

# How the Black/White Paradigm Renders Mexicans/Mexican Americans and Discrimination Against Them Invisible

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## I.

### INTRODUCTION\*

A number of authors have noted the relative lack of attention Mexicans and Mexican Americans receive by academics and popular media alike.<sup>1</sup> Scholars, popular print and visual media that attract large audiences all ignore the experiences of Mexicans/Mexican Americans.<sup>2</sup> This lack of attention is apparent in virtually every realm of American society. Discussions concerning discrimination and race/ethnic relations in the United States are no exception.<sup>3</sup> Indeed, the Civil Rights Movement and discourse on race/ethnic relations are almost inextricably intertwined with, and exclusively focused on, the contributions and experiences of Blacks. Some

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\* Author's Note: Throughout my high school, undergraduate college, and law school education my cousin Andrew was incarcerated for different crimes and for different times. From many different countries and states I have written him letters to his cell in five different prisons. Next to my father, he is among the men I most respect. He is a large part of the influence and strength of this article. I dedicate this article to Andrew Muñoz. He is currently a prisoner in a California Correctional Institute.

1. See Juan F. Perea, *Ethnicity and the Constitution: Beyond the Black and White Binary Constitution*, 36 WM. & MARY L. REV. 571, 573 (1995) (noting the dominance of the Black/White binary paradigm in discourse related to race in legal academic journals and popular culture); see also Margaret E. Montoya, *A Brief History of Chicana/o School Segregation: One Rationale for Affirmative Action*, 12 BERKELEY LA RAZA L.J. 159, 162 (2000-2001).

2. Because the two arguably distinct communities share a common history of discrimination in the United States, I have elected to combine the terms Mexican and Mexican American in this Article. Combining these terms is also justified inasmuch as some Anglos fail to distinguish between the two.

3. For purposes of this argument I combine the terms race and ethnicity. My intention is to avoid confusion over whether the experiences of Blacks and Mexicans/Mexican Americans are a matter of race or ethnicity. I believe that determining whether discrimination is based on race or ethnicity is frequently futile and significantly less important than analysis of the consequences of discrimination. I encourage the reader to focus on the discrimination itself and to avoid questioning whether the group, or the discrimination from which it suffers, is a matter of race or ethnicity. Therefore, to focus the reader's attention on the discrimination, throughout this Article I combine the terms race and ethnicity. This usage is further justified because Mexicans/Mexican Americans are often considered both a racial and ethnic group. Readers interested in this analytic distinction should understand that race and ethnicity have resulted in independent historical and legal analysis by scholars and jurists. For an in depth analysis of Latinos' characterizations as a racial or an ethnic group and its consequences in the legal realm, see Ian F. Haney López, *Race, Ethnicity, Erasure: The Salience of Race to LatCrit Theory*, 85 CAL. L. REV. 1143 (1997), 10 LA RAZA L.J. 57 (1998).

authors have termed this feature of race/ethnic relations the "Black/White paradigm."<sup>4</sup>

This Article critiques the Black/White paradigm, which structures both scholarly and popular discourse on race relations in America. First, the Article demonstrates how the paradigm generally renders Latinos invisible in race/ethnicity discourse. In particular, the paradigm obscures Mexican/Mexican American contributions to civil rights struggles. Next, I argue that recent demographic shifts undermine conventional justifications for continued use of the paradigm. Contemporary demography demonstrates the severe marginalization of Mexicans/Mexican Americans in the United States. Hence, belief in the Black/White paradigm may now be based on outdated and dangerously inaccurate social facts.

While the Black/White paradigm has reaped important gains for the Black community, this Article illustrates some of the negative consequences the paradigm bears for the Mexican/Mexican American community. I end the Article by illustrating how the Black/White paradigm obscures the civil rights struggles of the Mexican/Mexican American community to desegregate public education. While such efforts pre-date *Brown v. Board of Education*,<sup>5</sup> the Black/White paradigm renders Mexican/Mexican American struggles invisible. In place of the Black/White paradigm, I suggest that scholars of race/ethnicity construct a new, more inclusive, and consequently less inaccurate paradigm with which to understand, discuss and remedy racial/ethnic discrimination in the United States. If the Black/White paradigm remains dominant, we remain unable to understand or remedy the discrimination against Mexicans/Mexican Americans.

## II.

### THE BLACK/WHITE PARADIGM

#### A. *On Paradigms*

Thomas Kuhn, in *The Structure of Scientific Revolutions*, details the manner in which paradigms influence the structure and interpretation of knowledge.<sup>6</sup> While there are limits to what we can know, paradigms are commonly used in the sciences. They influence our understanding of all knowledge and fields of study; interpretations of race and ethnic relations are no exception.<sup>7</sup> Scholars of race/ethnic relations in the United States frequently employ paradigms to structure their arguments.<sup>8</sup> Paradigms determine what information is relevant and establish intellectual boundaries. However, because they limit the field of relevant information, paradigms necessarily render scholarship incomplete. Because the

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4. See Juan F. Perea, *The Black/White Binary Paradigm of Race: The "Normal Science" of American Racial Thought*, 85 CAL. L. REV. 1213 (1997), 10 LA RAZA L.J. 127 (1998); cf. Janine Young Kim, *Are Asians Black?: The Asian-American Civil Rights Agenda and the Contemporary Significance of the Black/White Paradigm*, 108 YALE L. J. 2385 (1999).

5. 347 U.S. 483 (1954).

6. THOMAS S. KUHN, *THE STRUCTURE OF SCIENTIFIC REVOLUTIONS* (2d ed. 1970). For an analysis of Kuhn's book, see Perea, *supra* note 4, at 1216-19 & 130-31.

7. See Perea, *supra* note 4, at 1216 & 130.

8. See *id.* at 1218-21 & 132-35.

Black/White binary paradigm limits analysis concerning race/ethnic relations almost exclusively to Black contributions and experiences, scholarship utilizing the paradigm is also incomplete. Although others exist, today the Black/White paradigm is the most pervasive and influential in shaping our understanding of race/ethnicity in the United States.<sup>9</sup>

Scholars of race/ethnic relations, and mainstream Americans in general, have focused almost exclusively on Black experiences in, and contributions to, civil rights struggles. The common thread of the Black/White paradigm is that race/ethnicity consists, either exclusively or primarily, of Whites and Blacks.<sup>10</sup> The Black/White paradigm limits the relevancy of race/ethnic relations to include only the experiences of Blacks; it omits the experiences of other minority communities.<sup>11</sup> This omission is not problematic in and of itself. After all, if Blacks were the only significant contributors to civil rights or public school desegregation, then scholarship utilizing the Black/White paradigm would accurately reflect those contributions. However, this is not the case. Despite common misconceptions, Mexicans/Mexican Americans have contributed significantly to general civil rights struggles and specifically to public school desegregation.<sup>12</sup>

#### B. *How the Black/White Paradigm Renders Latinos Invisible*

As this Article will discuss, Mexicans/Mexican Americans have not only struggled to end segregation for their own community, but have also contributed to similar efforts to promote the civil rights of Blacks.<sup>13</sup> Furthermore, it is worth noting that Mexicans'/Mexican Americans' contributions were neither sporadic nor insignificant. Rather, these contributions have contributed to civil rights efforts generally, and desegregation specifically, for as long as their Black counterparts.<sup>14</sup> This fact is worth noting because it more completely describes the civil rights history of the United States. Lamentably, scholars all too often overlook this chapter in the book of legal history. Furthermore, discussion of Mexican/Mexican American contributions to civil rights is particularly important because some legal scholars, including several of the most eminent, have characterized non-Black minorities' contributions to civil rights as secondary to those of Blacks at best, and at worst, have omitted their contributions altogether. For instance, Cornell West describes non-Black minorities' contributions to civil rights as "slight though significant."<sup>15</sup>

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9. *But see* MICHAEL OMI & HOWARD WINANT, RACIAL FORMATIONS IN THE UNITED STATES: FROM THE 1960S TO THE 1980S 14-24 (1986) (describing the ethnicity paradigm as dominant but critiquing its accuracy and explanatory value). As the title indicates, Omi & Winant advanced an alternative theory of race/ethnicity in the United States, one marked by the concept of "racial formation." *Id.* at 5. By the current day, many scholars of race/ethnicity utilize the concept of racial formation; unfortunately, many of them are constrained by the Black/White paradigm.

10. *See* Perea, *supra* note 4, at 1219 & 133.

11. Women, Asians/Asian Americans, Native Americans, and lesbian, gay, bi-sexual, and transgendered people have all contributed significantly to civil rights and/or school desegregation efforts. Such groups are beyond the scope of this Article.

12. *See* Montoya, *supra* note 1, at 162 (discussing the common misperception that Mexican/Mexican Americans have not contributed to desegregation efforts).

13. *See infra* Part III.

14. *See* Montoya, *supra* note 1; *see also* George A. Martinez, Legal Indeterminacy, Judicial Discretion and the Mexican American Litigation Experience: 1930-1980, 27 U.C. DAVIS L. REV. 555 (1994) (detailing desegregation efforts of Mexican-Americans since 1930).

15. CORNELL WEST, RACE MATTERS 28 (1993).

West's description of Latino, Asian, and Native American contributions is important for a number of reasons. First, despite the context of West's characterization, a brief paragraph where he argues that "a prophetic framework encourages a coalition strategy,"<sup>16</sup> his statement exemplifies the misconception that Latino civil rights struggles are minimal. Students of civil rights history read scholarship by renowned authors like West to guide them through their study of the subject. With this in mind, it is no mystery that students' understanding of the subject frequently mirrors the incomplete texts from which they read. If the history of civil rights is inaccurately written, then how can we expect students to understand it any differently? As long as civil rights scholarship is incompletely written, students and their scholarship will reflect the aforementioned flaws and fail to include the continuing civil rights struggles of Mexicans/Mexican Americans and other communities of color.

