

# The Community-Building Project: Racial Justice Through Class Solidarity Within Communities of Color

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## INTRODUCTION

As people of color continue to face racial and socioeconomic subordination in this country, one wonders when, if ever, the “elusive quest for racial justice”<sup>1</sup> will end. Intellectuals dedicated to the pursuit of racial justice have focused their work on unmasking the operation of racism and white privilege and recognizing the perspectives of the oppressed. One central insight of this approach is the need to take race into account when analyzing the application of supposedly “race neutral” but so often racially discriminatory criteria. This strategy provides a theoretical basis for transforming society’s view of racism and race relations. However, until the dominant culture becomes genuinely receptive to these ideas, communities of color will continue to suffer.<sup>2</sup> Indeed, current political discourse adds fuel

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1. DERRICK BELL, AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE (1987 & App. 1989). Derrick Bell has advanced the view that “racism is a permanent component of American life” in several of his works. See, e.g., DERRICK BELL, FACES AT THE BOTTOM OF THE WELL 13 (1992). He believes that “[n]either talking nor writing will solve the very real problems [that] African-Americans [and other people of color] continue to face.” Derrick Bell & Linda Singer, *Making a Record*, 26 CONN. L. REV. 265, 284 (1993). Nonetheless, “silence is not a more productive alternative,” *id.*, and we should employ a “both, and” strategy: “Both the recognition of the futility of action—where action is more civil rights strategies destined to fail—and the unalterable conviction that something must be done, that action must be taken.” BELL, FACES AT THE BOTTOM OF THE WELL, *supra*, at 199. But see BELL HOOKS, KILLING RAGE: ENDING RACISM 6-7 (1995) (contrasting the bleak future for race relations predicted by men with the more hopeful vision offered by progressive feminist writers).

2. I refer to “communities of color” generically throughout this Comment, offering a generalized approach that can then be particularized to suit the specific needs of a specific community of color. My discussion is largely applicable to the African-American and Latino communities, though, and I will focus my factual examples on those two communities of color. I recognize that this categorization is problematic. See Rachel F. Moran, *Foreword—Demography and Distrust: The Latino Challenge to*

to the argument that we cannot rely on a still white-dominated society to adequately address the persistence of such subordination.<sup>3</sup>

America's dominant culture and legal system consistently fail to recognize, respect and consider the needs and rights of communities of color. The dominant culture's ideology of liberal individualism converts claims for recognition and respect by communities of color into claims for individual rights based on allegedly "color blind," neutral and universal standards that are actually white, male norms. Despite civil rights gains, a person of color's need to identify and associate with his or her ethnic community is often at odds with membership in the larger "American community."<sup>4</sup> Thus, success for many people of color comes partly at the

*Civil Rights and Immigration Policy in the 1990s and Beyond*, 8 LA RAZA L.J. 1, 4-13 (1995) (examining the shortcomings of African-American civil rights strategies for Latinos); Kevin R. Johnson, *Civil Rights and Immigration: Challenges for the Latino Community in the Twenty-First Century*, 8 LA RAZA L.J. 42, 64-66 (1995) (contrasting the different interests and civil rights needs of the African-American and Latino communities). Despite these differences, I believe there are enough points of similarity between the racial subordination faced by the two ethnic groups that make a generic approach to community-building useful, including the national community's continuing rejection of each community's claims for recognition, respect, and equal treatment. See Joseph Erasto Jaramillo, *Letter to the Editor*, Harper's Magazine, Aug. 1996, at 7, 77 ("many Latinos, especially inner-city youth, view themselves more closely aligned with blacks in matters of politics, culture, and power than with any other ethnic group").

3. Perhaps inspired by the Republican victory in the November 1994 congressional elections, conservatives nationwide have taken on the cause of "defending" the "angry, white male" against affirmative action, taxes and public benefits spending for citizens and immigrants. See, e.g., William Schneider, *Reflections on the 'Angry White Male'*, S.F. CHRON., March 9, 1995, at A25; *Is the 'White Male Anger' Justified?*, S.F. CHRON., March 9, 1995, at A25 (reader poll); Ramon McLeod, *White Men's Eroding Economic Clout Contributes to Backlash*, S.F. CHRON., Mar. 20, 1995, at A7.