Second, for better or worse, the scholarship of renowned authors limits what is considered relevant in a field of study.<sup>17</sup> Scholarship by well-known authors tends to be regarded as definitive. As a result, laypersons and students alike often fail to discern the scholarships' omissions. Because race/ethnicity scholarship is heavily influenced by the Black/White paradigm, it often fails to include the history of non-Black communities of color. Therefore, whether they like it or not, celebrated civil rights authors cannot afford to omit or marginalize the contributions of Mexicans/Mexican Americans and other non-Black communities of color. Current race/ethnicity scholarship is embarrassingly incomplete and does a disservice to the many people who struggled in the Civil Rights Movement and to those who study it today. Having accepted the adulation and economic benefits that come with academic celebrity, it is appropriate to hold such authors to the highest standards of accuracy and completeness.<sup>18</sup>

Despite a rich legal history, race/ethnicity scholarship is virtually void of descriptions of the struggles of Mexicans/Mexican Americans. Perhaps the most unsettling aspect of this omission is that it is deliberate.

C. *Justifications for the Black/White Paradigm: The Deliberate Omission of Mexican/Mexican American Civil Rights History*

Among the common justifications scholars offer for deliberately omitting Mexican/Mexican American civil rights history is that Mexicans/Mexican Americans do not suffer from discrimination. If Mexicans/Mexican Americans are not omitted completely, they are often only marginally covered as compared to the treatment afforded to Blacks. For instance, Andrew Hacker in his celebrated book *Two Nations: Black and White, Separate, Hostile, Unequal* describes Mexicans/Mexican Americans, Asians/Asian Americans and other immigrant groups as less affected by discrimination because, "none of the presumptions of inferiority associated with Africa and slavery are imposed on these other ethnicities."<sup>19</sup>

16. *Id.*

17. See Perea, *supra* note 4, at 1216-17 & 130-31.

18. See e.g. Perea, *supra* note 4, at 1223-24 & 137-38 (discussing ANDREW HACKER, *TWO NATIONS: BLACK AND WHITE, SEPARATE, HOSTILE, UNEQUAL* (1992), and highlighting its omission of the discrimination from which Mexicans/Mexican Americans suffer).

19. ANDREW HACKER, *TWO NATIONS: BLACK AND WHITE, SEPARATE, HOSTILE, UNEQUAL* 16 (1992).

Hacker's assertion is flawed. True, immigrant communities do not have the *same* association with slavery that Blacks do, but a history of slavery exists nonetheless.<sup>20</sup> Mexicans/Mexican Americans and other immigrants do not suffer any less from discrimination than Blacks do. In fact, socioeconomic indicators suggest that racial/ethnic discrimination has currently waged a *greater* toll on Mexicans/Mexican Americans than Blacks.

Latinos are the largest minority group in the United States.<sup>21</sup> Additionally, socioeconomic indicators, such as poverty, median household income, school segregation and access to universities suggest that Mexicans/Mexican Americans currently suffer most from discrimination.<sup>22</sup> While immigrant groups may not be subject to the presumptions of inferiority based on an association with slavery, they suffer from discrimination nonetheless. Their position at the bottom of the socioeconomic hierarchy makes this evident.<sup>23</sup> The omission of Mexicans/Mexican Americans' civil rights struggles suggests that they have not suffered from discrimination, or even worse, that Mexicans/Mexican Americans never resisted discrimination. Neither is true.

Another justification for the Black/White paradigm is "black exceptionalism." Describing this claim, Angela Harris, a professor of law at the University of California, Berkeley, School of Law (Boalt Hall), writes, "African Americans play a unique and central role in American social, political, cultural, and economic life, and have done so since the nation's founding."<sup>24</sup> I do not dispute that Black exceptionalism presents a strong justification for the Black/White paradigm. The Black community *has* uniquely shaped contemporary understandings of race. Additionally, I agree with both Harris's and Hacker's assertions that Blacks' unique association with slavery has influenced subsequent discrimination based on race/ethnicity in the United States like no other community. However, the claim becomes dangerous where it exclusively focuses on the Black experience at the expense of omitting the experiences of others.

Many assume that Blacks are the veritably oppressed in the United States. This is not surprising considering that use of the Black/White paradigm limits analyses of racial/ethnic discrimination to its effect on the Black community. The Black/White paradigm explains why many Americans believe that the discrimination from which Blacks suffer is not only the most oppressive, but also an accurate model by which to understand and remedy the discrimination that all racial/ethnic communities suffer.

It is widely assumed that Blacks suffer most from discrimination.<sup>25</sup> It is also widely assumed that by addressing the discrimination suffered by Blacks, other

20. See e.g. Robert F. Castro, *Rescuing Catalina: Law, Storytelling, and Unearthing the Hidden History of Southwestern Slavery*, 12 BERKELEY LA RAZA L.J. 123 (2000-2001) (excavating legal history with narrative and storytelling to unearth "the enslavement of Mestizos and American Indians during the late antebellum period"). *Id.* at 123 (citation omitted).

21. Montoya, *supra* note 1, at 162 (noting U.S. Census figures that identify Latinos as "the largest minority group in the U.S.>").

22. See *infra* notes 35-39.

23. See *id.*

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

25. See *infra* notes 146-69 and accompanying text.

racial/ethnic groups necessarily will benefit. The logic is as follows: ameliorating the plight of Blacks and eliminating the discrimination from which they suffer will necessarily eliminate the discrimination from which other communities suffer. As this Article will discuss, the history of public school desegregation indicates that nothing is further from the truth. True, Mexicans/Mexican Americans and Blacks suffer from *some* similar forms of discrimination. But, discrimination also exists that is unique to each community. As the Article will discuss in Part III, because courts utilize the Black/White paradigm to analyze illegal discrimination and to formulate legal remedies, in the remedy phase of civil rights litigation, courts frequently ignore discrimination from which Mexican/Mexican Americans uniquely suffer.

The belief that Blacks have suffered and continue to suffer most from discrimination is based on flawed assumptions. Further describing “black exceptionalism,” Harris writes:

In the American collective unconscious, some nonwhites are more unequal than others. When compared with “whites,” Latinos, like Asian Americans and Native Americans, are all considered abnormal, exotically different, inferior or somehow ominously superior. But when compared with one another, blackness is the worst kind of nonwhiteness.<sup>26</sup>

This assertion fails to consider a number of facts.

First, proponents of black exceptionalism suggest that Blacks’ socioeconomic position is worse when compared to other minority groups. Despite the bold nature of this claim, it is not supported by the latest national population survey.<sup>27</sup> As the U.S. Census data indicates, virtually every socioeconomic indicator reveals that Blacks fare significantly better than Mexicans/Mexican Americans.<sup>28</sup> Thus, changed circumstances undercut the basic assumption that Blacks constitute the veritable underclass. Unfortunately, proponents of black exceptionalism are not alone in entertaining this assumption. Americans collectively tend to assume the same. The prevalence of these beliefs reveals the Black/White paradigm’s power to omit other communities’ experiences of oppression.

It is understandable that a layperson might fail to recognize the demographic and socioeconomic shifts in the United States. Without extensive research, many people might have no reason to believe that Mexicans/Mexican Americans fare worse than Blacks. But, scholars of race/ethnicity should not be so easily misled. Herein lies perhaps the most telling indicator of the paradigm’s strength. The Black/White paradigm is so pervasive that it omits Mexicans/Mexican Americans from consideration even amongst learned scholars of race/ethnicity.

[C]olor, the experience of being visually raced through one’s skin tone, lies at the very core of what it means to be African American. . . . Blacks—and-whites have, unique among American ethnic groups, centered their identities on a notion of putative skin color, a phenomenon that attests to the centrality of color. For

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26. Espinoza & Harris, *supra* note 24, at 1602 & 516.

27. See *infra* notes 36-39.

28. See *id.*

African Americans, but not for Latino/as, “ethnicity” converges with the biological fiction of “color.”<sup>29</sup>

This understanding of discrimination against Mexicans/Mexican Americans is lamentable but not surprising: lamentable, because it reveals a deep misunderstanding of the discrimination from which Mexicans/Mexican Americans suffer; and surprising, because despite careers dedicated to studying race/ethnicity, proponents of black exceptionalism fundamentally misunderstand the experiences of Mexicans/Mexican Americans.

In refreshing contrast, Professor Juan Perea accurately notes that color *is* a significant factor in the discrimination to which Mexicans/Mexicans are subjected within their own communities and others.<sup>30</sup> Mexicans/Mexican Americans have internalized many of the pejorative labels associated with skin color. For example, it is not uncommon amongst Mexicans/Mexican Americans to refer to each other pejoratively as “Indio” or “moreno,” which roughly translate to “Indian” and “dark one” respectively. Like many communities with an intimate connection to colonization, Mexicans/Mexican Americans measure standards of beauty by idealized Anglo-European phenotypes. By those standards, indigenous phenotypes, especially dark skin color, are considered unattractive. In short, Blacks are not alone. Mexicans/Mexican Americans also significantly center their identities on notions of skin color.<sup>31</sup>

The assertion that color has not played a central role in the formation of Mexicans’/Mexican Americans’ identity evidences a general misunderstanding of Mexicans/Mexican Americans among academics and others influenced by the Black/White paradigm. Unless scholarship concerning race/ethnicity begins consciously to include, and sometimes to center on, the experiences of Mexicans/Mexican Americans, this misunderstanding will likely persist.

#### D. *The Black/White Paradigm and Demographic Shifts*

Scholars might defend their use of the Black/White paradigm by arguing that they only include the experiences of Whites and Blacks because these groups comprise the two largest racial/ethnic groups in the United States. This argument may have been valid in the 1960s when America’s racial composition was nearly 90% White, 10% African American and an estimated 4% Latino.<sup>32</sup> However, today, the 2000 United States Census reveals that Latinos currently comprise the largest minority group and suffer from greater segregation than Blacks.<sup>33</sup>

A telling example of how the Black/White paradigm is inadequate for current analysis of racial/ethnic relations is public school segregation. Contemporary

29. Espinoza & Harris, *supra* note 24, at 1601 & 515.

30. Cf. Perea, *supra* note 4, at 1229 & 143.

31. And, like Blacks, Mexicans/Mexican Americans are subjected to racial/ethnic slurs. For instance, in *Contreras v. Crown Zellerbach Corp.*, 565 P.2d 1173 (Wash. 1977), a Mexican American sued his employer for the tort of outrage when the defendant’s employees continuously subjected plaintiff to racial jokes and slurs. (Interestingly enough, the Washington Supreme Court held for the first time that a plaintiff could successfully argue that racial slurs constitute the tort of outrage).

32. Deborah Ramirez, *Multicultural Empowerment: It’s Not Just Black and White Anymore*, 47 STAN. L. REV. 957, 958-59 (1995) (citing the 1960 United States Census).

33. See Montoya, *supra* note 1, at 162; see also *infra* notes 35-39.

discussions concerning school segregation almost exclusively center on its deleterious effects on Black students. The Black/White paradigm accurately addresses the segregation suffered by Black students. However, analysis of segregation under the Black/White paradigm is incomplete because it omits the deleterious effects segregation has on the Mexican/Mexican American community, which has both larger numbers of school age children and is more segregated than its Black counterparts.<sup>34</sup>

The 2000 Census tells us that Latinos have become the largest minority group in the U.S. They have been more segregated than blacks for a number of years, not only by race and ethnicity, but also by poverty. There is also serious segregation developing by language. Most Latinos are concentrated in high poverty, low-achieving schools and face by far the highest drop out rates.<sup>35</sup>

Considering the strong correlation between education and socioeconomic upward mobility, it is not surprising that Latinos are also the most economically disadvantaged, even in comparison to their Black counterparts. Latinos comprise the most impoverished racial/ethnic group,<sup>36</sup> are least likely to have health insurance,<sup>37</sup> and are the least educated.<sup>38</sup> These sobering statistics bear particular importance for the over twenty million Mexicans/Mexican Americans living in the United States.<sup>39</sup>

Mexicans/Mexican Americans comprise the largest Latino racial/ethnic group<sup>40</sup> and are also the most marginalized. Mexicans/Mexican Americans, who comprise approximately 62 percent of all Latinos in the United States,<sup>41</sup> have the lowest educational levels among Latinos<sup>42</sup> are among the most impoverished.<sup>43</sup> As I will discuss, public school desegregation is illustrative of the manner in which the Black/White paradigm bears deleterious effects for Mexicans/Mexican Americans.

#### E. *The Hegemony of the Black/White Paradigm*

The Black/White paradigm has so thoroughly dominated conventional analysis of race/ethnicity that few in academia, and fewer in the population at large, question its legitimacy, let alone its efficacy for analyzing race/ethnicity. The Black/White paradigm is hegemonic in nature. Its domination of racial/ethnic

34. *See id.*

35. *See Montoya, supra* note 1, at 162 (quoting findings reported in the Civil Rights Project of Harvard University, an entity engaged in empirical and qualitative research of contemporary segregation). *See* Gary Orfield, *Schools More Separate: Consequences of a Decade of Resegregation* (July 2001), available at [http://www.civilrightsproject.harvard.edu/research/deseg/Schools\\_More\\_Separate.pdf](http://www.civilrightsproject.harvard.edu/research/deseg/Schools_More_Separate.pdf).

36. U.S. Census Bureau, *Current Population Survey, March 2000, Ethnic and Hispanic Statistics Branch, Population Division*, at <http://www.census.gov/population/socdemo/hispanic/p20-535/tab14-1.txt> (release date March 6, 2001).

37. U.S. Census Bureau, *Health Insurance Coverage: 2000, Housing and Household Economic Statistics Division*, at <http://www.census.gov/hhes/hlthins/hlthin00/hlthin00a.html> (last revised Aug. 22, 2002).

38. *Cf.* Melissa Therrien & Roberto R. Ramirez, *The Hispanic Population in the United States: March 2000, Current Population Reports*, P20-535 4-5 (Mar. 2001), at <http://www.census.gov/population/socdemo/hispanic/p20-535/p20-535.pdf>.

39. Betsy Guzmán, *The Hispanic Population: Census 2000 Brief 3* (May 2001), at <http://www.census.gov/prod/2001pubs/c2kbr01-3.pdf>.

40. *Id.* at 2.

41. *Compare* Therrien & Ramirez, *supra* note 38, at 1, with Guzmán *supra* note 39, at 2.

42. Therrien & Ramirez, *supra* note 38, at 4.

43. *Id.* at 5-6. Puerto Ricans share in this distinction. *See id.* at 6.

discourse is so widely accepted that scholars fail to consider the use of any other paradigm to analyze racial/ethnic discrimination. Mexicans/Mexican Americans, along with Whites, Blacks, and others, are complicit in the paradigm's hegemonic status. Under the hegemony of the Black/White paradigm, Black experiences receive a virtual monopoly over racial/ethnic discourse. Representations of Black experiences dominate racial/ethnic discourse to such a degree that their position at center stage often goes unnoticed and hence unchallenged.

Trina Grillo and Stephanie Wildman have written about a dominant group's sense of entitlement to monopolize discourse in particular forums.<sup>44</sup>

[D]ominant groups assume that their perceptions are the pertinent perceptions, that their problems are the problems that need to be addressed, and that in discourse they should be the speaker rather than the listener. Part of being a member of a privileged group is being the center and the subject of all inquiry in which people of color or other non-privileged groups are the objects. So strong is this expectation of holding center-stage that even when a time and place are specifically designated for members of a non-privileged group to be central, members of the dominant group will often attempt to take back the pivotal focus. They are stealing the center – usually with a complete lack of self-consciousness.<sup>45</sup>

Grillo and Wildman wrote their observations with Whites in mind as the dominant group and racial/ethnic minorities as the non-privileged. Nonetheless, their observations provide an important insight for recognizing the Black/White paradigm's exclusion of Mexicans/Mexican Americans.

Unconsciously for many yet consciously for some, Black historical legal experiences are positioned on center stage, and the experiences of other minority groups are relegated to secondary and inferior roles as stagehands. Under the Black/White paradigm, Black experiences are considered pertinent. Problems afflicting the Black community are the ones that should be addressed, and in discourse, the Black community is held out as representative of all oppressed racial/ethnic communities. In short, in the arena of racial/ethnic discourse, Blacks enjoy a privileged status relative to Mexicans/Mexican Americans and other people of color.

Proponents of the Black/White paradigm generally justify the paradigm's use based upon their belief that Blacks suffer most from racial/ethnic discrimination, and hence, most of the attention concerning racial/ethnic discrimination is rightfully focused on that community. However, as demonstrated above, this belief is based on an inaccurate premise. Today, virtually every socioeconomic indicator suggests that Mexicans/Mexican Americans fare considerably worse than their Black counterparts.<sup>46</sup>

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44. Trina Grillo & Stephanie M. Wildman, *Obscuring the Importance of Race: The Implication of Making Comparisons Between Racism and Sexism (or Other-isms)*, 1991 DUKE L.J. 397.

45. *Id.* at 402 (footnotes omitted).

46. See Montoya *supra* note 1, at 162; see also *supra* notes 36-39.

F. *Resistance to Discarding the Black/White Paradigm: Nativistic Movement and "Inchoate Xenophobia"*

The Black/White paradigm's inability to address accurately the changing racial/ethnic demographics of marginalized groups in the United States has not gone without controversy.<sup>47</sup> For several years, some scholars of race/ethnicity have critiqued and defended the merits of the Black/White paradigm to analyze contemporary racial/ethnic issues and demographics.<sup>48</sup> Additionally some journalists have reported on related public debates. Beyond the general unconscious prioritization of Black experiences, a number of Black activists have expressed resistance to abandoning the Black/White paradigm.<sup>49</sup> Some go even further and express a form of xenophobic suspicion of minority immigrant communities.<sup>50</sup>

For instance, as already mentioned, Cornel West described Latino, Asian and Native American contributions to civil rights as "slight though significant."<sup>51</sup> Perea critiques West's scholarship as, "express[ing] a degree of distrust regarding Latinas/os and Asian Americans that works against the coalitions that West knows are necessary to struggle successfully against racism[.]"<sup>52</sup> Perea also critiques the work of celebrated Black author Toni Morrison as evidencing "[e]xcessive distrust of Latinas/os and other non-Whites."<sup>53</sup>

Morrison describes the struggles of immigrants as, "persistently framed as struggles between recent arrivals and blacks. In race talk the move into mainstream America always means buying into the notion of American blacks as the real aliens."<sup>54</sup> While there is some merit to Morrison's observations, her failure to differentiate between immigrant communities illustrates a general misunderstanding of Mexican/Mexican American immigrant experiences. Under the Black/White paradigm, such misunderstandings are all too common.

Highly educated and affluent immigrants may believe that distancing themselves from impoverished Blacks will facilitate their integration into American society. This rationale might seem logical where the immigrant group perceives itself as more educated and more affluent than Blacks. However, for Mexicans/Mexican Americans the converse is true – Mexicans/Mexican Americans are more marginalized than Blacks.<sup>55</sup> Morrison fails even to consider that categorization as "Black" could indicate socioeconomic upward mobility for many Mexicans/Mexican Americans.<sup>56</sup>

47. See e.g. Perea *supra* note 1.

48. See Perea, *supra* note 4, at 1213 & 127; Espinoza & Harris, *supra* note 24, at 1586 & 499; and Kim *supra* note 4, at 2386.

49. See e.g. Kim, *supra* note 4, at 2386 (noting "the highly publicized conflict between Angela Oh and John Hope Franklin within President Clinton's race relations commission"); see also *id.* at fn.7 (citing several news stories covering the conflict in the L.A. and Washington Times).

50. See Perea, *supra* note 4, at 1226-30 & 140-44.

51. West, *supra* note 15, at 28.

52. Perea, *supra* note 4, at 1229 & 143.

53. See *id.* at 1230-31 & 144-45.

54. TONI MORRISON, ON THE BACKS OF BLACKS, *reprinted in* ARGUING IMMIGRATION 97 (1994).

55. See *supra* notes 35-39.

56. See *id.*

West's and Morrison's inaccurate descriptions of immigrants exemplify their general misunderstanding of Mexicans/Mexican Americans. Their limited understanding of the experiences and contributions of immigrant communities is not surprising considering that both utilize the Black/White paradigm to analyze racial/ethnic relations and that the paradigm fails to adequately consider immigrant contributions. Hence, scholars using the Black/White paradigm frequently pen scholarship that misrepresents, or omits altogether, the experiences and contributions of Mexicans/Mexican Americans.