This backlash has created a political atmosphere that appears to open the door to outright acts of bigotry. For example, in the San Francisco Bay Area, within a period of one month, the following incidents occurred:

Someone stuffs a flyer into the mailboxes of minority law students at the University of California, Berkeley. A racist screed, it shows a picture of a monkey while ranting against former U.S. Surgeon General Jocelyn Elders, an African-American. [Distributed on the first day of finals, the flyer also read "Affirmative Action Sucks. . . . Good Luck on Finals!"] A second flier calls her proposed replacement, Dr. Henry Foster, also black, "another unqualified monkey." It says minority law students are not at Berkeley on their merits, and belong "at Coolie High Law."

In Danville, a swastika, symbol of the Nazi Party, is plastered on a Jewish store and fliers boasting the achievements of "the white race" are distributed. At California High School in San Ramon someone scrawls a racist word on a piece of artwork. Vendors hawk Nazi paraphernalia at the Cow Palace and Hitler-quoting fliers at the College of San Mateo call for foreign students to be kicked out.

*Fight Back Against Bigotry*, OAK. TRIB., March 16, 1995, at A16 (editorial).

4. See, e.g., Johnson, *supra* note 2, at 79 ("immigrants in the United States have the implicit obligation to assimilate into mainstream society. They should learn English, shed the culture of their native country, and become uniquely 'American.'"); Wendy Brown-Scott, *The Communitarian State: Lawlessness or Law Reform for African-Americans?*, 107 HARV. L. REV. 1209 (1994) (detailing the inability of communitarian theory to end lawlessness against African-Americans without taking a race

cost of shedding parts of one's ethnic identity and weakening commitment to one's ethnic community in order to assimilate into the mainstream.

I propose an alternative, but concurrent, pursuit of racial justice that allows people of color to make progress and combat the disrespect of our communities while we pressure the dominant culture to seriously consider our ideas. This approach focuses on strengthening our communities of color so that they may become more economically viable and politically powerful within the larger national community.<sup>5</sup> I call this approach "the community-building project" because it requires moving beyond our loose, traditional notions of communities of color and actively identifying and contributing to those communities. Of course, we may all do this to varying degrees already; the key here is to create a collective, synergistic movement that seeks to empower all members of the community. Under this approach, community is placed at the center of our struggle.

This community-building project necessarily entails an examination of the divisions within communities of color. Of course, ethnic background is only one aspect of one's personal identity, and individual members of an ethnic group will differ based on culture, linguistic ability and preference, skin color, gender, sexual orientation, political beliefs, disability, level of identification with their community of color, level of assimilation, educational attainment and socioeconomic status, and other factors. I identify the socioeconomic stratification within communities of color as a central factor that militates against building stronger and more cohesive communities. I argue that the dominant culture's conception of racial justice has contributed to socioeconomic stratification within communities of color, producing different political and economic interests for people on

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conscious approach); Alex M. Johnson, Jr., *Bid Whist, Tonk, and United States v. Fordice: Why Integrationism Fails African-Americans Again*, 81 CAL. L. REV. 1401, 1414-15 (1993) (the existence of a separate African-American community is at odds with the traditional liberal view of American society as a melting pot); Bill Ong Hing, *Beyond the Rhetoric of Assimilation and Cultural Pluralism: Addressing the Tension of Separatism and Conflict in an Immigration-Driven Multiracial Society*, 81 CAL. L. REV. 863 (1993) (articulating a new approach to cultural pluralism that respects diverse views and cultures, including the rights of separatists within communities of color); Clayborne Carson, *The Founding Fallacy: Is Multicultural Democracy Possible in America? Prognosis: Uncertain*, S.F. EXAMINER MAGAZINE, Feb. 25, 1996, at 15 (examining America's persistent failure to embrace a multicultural approach to its social order).

5. See D. Malcolm Carson, *A Message From the Grassroots: Participatory Democracy, Community Empowerment, and the Reconstruction of Urban America*, 1 AFR.-AM. L. & POL'Y REP. 119 (1994) (reviewing the community-building strategy offered by HAROLD A. MCDUGALL, *BLACK BALTIMORE, A NEW THEORY OF COMMUNITY* (1993)); Regina Austin, *The Black Community, Its Lawbreakers, and a Politics of Identification*, 65 S. CAL. L. REV. 1769, 1815 (1992) (arguing for Black solidarity that promotes "critical engagement between lawbreakers and the middle class in order to move some of the lawbreakers beyond the self-destruction that threatens to bring the rest of us down with them"); David J. Garrow, *Turning Inward*, DISSENT, Spring 1996, at 76 (positing that Black America may be moving into a new era where private, community-based support is more important than public support).

different ends of the socioeconomic spectrum. As the rich get richer and the poor get poorer, community bonds diminish. Thus, building more cohesive communities of color requires reconciling these differences in a way that allows for collective action.

Several legal scholars have recognized the need to more fully explore the relationship between socioeconomic position and racial subordination within the Critical Race Theory (CRT) project.<sup>6</sup> CRT scholars focus their writings on deconstructing the operation of racial hierarchies within our law and society and demarginalizing the perspectives of people of color. Those outside of the CRT project have frequently criticized the movement because, in their opinion, "critical race scholars are too privileged to speak for all people of color."<sup>7</sup> CRT scholars have responded with forceful articulations of the existence and utility of "voices of color" and "perspectives of color," that necessarily cut across class lines.<sup>8</sup> Nonetheless, much of the CRT project has focused on the racism encountered by people of color in the middle class and privileged professional or academic settings. While these accounts and explanations provide a strong basis for race theory of general applicability, they do not always fully capture the nature and experience of racism encountered by socioeconomically underprivileged people of color.<sup>9</sup> As part of the community-building project, intellectuals should actively communicate with underprivileged people of color to gain a broader perspective on the racial subordination that occurs across class lines and the prospects for community-building as a counteractive force against such subordination.

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6. See ROY L. BROOKS, *RETHINKING THE AMERICAN RACE PROBLEM* (1990); Angela Harris, *Foreword: The Jurisprudence of Reconstruction*, 82 CAL. L. REV. 741, 777-78 (1994); Daniel A. Farber, *The Outmoded Debate Over Affirmative Action*, 82 CAL. L. REV. 893, 932 (1994); Richard Delgado, *Zero-Based Racial Politics: An Evaluation of Three Best-Case Arguments on Behalf of the Nonwhite Underclass*, 78 GEO. L.J. 1929 (1990); Frances Lee Ansley, *Stirring the Ashes: Race, Class and the Future of Civil Rights Scholarship*, 74 CORNELL L. REV. 993 (1989); John O. Calmore, *Exploring the Significance of Race and Class in Representing the Black Poor*, 61 OR. L. REV. 201 (1982).

7. See, e.g., Daniel A. Farber and Suzanna Sherry, *Telling Stories Out of School: An Essay on Legal Narratives*, 45 STAN. L. REV. 807, 828 (1993); Randall L. Kennedy, *Racial Critiques of Legal Academia*, 102 HARV. L. REV. 1745, 1782-85 (1989).

8. See, e.g., Richard Delgado, *On Telling Stories in School: A Reply to Farber and Sherry*, 46 VAND. L. REV. 665 (1993); Jerome McCristal Culp, Jr., *Voice, Perspective, Truth, and Justice: Race and the Mountain in the Legal Academy*, 38 LOYOLA L. REV. 61 (1992); Alex M. Johnson, Jr., *The New Voice of Color*, 100 YALE L.J. 2007 (1991).

9. While racism cuts across class lines—e.g., "a black man faces racial oppression whether he is an executive, an auto worker, or a tenant farmer"—"class oppression permeates other spheres of power, so that the oppression experienced by . . . minorities [can be] differentiated along class lines . . . the particular issues they confront may be quite different depending on their position in the class structure." Gregory Mantsios, *Class in America: Myths and Realities*, in *RACISM AND SEXISM: AN INTEGRATED STUDY* 56, 66 (Paula Rothenberg ed., 1988).