Another disturbing aspect of Morrison's comment is the certainty with which she describes the socioeconomic upward mobility of immigrants. Morrison asserts that immigrants' socioeconomic upward mobility is directly and necessarily oppressive of Blacks. Yet Morrison does not consider that some *Blacks* might distance themselves from more impoverished immigrant communities in an effort to lay claim to "native" entitlement to the benefits of U.S. citizenship. Could it be that some Blacks have distanced themselves from immigrant communities as a means of establishing themselves as more entitled than immigrants to material and social benefits? Perhaps some Blacks have aligned themselves with the dominant White majority in an effort to marginalize Mexicans/Mexican Americans. Might these Blacks constitute the newest members of a nativist movement? Unfortunately, a recent trend in Black voting in California supports such assertions.

In the past decade, Black voters in California were divided over legislation that curbed immigrant rights<sup>57</sup> and bilingual education,<sup>58</sup> and in Los Angeles they voted against a progressive Mexican American mayoral candidate.<sup>59</sup>

In 1994 California voters passed Proposition 187. The initiative was obviously aimed at Mexican immigrants and preyed upon nativist sentiments.<sup>60</sup> Proposition 187 sought to limit or deny undocumented immigrants access to social welfare benefits.<sup>61</sup> Exit polls revealed a divide between the Black and Latino communities' support of civil rights. According to several scholars of race/ethnicity, Proposition 187 enjoyed only 22% of the Latino vote but received approximately 50% of Black votes.<sup>62</sup>

Commenting on the support Proposition 187 received from the Black community, Kevin Ross, an Inglewood deputy district attorney and political action chairman of the NAACP chapter in Los Angeles, noted that, "forty percent of African American youth are unemployed. When the assertion is made that illegal immigrants do the jobs others wouldn't do in the first place, the black community is offended."<sup>63</sup>

Ross's comments reflect the Black community's fear that immigrants are

57. Evelyn C. White, *Immigration a Tough Call for Blacks: Proposition 187 Debate Has Stirred Deep Feelings*, SAN FRANCISCO CHRONICLE, Oct. 10, 1994, at A1.

58. James Crawford, THE CAMPAIGN AGAINST PROPOSITION 227: A POST MORTEM, 21 BILINGUAL RESEARCH JOURNAL 1 (1997), available at <http://brj.asu.edu/archives/1v21/articles/Issue1Crawford.html>.

59. Gerald Horne, *Black L.A., Not the Way – To Go*, THE BLACK WORLD TODAY 5 (Apr. 18, 2002), at <http://athena.tbwt.com/content/article.asp?articleid=523>.

60. See John S.W. Park, Note, *Race Discourse and Proposition 187*, 2 MICH. J. RACE & L. 175, 185 (1996); and Kim, *supra* note 4, at 2410.

61. See Perea, *supra* note 4, at 1225 & 139.

62. See Park, *supra* note 60, at 185; and Kim, *supra* note 4, at fn. 120.

63. Park, *supra* note 60, at 178; see also Kim, *supra* note 4, at 2411.

displacing them. But, if Mexicans/Mexican Americans have displaced Blacks of anything, it is their distinction as the veritable underclass. Such displacement is neither cause for envy by Blacks nor cause for celebration by Mexicans/Mexican Americans.<sup>64</sup>

On June 2, 1998 California voters passed Proposition 227, which sought to eliminate bilingual education in the state. According to a Los Angeles Times-CNN poll, 63% of Latinos voted against the initiative.<sup>65</sup> In contrast, Black voters were divided over the issue. Blacks voted against the initiative 52-48%.<sup>66</sup> While a small majority of Blacks voted against it, the exit polls nonetheless reveal their apprehension for protecting the educational rights of immigrants. The exit polls for both Propositions 187 and 227 illustrate a general reluctance on the part of Black voters to oppose measures that limit civil rights for immigrant communities.

Then, in 2001, Black voters voted overwhelmingly in favor of White mayoral candidate Jim Hahn instead of his opponent, Mexican-American Antonio Villaraigosa.<sup>67</sup> Despite Villaraigosa's clearly more progressive stance, 80% of Blacks voted in favor of Jim Hahn.<sup>68</sup> Commentators attributed the Black community's support of Hahn to their fear that Villaraigosa's election would signify Mexicans'/Mexican Americans' displacing Blacks in the Los Angeles political arena.<sup>69</sup>

It is important to note that when the interests of immigrant and Black communities converge, the results are strikingly different than those demonstrated during the elections that passed Propositions 187 and 227 and defeated Los Angeles mayoral candidate Antonio Villaraigosa.

For instance, on November 5, 1996, California voters chose to end consideration of race/ethnicity by the state in public employment and admission to California state institutions of higher education by passing Proposition 209. This statewide ballot initiative was the first in which citizens voted on the issue of affirmative action. The proposition passed with almost fifty-five percent of the vote.<sup>70</sup> However, Latinos and Blacks, who both stood to suffer from the passing of the Proposition, overwhelmingly voted against it. Seventy percent of Latinos and seventy-three percent of Blacks voted against Proposition 209.<sup>71</sup> Hence, it appears

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64. The purpose of this Article is to illustrate the inefficacy of the Black/White paradigm. Contemporary racial/ethnic demographics render the paradigm outdated for analyzing the effects of racial/ethnic discrimination. My intention is NOT to engage in competition over which community has suffered most from racial/ethnic discrimination or win what some have termed the "oppression sweepstakes." Espinoza & Harris, *supra* note 24, at 1594, 1641 & 508, 555. Rather, this Article critiques how the Black/White paradigm renders Mexicans/Mexican Americans and discrimination against them invisible. This Article is also intended to stimulate representation of non-Black racial/ethnic communities' experiences with the goal of constructing a new, more inclusive, and consequently less inaccurate paradigm with which to understand and discuss racial/ethnic discrimination in the United States.

65. See Crawford, *supra* note 58.

66. *Id.* at fn. 23.

67. See Horne, *supra* note 59.

68. *Id.*

69. *Id.*

70. Coalition for Economic Equity v. Wilson, 122 F.3d 692, 697 (9th Cir. 1997). The total tally showed 4,736,180 voting in favor of the initiative and 3,986,196 voting against it. *Id.*

71. Kenneth L. Karst, *The Coming Crisis of Work in Constitutional Perspective*, 82 CORNELL L. REV. 523, fn. 113 (citing *State Propositions: A Snapshot of Voters*, L.A. TIMES, Nov. 7, 1996, at A29).

that Latinos and Blacks vote similarly when they perceive common interests in a mutual civil rights struggle. However, Blacks in recent years have voted more closely to Whites on civil rights issues that are perceived exclusive to immigrant communities and in the case of Proposition 187, particularly exclusive to Mexicans/Mexican Americans.<sup>72</sup> For example, Proposition 187 was supported by 63% of Whites and 47% of Blacks but only received 23% of the Latino vote.<sup>73</sup>

Of course myriad factors influenced the decision of Black voters in the aforementioned elections. Nonetheless, overall the Black community's voting patterns in California support the assertion that as Blacks have become more affluent relative to Mexicans/Mexican Americans, they have also become more reluctant to support civil rights struggles perceived to lack a common cause.

In sum, it appears that Black academics and a significant cross section of the Black population harbor what West himself describes as an "inchoate xenophobia" towards immigrants.<sup>74</sup> Similarly Morrison's scholarship suggests that Blacks see themselves as "Americans" and consequently as more entitled to the benefits of residing in the United States than Mexicans/Mexican Americans, whom they tend to perceive as "foreigners" and hence not entitled to the same benefits.<sup>75</sup> Ross's commentary similarly evidences this belief.<sup>76</sup> Implied in his statement is the sense that Blacks are more entitled to social benefits than Mexicans/Mexican Americans. Ross expresses the Black community's fear that Mexican immigrants are displacing and taking jobs away from them.<sup>77</sup> Professor Harris offers insight into this expressed feeling of greater entitlement. She writes, "African Americans, for all our talk about Mother Africa, are profoundly and unmistakably Americans."<sup>78</sup>

It seems that some Blacks believe that their incorporation into and contributions to the United States gain value by the marginalization of immigrant communities – particularly Mexicans/Mexican Americans.<sup>79</sup> However, the perception of Mexicans/Mexican Americans as foreigners is incorrect.

First, like Native Americans, Mexicans/Mexican Americans are indigenous to the United States. A significant percentage of Mexicans/Mexican Americans did not migrate to the United States. As Perea notes, "Mexicans occupied the Southwest long before the United States ever found them."<sup>80</sup> Second, many scholars believe incorrectly that Mexicans/Mexican Americans' incorporation into mainstream

72. Kevin R. Johnson, *Symposium On Immigration Policy: An Essay On Immigration Politics, Popular Democracy, and California's Proposition 187: The Political Relevance and Legal Irrelevance Of Race*, 70 WASH. L. REV. 629, fn. 144 (citing a poll at L.A. TIMES, Nov. 10, 1994, at B2).

73. *Id.*

74. See West, *supra* note 15, at 27; see also Perea, *supra* note 4, at 1229-30 & 143-44 (describing West's "characterization of Latino/a, Asian, and Native American resistance to White racism as 'slight though significant'... belittling, ill-informed, and marginalizing of Latino/a, Asian, and indigenous people"). *Id.* Perea goes on to note West's description of an inchoate xenophobia in the Black community. See *id.*

75. *Cf. supra* note 54; *contra infra* notes 80-82 and accompanying text.

76. See *supra* note 63.

77. *Cf. id.*

78. Espinoza & Harris, *supra* note 24, at 1597 & 511.

79. See *supra* notes 57-60. Black marginalization of Mexicans/Mexican Americans is evidenced in their divided vote over Propositions 187 and 227—both of which were perceived as involving civil rights distinctive to Mexicans/Mexican Americans—and their electoral support of Jim Hahn.