I do not take issue with the proposition that "voices of color" cut across class lines.<sup>10</sup> I do not seek to minimize the lingering centrality of race and racism in our society and essentialize socioeconomic position with respect to narrative theory, in particular, or lived experience, in general. Nor do I seek to resolve the debate over the relationship between class subordination and racial subordination, although I proceed on the general proposition that, in this country, racism has been a driving force behind the continuing class subordination of people of color.<sup>11</sup> Finally, I do not, by virtue of advocating for more inquiry into the class divisions between people of color, argue that CRT's focus on legal reform is of lesser concern to all people of color. In fact, legal reform should be the focus of CRT and is precisely where CRT can foster widespread change. However, I argue intellectuals, including CRT scholars, must also focus on the community-building project. We can more effectively achieve racial justice if our communities are stronger and more cohesive; if the national community fails our communities, we can only depend on ourselves to improve them. This pursuit requires a closer examination of the socioeconomic divisions that exist within communities of color, the effect of the law and dominant culture in perpetuating these divisions, and the prospects for overcoming these divisions.

Part I examines the socioeconomic divisions that exist among people of color. First, I offer a definition of "class" and framework of class stratification. Next, I overview some of the different manifestations of racial and socioeconomic subordination faced by people of color along this class spectrum. Part II examines how our legal system's conceptions of formal equal opportunity, meritocracy and integration have contributed to both racial subordination and class stratification among people of color. This examination highlights the need for legal recognition of the particular needs and concerns of communities of color. In Part III I examine how legal

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10. As Patricia Williams writes, "the simple matter of the color of one's skin so profoundly affects the way one is treated, so radically shapes what one is allowed to think and feel about this society, that the decision to generalize from such a division is valid." PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* 256 (1991). By contrast, "de-essentializing" race for purposes of highlighting class oppression is not as valid an exercise because "class is not associated with a visible physical characteristic and many working class people persist in identifying with a middle-class lifestyle"; thus, "class is not a category easy to identify in terms of physical or psychological control." William Chafe, *Sex and Race: The Analogy of Social Control*, in *RACISM AND SEXISM: AN INTEGRATED STUDY*, *supra* note 9, at 346.

11. As Professor Wendy Brown-Scott explains, "[i]n America, capitalist economic theory converges with social ideas about racial difference to ensure that the underclass consists disproportionately of people of color and that poor whites identify with the 'whiteness' of better off 'counterparts' rather than with the poverty of Blacks." Brown-Scott, *supra* note 4, at 1216 n.35; see also Calmore, *supra* note 6. But see WILLIAM JULIUS WILSON, *THE DECLINING SIGNIFICANCE OF RACE: BLACKS AND CHANGING AMERICAN INSTITUTIONS* (1978) (arguing that economic class bears greater than race in determining individual black opportunities); Leonard J. Long, *A Problem of the Heart: Few Feel for the Poor*, 66 S. CAL. L. REV. 1317, 1330 (1993) (arguing that the short-sighted economic self-interest of the middle class, not race, is the controlling factor in society's inaction in addressing poverty).

scholars have defined "community" on three levels: national community, general communities of color and particular sub-groups of communities of color. Next, I highlight the problems these conceptions have posed for addressing racial subordination faced by underprivileged people of color. I then offer a moral argument for community-building within general communities of color. Finally, Part IV explores the implications of this moral argument for intellectuals like CRT scholars who are engaged in the project of combating racial subordination.

## I.

### SOCIOECONOMIC DIVISIONS WITHIN COMMUNITIES OF COLOR

People of color are more stratified along socioeconomic lines now than at any previous point in American history.<sup>12</sup> As this stratification continues, people of color at different locations on the socioeconomic spectrum develop different social and political interests that do not coincide. Such interest divergence makes it more difficult for people of color to work together toward ending racial subordination, as people situated at different locations on the spectrum experience racism differently. This Part explores the socioeconomic divisions that exist between people of color and the implications such divisions have for the movement against racial subordination.