80. Perea, *supra* note 4, at 1231 & 145.

America and economic upward mobility is only a question of time.<sup>81</sup> However, such scholars fail to admit that Mexicans/Mexican Americans have comprised an integral part of the United States since its inception. Furthermore, this belief presumes that Mexicans/Mexican Americans have become more affluent and more integrated than Blacks have. This assumption is incorrect. As argued above, Blacks fare significantly better than Mexicans/Mexican Americans according to virtually every socioeconomic indicator.<sup>82</sup> Hundreds of years have passed, and Mexicans/Mexican Americans in the United States remain marginalized.

### III.

#### MEXICANS'/MEXICAN AMERICANS' CONTRIBUTIONS TO PUBLIC SCHOOL DESEGREGATION

##### A. *The Beginnings of Mexicans'/Mexican Americans' Public School Desegregation Litigation*

The Black community's efforts to desegregate public schools are widely known amongst law students, lawyers, and the American collective in general. As a result, Blacks receive the lion's share of attention concerning the history of public school desegregation.<sup>83</sup> Furthermore, scholarly focus on the Black community's desegregation efforts became such a practice amongst legal scholars and historians that they largely omitted similar efforts by Mexicans/Mexican Americans. The Black/White paradigm limits the scope of relevant material to such a degree that American historians, commentators on contemporary issues and those in control of popular media virtually never consider the contributions of Mexicans/Mexican Americans. As a result, the overwhelming majority of scholarship and popular media that focuses on race relations is dedicated to studying the plight of Blacks or their interaction with Whites.<sup>84</sup> However, such an interpretation of the history of public school desegregation is fundamentally inaccurate.

The legal history of public school desegregation is largely inaccurate because it ignores Mexican/Mexican American contributions. Not only did Mexican/Mexican American plaintiffs attempt to end segregated schooling for the Mexican/Mexican American community as the Article will discuss, Mexican/Mexican American school desegregation efforts also contributed directly to the successful arguments in *Brown v. Board of Education*.<sup>85</sup>

Despite a long history of involvement, academics frequently overlook Mexican/Mexican American contributions to civil rights struggles. However, this omission has not gone unnoticed by Latino scholars.<sup>86</sup> Scholars, popular media and the American public at large are all responsible for the incomplete historical account of public school desegregation. The omission presents particular adversity for

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81. See Perea, *supra* note 4, at 1230 & 144.

82. See Montoya, *supra* note 1, at 162; and *supra* notes 36-39.

83. See *infra* Part IV.

84. See West, *supra* note 15; and Hacker *supra* note 19.

85. 347 U.S. 483 (1954) (holding unconstitutional the de jure segregation of Black school children).

86. See Perea, *supra* note 1; and Montoya, *supra* note 1.

communities with low educational attainment levels and poverty. Mexicans/Mexican Americans suffer from both.<sup>87</sup>

Mexicans/Mexican Americans have struggled to end desegregation since at least the 1930s.<sup>88</sup> They probably did not undertake similar efforts before the 1930s because a formal public education system was not established before that time.<sup>89</sup> Public elementary education was not widespread in the United States until the mid-nineteenth century and public secondary education not until the early twentieth century.<sup>90</sup> But, Mexican/Mexican American schoolchildren were segregated even before then. They were segregated in public education before the turn of the nineteenth century.<sup>91</sup> Despite government and court classification as "White," Mexicans/Mexican Americans were still segregated.<sup>92</sup> "It was almost insignificant that Latinos were White for citizenship, because they were not White for the purposes of enjoying the benefits citizenship should confer, such as education."<sup>93</sup> While law did not officially promote the practice, it was common.<sup>94</sup>

A 1931 survey of Latino school segregation confirmed the prevalence of segregating Latino students. The survey revealed that over 80% of school districts with large Latino populations were officially segregated and many of the remaining 20% were unofficially segregated through practices such as "Americanization" classrooms.<sup>95</sup>

Proponents of segregating Mexicans/Mexican Americans argued that separate schools would facilitate their assimilation to American ideals, of which Anglo students were already educated.<sup>96</sup> They also argued that because Mexicans/Mexican Americans were inferior, they would hinder the education of Anglos.<sup>97</sup> Hence, proponents of segregation opined that separate schools were mutually beneficial for Anglo and Mexican/Mexican American students. This perceived symbiotic relationship was justified on the grounds that if segregated, Anglo students could not taunt Mexican/Mexican American students, and in turn, Mexicans/Mexican Americans could not hinder the education of Anglos.<sup>98</sup>

One of the first cases to litigate Mexican/Mexican American public school segregation was *Independent School District v. Salvatierra* in 1930.<sup>99</sup> The city of Del Rio, Texas, operated a "Mexican" elementary school. No Texas statute expressly required the segregation of Mexicans/Mexican Americans.<sup>100</sup> Nonetheless,

87. See Montoya, *supra* note 1, at 162; and *supra* notes 36-39.

88. See Martinez, *supra* note 14, at 574-75.

89. See Kristi L. Bowman, Note, *The New Face of School Desegregation*, 50 DUKE L.J. 1751, 1768 (2001).

90. See *id.*

91. See Lisa J. Soto, Note, *The Treatment of the Spanish Language and Latinos in Education in the Southwest, in the Workplace, and in the Jury Selection Process*, 3 TEX. HISP. J. L. & POLICY 73, 76 (1997).

92. See Bowman, *supra* note 89, at 1769.

93. *Id.*

94. See Soto, *supra* note 91, at 76.

95. Bowman, *supra* note 89, at 1770.

96. See Soto, *supra* note 91, at 76.

97. See *id.*

98. See *id.*

99. 33 S.W. 2d 790 (Tex. Civ. App. 1930).

100. See Martinez, *supra* note 14, at 574-75 (noting that Texas statutes "only authorized separate schools for white and black children"). *Id.* at fn. 95.

the city exclusively used this school for the instruction of Mexican/Mexican American pupils.<sup>101</sup> The Texas Court of Civil Appeals held that “school authorities could not arbitrarily segregate Mexicans/Mexican Americans solely because of ethnic background.”<sup>102</sup> However, the court went on to hold that the authorities had not arbitrarily segregated Mexican/Mexican American children. The court opined that the reasons school authorities gave for the segregation—linguistic difficulty and late school enrollment (attributed to migrant farm working)—were permissible if impartially applied to all children.<sup>103</sup> This case is particularly significant because it foreshadows arguments for segregating Mexican/Mexican American school children in future cases. Specifically, the court upheld the segregation of Mexicans/Mexican Americans because of their perceived linguistic difficulty or late enrollment because of migrant occupational patterns.

Although rarely cited in legal history books and rarely recognized at large, the first successful court-ordered public school desegregation for Mexicans/Mexican Americans occurred in Lemon Grove, California. The Mexican/Mexican American plaintiffs filed their complaint in 1931 in *Alvarez v. Owen*.<sup>104</sup> In that case, Mexican/Mexican American and White students initially attended Lemon Grove elementary school together.<sup>105</sup> However, on July 23, 1930, the Lemon Grove School Board decided to segregate Mexican/Mexican American children in a new building.<sup>106</sup> This new barn like building was appropriately called “La Caballeriza” (the barn) by the Mexican/Mexican American schoolchildren.<sup>107</sup> Their parents initially responded by refusing to send them to the new Mexican school.<sup>108</sup> Shortly after the construction of La Caballeriza, Mexican/Mexican American parents filed a claim in the Superior Court of San Diego County alleging that the segregation was unlawful under the California Education Code.<sup>109</sup> The Code only called for the segregation of Negroes and Indians. Hence, “the Court concluded that Mexicans were neither Negroes nor Indians. . . . [T]heir segregation was therefore unlawful” under the code.<sup>110</sup>

However, it is important to note that the court’s holding was the exception rather than the rule for the time. Despite the seeming success *Alvarez* presented to the Mexican/Mexican American community, the “system of widespread Latino segregation in the Southwest persisted until the late 1940s and early 1950s.”<sup>111</sup>

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101. *See id.*

102. *Id.* at 575 (footnote omitted).

103. *See id.*

104. No. 66-625 (Cal. Super. Ct. San Diego County filed April 17, 1931.)

105. *See Bowman, supra* note 89, at 1770.

106. *See Montoya, supra* note 1, at 165.

107. *Id.*

108. *See Bowman, supra* note 89, at 1771.

109. *See Montoya, supra* note 1, at 166.

110. *Id.* (footnote omitted).

111. *Bowman, supra* note 89, at 1772 (footnote omitted).

B. *Mendez's contributions to Brown*

The next apparent school desegregation case litigated by Mexicans/Mexican Americans is *Mendez v. Westminster School District of Orange County*.<sup>112</sup> In that case, the parents of Mexican/Mexican American school children in California filed a petition for relief against officials of the Westminster, Garden Grove, Santa Ana, and El Modeno school districts of Orange County.<sup>113</sup> School district officials admitted to the practice of segregating children exclusively by Mexican descent.<sup>114</sup> The school board defended its policy on the grounds that Mexican/Mexican American children were not segregated because of race or nationality but rather because they lacked American values, culture and proficiency in the English language.<sup>115</sup> The school board additionally argued that the doctrine of "separate but equal" educational facilities was controlling with respect to Mexican/Mexican American children.<sup>116</sup>

The district court rejected both arguments. Judge Paul J. McCormick rejected the school board's argument that segregated schools were necessary because of Mexican/Mexican American children's difficulty with English.<sup>117</sup> McCormick also rejected that Mexican/Mexican American school children were intellectually inferior.<sup>118</sup> Finally, he held that integrated schools would facilitate the cultural assimilation of Mexicans/Mexican Americans.<sup>119</sup>

Judge McCormick went on to hold that the "separate but equal" doctrine of *Plessy v. Ferguson*<sup>120</sup> did not apply in this case because there was no California statute providing for separate schools for Mexicans.<sup>121</sup> Next, he addressed the school board's argument that facilities in the schools for Mexicans/Mexican Americans were equal to those of their White counterparts.

McCormick chose to focus on the deleterious effect segregated schools bore upon Mexicans/Mexican Americans. He found that segregated schools for Mexicans/Mexican Americans violated the Equal Protection clause even if "the efficiency of the teachers therein and the curricula are identical and in some respects superior to those in the other [White] schools in the respective districts."<sup>122</sup> McCormick's decision represents a watershed in public school desegregation litigation. Unlike many of the cases prior to *Brown*, this case did not focus on the equality of the school facilities. Rather, the Mexican/Mexican American plaintiffs argued that the school board's segregation itself made their children's education inferior. Judge McCormick agreed. He wrote:

112. *Mendez v. Westminster School Dist. of Orange County*, 64 F. Supp. 544 (C.D. Cal. 1946), *aff'd*, 161 F. 2d 774 (9th Cir. 1947). See Martinez, *supra* note 14, at 577. Because so little has been written concerning Mexican/Mexican American desegregation efforts, it is impossible to state with certainty that *Mendez* is the successive case in their efforts.

113. See Montoya, *supra* note 1, at 167.

114. See Martinez, *supra* note 14, at 577.

115. See Montoya, *supra* note 1, at 167.

116. *Id.*

117. See *id.*

118. See *id.*

119. See *id.*

120. 163 U.S. 537 (1896).

121. See Montoya, *supra* note 1, at 167.

122. *Mendez*, 64 F. Supp. at 546.

“The equal protection of the laws” pertaining to the public school system in California is not provided by furnishing in separate schools the same technical facilities, text books and courses of instruction to children of Mexican ancestry that are available to the other public school children regardless of their ancestry. A paramount requisite in the American system of public education is social equality. It must be open to all children by unified school association regardless of lineage.<sup>123</sup>

This decision foreshadowed the reasoning that Thurgood Marshall would later argue in *Brown*. Indeed, when comparing the language used in *Mendez* with that in *Brown*, the similarities are uncanny. For instance, the district court in *Mendez* wrote:

The evidence clearly shows that Spanish-speaking children are retarded in learning English by lack of exposure to its use because of segregation, and that commingling of the entire student body instills and develops a common cultural attitude among the school children which is imperative for the perpetuation of American institutions and ideals. It is also established by the record that the methods of segregation prevalent in the defendant school districts foster antagonisms in the children and suggest inferiority among them where none exists. One of the flagrant examples of the discriminatory results of segregation in two of the schools involved in this case is shown by the record. In the district under consideration there are two schools, the Lincoln and the Roosevelt, located approximately 120 yards apart on the same school grounds, hours of opening and closing, as well as recess periods, are not uniform. No credible language test is given to the children of Mexican ancestry upon entering the first grade in Lincoln School.<sup>124</sup>

This reasoning closely resembles that used in *Brown* to prohibit de jure segregation. The Court wrote:

[Education] is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms. . . . To separate [children in primary and secondary schools] from others of similar age and qualifications solely because of their race generates a feeling of

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123. *Id.* at 549.

124. *Id.*

inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.<sup>125</sup>

*Mendez's* impact on public school desegregation was well understood by the legal community. Several legal scholars commented on the support that *Mendez* would provide for efforts to desegregate public schools for Black pupils. A Note in the Yale Law Journal, one year after the District Court decision in *Mendez*, stated that:

[A] recent District Court decision [*Mendez*] . . . has questioned the basic assumption of the *Plessy* case and may portend a complete reversal of the doctrine. . . . Although the facilities of the Mexican schools were admittedly equal to those of other district schools, the District Court felt that it was not enough to provide the same text books and courses of instruction. . . . Modern sociological and psychological studies lend much support to the District Court's views. A dual school system, even if "equal facilities" were ever in fact provided, does imply social inferiority.<sup>126</sup>

The social science studies to which the Note refers were widely accepted amongst academics and ultimately attached as an appendix to the appellants' brief in *Brown*.<sup>127</sup>

Another Note that appeared in the Columbia Law Review the same year commented on *Mendez's* importance.

The segregation of races has not yet previously been considered a denial of equal protection so long as equal facilities were made available to the members of both groups. . . . Attacks on segregation based on the equal protection clause of the 14<sup>th</sup> Amendment have been equally unsuccessful. If the physical facilities available to each group are substantially equal, the courts have followed the traditional view that the humiliation engendered by relegation to an inferior social status is not in itself indicative of discrimination. The court in the instant case breaks sharply with this approach and finds that the 14<sup>th</sup> Amendment requires "social equality" rather than equal facilities. . . . Since segregation on racial lines serves no desirable ends, a reappraisal of the validity of the practice is in order.<sup>128</sup>

When the school board appealed the district court's decision, amicus briefs were filed by several civil rights organizations including the American Civil Liberties Union, the National Lawyers Guild, the American Jewish Congress and the Japanese American Citizens League.<sup>129</sup> Thurgood Marshall and Robert Carter wrote

125. 347 U.S. at 493-94.

126. Note, *Segregation in the Public Schools - A Violation of "Equal Protection of the Laws,"* 56 YALE L.J. 1059, 1060 (1947) (footnotes omitted).

127. See Bowman, *supra* note 89, at 1775.

128. Note, *Segregation in Schools as a Violation of the XIVTH Amendment*, 47 COLUM. L. REV. 325, 326-27 (1947) (footnotes omitted).

129. See Montoya, *supra* note 1, at 168.

the brief for the National Association for the Advancement of Colored People – Legal Defense and Education Fund (NAACP – LDF),<sup>130</sup> and like the plaintiffs in *Mendez*, they introduced social science evidence detailing the general harms of segregation.<sup>131</sup> Additionally, Carey McWilliams, a lawyer and historian, filed an amicus brief detailing the specific harm of segregation in education.<sup>132</sup>

The Ninth Circuit unanimously upheld the lower court's decision. However, "Judge Albert Lee Stevens' opinion refused to rule on the issue of 'separate but equal.'" <sup>133</sup> Furthermore, Stevens omitted from the reported opinion the social science evidence provided in the amicus briefs.<sup>134</sup> The appellate court opined that segregated schools violated the Mexican/Mexican American plaintiffs' rights because no California statute allowed such a practice.<sup>135</sup> Hence, the court's narrow opinion left open the possibility that Mexican/Mexican American school children could be lawfully segregated if California were to pass a statute requiring such a practice. And, perhaps even more important, the court's opinion did not rule out the possibility that Mexicans/Mexican Americans could be segregated on the grounds of English language difficulty even without such a statute.<sup>136</sup>

*Mendez's* contributions to *Brown* do not end with the introduction of social science to support desegregation. Robert L. Carter, Assistant Special Counsel of the NAACP – LDF, viewed *Mendez* as a case that would test the "separate but equal" doctrine in *Plessy*. Carter was aware that there were "cases presently pending in Oklahoma, Texas, Louisiana and South Carolina which involve state educational segregation statutes which may require a Supreme Court ruling in the near future on the constitutional issue of the *Mendez* case."<sup>137</sup>

Finally, *Mendez* foreshadowed the disposition of the Supreme Court with respect to *Plessy's* "separate but equal" doctrine. As Perea notes:

Significantly, it was the *Mendez* decision that led to California's repeal of its school segregation statutes. Then Governor Earl Warren signed legislation repealing California's segregation statutes on June 14, 1947. This was, of course, the same Earl Warren, who as Chief Justice of the United States, would later pen the opinion in *Brown v. Board of Education* and *Hernandez v. Texas*.<sup>138,139</sup>

The Supreme Court finally considered discrimination against Mexicans/Mexican Americans in *Hernandez v. Texas*. Interestingly, it was decided a mere twelve days before *Brown*. Although *Hernandez* primarily involved designating Latinos as a protected class for jury eligibility purposes, its importance

130. *See id.*

131. *See* Bowman, *supra* note 89, at 1774.

132. *See id.*

133. Montoya, *supra* note 1, at 168.

134. *See* Bowman, *supra* note 89, at 1774.

135. *See* Montoya, *supra* note 1, at 168.

136. *See* Martinez, *supra* note 14, at 578.

137. Note, *supra* note 126, at 1060, fn.12 (communication to Yale Law Journal from Robert L. Carter).

138. 347 U.S. 475 (1954).

139. Perea, *supra* note 4, at 1247 & 161.

to the desegregation of public schools is worth mentioning. In *Hernandez*, the Court cited the segregation of Mexican/Mexican American school children as evidence that the White community in Jackson, Texas considered Mexicans distinct and inferior.<sup>140</sup> Hence, the Supreme Court considered the segregation of Mexicans/Mexican Americans in public education in order to determine their protection as a cognizable minority group for equal protection purposes.

C. *Mexican/Mexican American Public School Segregation after Brown*

While *Brown* clearly prohibited the segregation of Black school children, its protection of their Mexican/Mexican American counterparts was more ambiguous. For sixteen years, not a single court interpreted *Brown* to prohibit segregation of Mexicans/Mexican Americans. It wasn't until 1970 in *Cisneros v. Corpus Christi Independent School District*<sup>141</sup> that a court held that *Brown* protected Mexican/Mexican American as well as Black schoolchildren.<sup>142</sup> The district court in *Cisneros* held it impermissible for schools to segregate Mexicans/Mexican Americans from other school children. The Fifth Circuit affirmed the district court's decision.<sup>143</sup>

The Fifth Circuit recognized the novelty of *Cisneros* because it involved de facto segregation; no statute required the segregation of Mexican/Mexican American school children in Corpus Christi.<sup>144</sup> The *Cisneros* court interpreted *Brown* to prohibit both de jure and de facto segregation.<sup>145</sup> Furthermore, the court stated that plaintiffs did not have to show discriminatory intent in order to prove a violation of the Equal Protection clause.<sup>146</sup> The Fifth Circuit in *Cisneros* only required that plaintiffs demonstrate that state action resulted in segregation of Mexican/Mexican American schoolchildren.

The Board, however, conceding the existence of severe racial and ethnic separation in the Corpus Christi public schools, nevertheless maintains that another type of de facto segregation exists here, arguing that this separation is not a result of school board actions and policies but rather of housing patterns, geographic fluctuations, and other social and economic factors prevalent in the city. Moreover, it urges, even if the imbalance could be traced to Board action, it does not fall within constitutional proscription because it has not acted with a discriminatory motive or purpose. "We . . . reject this type of continued meaningless use of de facto and de jure nomenclature to attempt to establish a kind of ethnic and racial separation of students in public schools that federal courts are powerless to remedy."<sup>147</sup>

The Fifth Circuit's holding is important because it marks a departure from other courts, which required demonstration of discriminatory intent.<sup>148</sup>

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140. *Hernandez*, 347 U.S. at 479-80.