The concept of class is often misunderstood or avoided in American public discourse.<sup>13</sup> This partially arises from the dominant paradigm's emphasis on liberal individualism and one of its central myths: "[e]veryone has an equal chance to succeed."<sup>14</sup> As Alan Freeman writes, "[e]quality of

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12. This is a function of both a growing African-American and Latino middle class and a percentage of African-Americans (33.3%) and Latinos (29.3%) in poverty that has remained relatively unchanged since the 1960s. Tom Wicker, *Deserting the Democrats: Why African-Americans and the Poor Should Make Common Cause in Their Own Party*, Nation, June 17, 1996, at 11; see HENRY LOUIS GATES, JR. & CORNEL WEST, *THE FUTURE OF THE RACE* XI-XII (1996) ("If it is the best of times for the black middle class . . . it is the worst of times for an equally large segment of our community [the black poor]."); David Treadwell, *Seeking a New Road to Equality*, L.A. TIMES, July 7, 1992, at A1, A8. Though, at any moment, the white poor outnumber poor African-Americans and Latinos, "white poverty generally does not persist from generation to the next—white people move in and out of poverty in a way that nonwhite poor do not." Delgado, *supra* note 6, at 1929; see also MELVIN OLIVER & THOMAS SHAPIRO, *BLACK WEALTH/WHITE WEALTH* (1995).

13. See Mantsios, *supra* note 9, at 56-57.

14. *Id.* at 58. The degree to which this myth pervades our social discourse cannot be overstated. Based on intensive interviews with over 200 middle-class white Americans, a team of sociologists concluded:

Americans define success in terms of the outcome of free competition among individuals in an open market. One is a success to the extent that one personally comes out ahead in fair competition with other individuals. Most of those we have

opportunity is a myth that does not permit one to notice the un-American reality of a pervasive and recurring class structure."<sup>15</sup> To uncover the effects of class stratification among people of color, then, we must analyze both racial subordination as it affects people across the socioeconomic spectrum and the class structure of society as it plays out in communities of color.

Before we examine elements of this class structure and its application to people of color, the continuing, if not increasing, significance of race and racism in American life must be emphasized. Racial discrimination remains problematic for people of color at every point on the socioeconomic spectrum. As Howard Winant explains, "[t]he sites and types of discriminatory acts, and the range of available responses to them, obviously differ by class. Yet in other instances, the malevolent attention that police devote to African-Americans reveals a frightening uniformity across all classes."<sup>16</sup> Indeed, middle class position provides little, if any, protection from a host of discriminatory acts. In public places, affluent African-American shoppers have been subject to excessive surveillance,<sup>17</sup> often receive discourteous service from clerks<sup>18</sup> and have sometimes been denied service altogether.<sup>19</sup>

In addition, professionals of color continue to face racism in the workplace. Bill Hing notes: "[a] popular misconception is that [professionals of color] do not experience the effects of discrimination and racial and economic stratification. On the contrary, the few professionals of color who are successful in mainstream society often bear the burden of having white society treat them as ambassadors or representatives of their

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talked to emphasized that they had attained their present status in life through their own hard work, seldom mentioning the part played by their family, schooling, or the advantages that came to them from being middle-class to start with . . . . It is only insofar as they can claim that they have succeeded *through their own efforts* that they can feel they have deserved that achievement.

ROBERT N. BELLAH ET AL., *HABITS OF THE HEART* 198 (1985). Mantsios debunks this and other class myths by citing research that demonstrates, among other things, that "class standing has a significant impact on our chances for survival . . . and success." Mantsios, *supra* note 9, at 64-65; see also RICHARD H. DE LONE, *SMALL FUTURES* 3-4 (1979); GREGORY D. SQUIRES, *EDUCATION AND JOBS* (1979).

15. Alan Freeman, *Racism, Rights and the Quest for Equality of Opportunity*, 23 HARV. C.R.-C.L. L. REV. 361, 363 (1988).

16. HOWARD WINANT, *RACIAL CONDITIONS* 64 (1994).

17. Joe R. Feagin, *The Continuing Significance of Race: Antiblack Discrimination in Public Places*, 56 AM. SOC. REV. 101, 107 (1991).