141. 324 F. Supp. 599, 606, 617-20 (S.D. Tex. 1970).

142. *Id.* at 617-20.

143. 467 F.2d 142 (5th Cir. 1972).

144. *See id.* at 144.

145. *See id.* at 150.

146. *See id.* at 149-50.

147. *Id.* at 148.

148. *See id.* at 150.

D. *Public School Desegregation and Keyes: Breaking from the Black/White Paradigm*

The Supreme Court decided *Brown* in 1954 utilizing the Black/White paradigm. Not until the 1970s, in *Keyes v. School District No. 1*,<sup>149</sup> did the Court depart from the paradigm. When *Keyes* was argued before the Supreme Court in 1972, 66% of the students in the Denver school system were White, 14% were Black and 20% were Mexican/Mexican American.<sup>150</sup> In *Keyes* the Court utilized a White/*Non-White* paradigm to hold that it would classify Mexican/Mexican American students with their Black students for school desegregation purposes.<sup>151</sup> The Court, relying on the United States Commission on Civil Rights, held that Mexicans/Mexican Americans, or "Hispanos:"

[S]uffer from the same educational inequities as Negroes and American Indians. In fact, the District Court itself recognized that "one of the things which the Hispano has in common with the Negro is economic and cultural deprivation and discrimination." This is agreement that, though of different origins, Negroes and Hispanos in Denver suffer identical discrimination in treatment when compared with the treatment afforded Anglo students. In that circumstance, we think petitioners are entitled to have schools with a combined predominance of Negroes and Hispanos included in the category of "segregated" schools.<sup>152</sup>

This classification is important not only because of its departure from the Black/White paradigm and use of a White/*Non-White* paradigm, but also because it confirmed the Court's classification of Mexicans/Mexican Americans as an "identifiable class for purposes of the Fourteenth Amendment."<sup>153</sup> The Supreme Court in *Keyes* appears to acknowledge that even though Mexicans/Mexican Americans are classified as "White" by courts and the U.S. Census Bureau, they enjoyed none of the classification's privileges.

The Supreme Court finally addressed Mexican/Mexican American segregation in *Keyes*. The decision marked a significant departure from earlier school desegregation decisions. American jurisprudence was, and is, so dependent upon the Black/White paradigm that few in the legal community considered addressing discrimination beyond the paradigm's parameters. This is evidenced by the Court's long overdue classification of Mexicans/Mexican Americans as an identifiable group for purposes of Fourteenth Amendment protection in *Keyes*. Such classification occurred almost *two decades* after the court decided *Brown*. As previously demonstrated, today Mexicans/Mexican Americans are more impoverished<sup>154</sup> and attend more segregated schools than Blacks.<sup>155</sup> True, Blacks continue to suffer from public school segregation but less so than Mexicans/Mexican

149. 413 U.S. 189 (1973).

150. *See id.* at 195.

151. *See id.* at 197.

152. *Id.* at 197-98 (citations omitted).

153. *Id.* at 197.

154. *See supra* notes 36-39 and accompanying text.

155. *See supra* note 35.

Americans. The Court's use of the Black/White paradigm to analyze racial/ethnic discrimination has resulted in real gains for the Black community. But, while Blacks make significant gains, Mexicans/Mexican Americans and other racial/ethnic minorities are left behind. Why? The question begs an explanation.

E. *The Black/White Paradigm's Consequences on the Segregation of Mexicans/Mexican Americans*

At this point I feel it incumbent to explain the reasons for reiterating Mexicans'/Mexican Americans' socioeconomic status in relation to that of Blacks. Contrary to what I suspect many will believe, my intent is not an attempt to win "the race to the bottom" or the "oppression sweepstakes" for Mexicans/Mexican Americans. Rather, it is to explain that those who dominate racial/ethnic discourse directly benefit from the consequent attention they receive. Contrary to what legal scholars and popular media present, socioeconomic indicators show that overall, Blacks fare considerably better than Mexicans/Mexican Americans.<sup>156</sup> Yet these facts are repeatedly unrecognized.

The Black/White paradigm places on center stage the discrimination from which Blacks suffer. As a result, the Black experience has come to dominate legal discourse concerning racial/ethnic discrimination. The legal remedies for racial/ethnic discrimination have focused almost exclusively on ameliorating the forms of discrimination with which the courts are most familiar. These legal remedies are tailored to address the discrimination from which Blacks suffer. Blacks' improved socioeconomic status in comparison to Mexicans/Mexican Americans is partly explained by the tailoring of such legal remedies. While a number of factors contribute to the marginalization of Mexicans/Mexican Americans, the unwillingness of courts, scholars and the American collective to address such discrimination is partly to blame. In particular, the Supreme Court's delay in holding that Mexicans/Mexican Americans were an identifiable class for public school desegregation purposes partly explains why Mexicans/Mexican Americans continue to attend the most segregated schools.<sup>157</sup> Consider the following:

Latinos have the highest high-school drop out rates: in 1988, 30% (of 1.5 million) of Latinos aged sixteen to twenty-four had dropped out of school, compared to only 8% of Whites and 14% of African Americans the same age. Of the drop outs 40% of the Latinos had less than a ninth-grade education when they left school, compared to 13% of Whites and 11% of African Americans. . . . Latinos still attend a college or university in lower proportions than Whites or African Americans.<sup>158</sup>

Furthermore, the marginalization of Mexicans/Mexican Americans only appears to be increasing, including vis-à-vis Blacks.

The President's Advisory Commission on Educational Excellence for Hispanic Americans has reported that Latinos are "more segregated" and "more

156. See *supra* notes 35-39 and accompanying text.

157. See Montoya, *supra* note 1; and Orfield, *supra* note 35.

158. Bowman, *supra* note 89, at 1783 (citations omitted).

concentrated in high-poverty schools than any other group of students.” Latinos’ concentration in high-poverty schools has increased at an alarming rate: between 1988 and 1993, the likelihood that a Latino student would be in a high poverty school increased from 14% to 40%. Comparable rates for Whites increased from 7% to 8%, and African Americans’ likelihood increased from 11% to 25%. Latino school segregation has “remained in an unbroken pattern of increasing segregation” since the 1960s, and it dramatically increased in the 1970s and 1980s.<sup>159</sup>

The marginalization of Latinos, and Mexicans/Mexican Americans particularly, is alarming.<sup>160</sup> But if Mexicans/Mexican Americans are so marginalized, why have scholars overlooked their experiences? The answer: the Black/White paradigm. Discrimination is still analyzed almost entirely as it relates to the Black community.

Scholars and interested social activists should continue to focus on the discrimination from which Blacks suffer. However, any discussion of racial/ethnic discrimination in the United States must incorporate the experiences of other marginalized communities, particularly Mexicans/Mexican Americans. As this Article has demonstrated, to do otherwise might ameliorate the plight of Blacks, but at the expense of further marginalizing Mexicans/Mexican Americans and other racial/ethnic communities.

Addressing the segregation from which Mexicans/Mexican Americans suffer is long overdue. One need look no further than Blacks’ socioeconomic upward mobility to conclude that the Black/White paradigm has partly contributed to considerable gains for the Black community vis a vis Mexicans/Mexican Americans.<sup>161</sup>

Ameliorating the segregation of Black school children does not necessarily translate into gains for the Mexican/Mexican American community. Mexican/Mexican American and Black segregated schools frequently share characteristics such as poorer students, higher drop out rates and lower scores on college standardized entrance exams than White or integrated schools. However, both communities face unique obstacles. When ignored, these differences frequently spell greater marginalization for Mexicans/Mexican Americans. As Kristi L. Bowman noted, “Professor of Education and Social Policy Gary Orfield has recognized what most courts do not: a trial and resulting remedial order that treat African Americans and Latinos the same do not sufficiently allow for the dramatic differences in the contemporary experiences of Latinos and African Americans.”<sup>162</sup>

These differences include Mexican/Mexican American students’ greater levels of poverty, common English language difficulty and consequent need for bilingual education programs, greater drop-out rates and the general denial of their own struggle for integrated schooling.<sup>163</sup> Analyzing segregated schooling through the binary lens of the Black/White paradigm obscures the clear vision needed to identify appropriate means to remedy segregation. Bowman notes, “Latinos suffer from higher rates of school segregation because they are not considered distinct from African Americans and are rendered invisible in a White-Non White paradigm by a

159. *Id.* (citations omitted).

160. See Therrien & Ramirez, *supra* note 38 and accompanying text.

161. See Montoya *supra* note 1; and *supra* notes 36-39.

162. Bowman, *supra* note 89, at 1784.

163. See *id.*

society that never learns about Latinos' unique history and present experiences."<sup>164</sup> It is important to note that courts can order remedies that are specifically tailored to address the distinct needs of both Mexican/Mexican American and Black students.<sup>165</sup>

The current state of Mexicans'/Mexican Americans' de facto segregation suggests that courts should consider their distinctive needs. Indeed, some courts have considered Mexican/Mexican Americans and Blacks independently for school desegregation purposes.<sup>166</sup> But, these courts are the exception rather than the rule.<sup>167</sup> While some courts currently adjudicating public school desegregation cases attempt to ensure that school enrollment reflects the White/Non-White ethnic composition of the community, they do not distinguish between the Non-White ethnic groups.<sup>168</sup>

#### IV.

### THE INVISIBILITY OF MEXICAN/MEXICAN AMERICAN CONTRIBUTIONS TO CIVIL RIGHTS

#### A. *Legal Scholars and the Invisibility of Mexican/Mexican American Contributions to Civil Rights.*

The history of legal remedies for public school segregation demonstrates courts' failures to address accurately the needs of Mexicans/Mexican Americans. But others in the legal community have likewise failed to include the contributions of Mexicans/Mexican Americans in their analysis of civil rights. Professor Perea has critiqued the experiences scholars of race/ethnicity choose to include in their publications.<sup>169</sup> He notes that books on white racism, written by highly regarded authors, frequently omit the experiences of Mexicans/Mexican Americans.

These books are all innovative in their focus on White racism, which all of the authors consider to be the real racism problem. While many other books on race tend to focus on Blacks as "the race problem," these books focus on those with the power to create and enforce racism, White people. Despite the pathbreaking nature of the Kovel and Feagin and Vera books, their analysis of White racism is limited to its deployment against Blacks. The title of each of these three books, *White Racism*, suggests a claim to universality of coverage and explanation without qualifications. Yet all of the books focus only on the racism of Whites toward Blacks. By claiming to discuss the full scope of White racism in their titles, yet analyzing only the racism of Whites toward Blacks, these books all fit within, and help re-create, the Black/White binary paradigm.<sup>170</sup>

Perea argues convincingly that scholarly works that analyze the effects of racism frequently and exclusively focus on the discrimination from which Blacks suffer. The authors approach the discrimination against Blacks as representative of

164. *Id.* at 1796.

165. *See id.* at 1789.

166. *See id.*

167. *See id.*

168. *See id.* at 1788-89.

169. *See Perea, supra* note 4, at 1232-33 & 146-47.

170. *Id.* (citations omitted).

that from which all other ethnic minority groups suffer.<sup>171</sup> They treat Black discrimination as a sufficient basis from which to analyze all forms of racial/ethnic discrimination.

The challenges racial/ethnic communities confront vary. Utilizing the Black community as the standard by which to address all forms of discrimination may present more harm than good for non-Black racial/ethnic communities. Mexicans'/Mexican Americans' efforts to desegregate schools for their community support such an assertion. If even highly regarded authors of race/ethnicity fail to recognize the discrimination from which Mexicans/Mexican Americans suffer, it is not surprising that their readers echo their incomplete analyses.

Constitutional law textbooks similarly fail to include the contributions of Mexicans/Mexican Americans.<sup>172</sup> As already mentioned, paradigms limit what scholars consider relevant and determine important to their research.<sup>173</sup> The study of racism is no exception. Because the vast majority of constitutional law textbooks utilize the Black/White paradigm, Mexicans'/Mexican Americans' contributions to civil rights are almost completely omitted. As Perea notes:

One of the most striking results of the Black/White binary paradigm is that it limits the scope of relevant facts that are deemed important in research and teaching about this country's racial history. Within the paradigm, the only facts and histories that matter are those regarding Whites and Blacks. Therefore, virtually the only stories we ever learn about civil rights are stories about Blacks and Whites struggling over civil rights for Blacks.<sup>174</sup>

Perea further notes that in at least one leading constitutional law casebook, there is no mention of Mexicans'/Mexican Americans' civil rights struggles.<sup>175</sup>

Despite a lengthy history to desegregate schools in their communities and contributions to the widely known *Brown* case, Mexican/Mexican American civil rights litigation is completely overlooked. Although the Stone book dedicates forty pages to school desegregation there is no mention of Mexican/Mexican American segregation or their efforts to desegregate their schools.<sup>176</sup> Perea describes this incomplete account of civil rights as follows:

The linear, paradigmatic version of the story of civil rights and equality is a story of an exclusively Black struggle for equality and a gradual, progressive White concession to Black demands voiced in the courts and on the streets. . . . In order to tell this linear story of Black civil rights, the authors of the Stone book engage in a numbing truncation of history. . . . The paradigmatic, truncated presentation of racial and legal history that results from the Black/White binary paradigm ensures that most readers will never

171. See *id.* at 1233 & 147. Perea writes, "The Black experience in America is somehow taken as representative of the whole complicated universe of race relations." *Id.*

172. See Perea, *supra* note 4, at 1239-42 & 153-56.

173. See Kuhn, *supra* note 6, and accompanying text.

174. Perea, *supra* note 4, at 1239 & 153.

175. See *id.* at 1242 & 156 (critiquing GEOFFREY R. STONE, ET. AL., CONSTITUTIONAL LAW, (2d ed. 1991)).

176. See *id.*

learn anything about Mexican American struggles for equality. . . . Cases such as *Lopez*, *Mendez* and *Hernandez* should be included in every book that discusses racism and segregation, especially books on constitutional law. Omit these cases, omit this history, and the vast majority of law students (and many law teachers) will have no clue that the Mexican-American struggle against segregation has been long and hard-fought in the courts. . . . Omit these cases and we get the story of the struggle for equality told only in Black and White. We get only the paradigm, not the picture.<sup>177</sup>

Perea is not alone in calling attention to the omission of Mexican/Mexican American contributions to civil rights litigation. Professor Margaret Montoya noted that despite a long history of struggling to promote civil rights, “none of the constitutional experts include Latinos/as in their rewriting of this iconic classic of constitutional law [the *Brown* decision]. It is as though Latinas/os were neither subjected to segregation in the past nor continue to be the most segregated group in this society today.”<sup>178</sup> And, Kristi L. Bowman writes:

This recognition of the Latino narrative is often overlooked in legal education, especially in the area of constitutional law—a required first-year course in law schools across the United States. Of six leading constitutional law casebooks, four overlook the topic of Latinos in connection with school desegregation. If lawyers are not taught about the history of Latino educational segregation, it is not surprising that even those who work as advocates for social justice might not appreciate the importance of distinguishing between Latinos and African Americans—and avoiding constituting them as one Non-White group. Changes to these law school texts would be only a first step.<sup>179</sup>

Indeed, Mexican/Mexican American contributions to civil rights are lengthy, continuous and extend far beyond the cases mentioned in this Article.<sup>180</sup> The observation of which makes the continuing omission of their history inexcusable.

B. *Mexicans'/Mexican Americans' Contemporary Invisibility in Social Struggles: The L.A. Riots.*

The omission of Mexican/Mexican American experiences extends far beyond legal academia. Indeed, Mexicans/Mexican Americans are poorly represented in popular media such as news, and the film, television and music industries.<sup>181</sup> The invisibility of Mexicans/Mexican Americans is partly attributable to the Black/White paradigm.

177. *Id.* at 1242, 1251 & 156, 165.

178. Montoya, *supra* note 1, at 172 (alteration in original).

179. See e.g. Bowman, *supra* note 89, at 1799.

180. For an in depth discussion of Mexican/Mexican American contributions to public school desegregation see Martinez, *supra* note 14.

181. See Bowman, *supra* note 89, at 1757.

Scholars and popular media alike almost exclusively utilize the Black/White paradigm to conceptualize race/ethnicity. The paradigm promulgates Black experiences but fails to represent Latinos, Asians, Native Americans and other non-Black minority groups adequately. The coverage of the Los Angeles riots by news media supports such an assertion.

The Los Angeles riots took place in late April and early May of 1992. The catalyst for the social unrest is largely attributed to the acquittal of the four White police officers, who beat Black motorist Rodney King.<sup>182</sup> The resulting riots claimed 55 lives and injured more than 2,300 persons.<sup>183</sup> More than one thousand buildings were damaged or destroyed and the resulting property damage was estimated in the billions of dollars.<sup>184</sup> Among the images the news media presented were police officers beating Rodney King, Black rioters beating White motorist Reginald Denny, confrontations between Korean storeowners and rioters and finally, rioters looting.

The news media paid considerable attention to the role racial/ethnic discrimination played in precipitating the riots. However, the journalistic and scholarly works focused on the dynamics between Whites, Blacks and Koreans. Mexicans/Mexican Americans were all but excluded from the discussion. Professor Perea notes that, "only one published article focuses exclusively on describing and explaining the role of Latinos during the Los Angeles riots."<sup>185</sup> In contrast, an entire anthology was written concerning the beating of Rodney King and the Los Angeles riots.<sup>186</sup> The anthology contains works by Black, Asian, and White scholars. Their articles detail the perspectives of their respective communities concerning the riots. The anthology's analysis is inexcusably incomplete, especially when considering the role Mexicans/Mexican Americans played in the riots.

The majority of the victims of early riot violence were Latinos.<sup>187</sup> A full third of the dead victims of the riots were Latinos. Between twenty and forty percent of the businesses damaged were Latino owned,<sup>188</sup> and Latinos comprised one half of all the arrested.<sup>189</sup> These statistics are far from surprising because Latinos, primarily Mexicans/Mexican Americans, comprise over half of South Central Los Angeles' population.<sup>190</sup> Considering these statistics, what should be surprising is the lack of attention visual and print media gave to Mexicans'/Mexican Americans' perspectives concerning the riots. Media coverage and scholarly analyses of the Los Angeles riots provide a poignant example of how the Black/White paradigm distorts the lens through which we view racial/ethnic group dynamics in the United States. Under the Black/White paradigm, Mexicans/Mexican Americans are omitted from racial/ethnic

182. See Juan F. Perea, *Los Olvidados: On the Making of Invisible People*, 70 N.Y.U. L. REV. 965, 967 (1995).

183. William Booth and Jeff Adler, *L.A. Looks Back 10 Years to Deadly King Verdict Riot*, SAN FRANCISCO CHRONICLE, Apr. 27, 2002, at A6.

184. *Id.*

185. Perea, *supra* note 182, at 969.

186. See *id.* at 969-70.

187. See David Hayes-Bautista, Werner Schink, & Maria Hayes-Bautista, *Latinos and the 1992 Los Angeles Riots: A Behavioral Sciences Perspective*, 15 HISPANIC J. BEHAVIORAL SCI. 427, 429 (1993).

188. See *id.*

189. See Booth and Adler, *supra* note 183.

190. See Perea, *supra* note 172, at 969-70.

analyses, their harms and grievances are under-reported and their marginalization is exacerbated.

This Article was written almost ten years to the day after the Los Angeles riots. Recent visual and print news media have dedicated considerable attention to the aftermath of the riots. Despite ten years of hindsight, the journalistic commentary on racial/ethnic relations and the Los Angeles riots still almost completely omits the perspective of Mexicans/Mexican Americans. At most, the commentary notes the change in the racial/ethnic composition of Los Angeles since the riots.<sup>191</sup> However, if news commentary mentions Mexicans/Mexican Americans at all, it is still only in passing. Even ten years of retrospect has not been able to undo what the Black/White paradigm has done—to render Mexican/Mexican Americans invisible.

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191. *See id.* (noting that Mexicans/Mexican Americans have displaced African Americans as the majority in South Central Los Angeles).