18. Lena Williams, *When Blacks Shop, Bias Often Accompanies Sale*, N.Y. TIMES, Apr. 30, 1991, at A1.

19. See Williams, *supra* note 10, at 44-47.

entire race.”<sup>20</sup> Anecdotal accounts demonstrate that professionals of color bear more than the burden of serving as “ambassadors.” Patricia Williams recalls that she “was raised to be acutely conscious of the likelihood that, no matter what degree of professional or professor I became, people would greet and dismiss my black femaleness as unreliable, untrustworthy, hostile, angry, powerless, irrational and probably destitute.”<sup>21</sup> Derrick Bell was subject to a racist incident at Stanford Law School which involved a series of faculty lectures offered to first-year law students in response to some student complaints about Bell’s teaching. The Stanford administration undoubtedly legitimized the student complaints because Bell is African-American; similar complaints about other professors had not led to the creation of supplemental lectures. Even more egregious, to shield the purpose of the lectures, Bell was invited to participate but was not told the real reason.<sup>22</sup> Thus, we can see how racial subordination continues against people of color no matter what their location on the socioeconomic spectrum. To understand how people of color at the other end of the socioeconomic spectrum experience racial subordination we must first examine the American class structure.

Very real class barriers persist in America. These barriers can be described by the inequitable distribution of four major factors: (1) income levels, (2) occupation, (3) “cultural capital,” and (4) “respectability.”<sup>23</sup> By “occupation,” I am primarily concerned with the person’s location in the economy. Those in the “mainstream” will have a steady and reasonably well-paying job with benefits, one that may be considered a career. By contrast, those at the periphery of the economy, for example, the labor reserve, may spend a significant amount of time unemployed, without health insurance and subject to the discipline of the state through welfare bureaucracies. Thus, people with the same income level could have very different socioeconomic positions due to their occupation. As Roy Brooks explains:

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20. Hing, *supra* note 4, at 900.

21. Patricia Williams, *Alchemical Notes: Reconstructing Ideals From Deconstructed Rights*, 22 HARV. C.R.-C.L. L. REV. 401, 407-08 (1987). For a personal account of how young upper middle-class people of color face discrimination in integrated school settings, see Robin Barnes, *Politics and Passion: Theoretically a Dangerous Liaison*, 101 YALE L.J. 1631, 1646 & n.68 (1992). For a detailed report of employment discrimination faced by members of the African-American middle-class, see BROOKS, *supra* note 6, at 42-51.

22. See DERRICK BELL, *CONFRONTING AUTHORITY: REFLECTIONS OF AN ARDENT PROTESTER* 115-16 (1994).

23. This is a framework suggested by Angela Harris. Letter from Angela Harris, Professor of Law, University of California, Berkeley School of Law (Boalt Hall), to Joseph Erasto Jaramillo (Mar. 11, 1995) (on file with author).



A more fundamental problem with an income approach [to socioeconomic status] is that it provides little information about occupational status, earnings stability and potential, or educational background. A young business lawyer who earns \$40,000 a year, a janitor who moonlights as a taxicab driver and has a combined annual income of \$40,000, a high school teacher who earns \$40,000 a year after twenty years on the job, and a family in which the husband works in a factory and the wife cleans offices to earn a combined annual income of \$40,000 all have the same "middle-class" income—but their occupations, their degree of job security and mobility, their future earning potential, and their educational backgrounds are vastly different.<sup>24</sup>

"Cultural capital," a term coined by theorist Pierre Bordieu, refers to the knowledge and contacts necessary to effectively function in upper middle-class and upper-class life, including knowledge about private and public institutions, business form and etiquette, and "commitments and debts of honour" that may be due as a result of one's historical family ties.<sup>25</sup> "Respectability," a term coined by Iris Marion Young, refers to superficial measures of class standing, such as mode of dress, speech, taste and demeanor, all of which serve to make individuals more or less "respectable" in society.<sup>26</sup> As Young explains, "[t]o treat people with respect is to be prepared to listen to what they have to say or to do what they request because they have some authority, expertise or influence. The norms of respectability in our society are associated specifically with professional culture."<sup>27</sup> In examining the socioeconomic differences among people of color, these four factors are important in two ways: (1) where you fall along the above axes determines what issues you think are most important and pressing; and (2) where you are along the axes determines how others treat you and how you think of yourself, which is itself a part of "class privilege."

By succeeding in the dominant culture, professional persons of color, while still subject to the racism that persists in all sectors of our society,<sup>28</sup>

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24. BROOKS, *supra* note 6, at 36.

25. See PIERRE BORDIEU, *OUTLINE OF A THEORY OF PRACTICE* 178 (1977).

26. IRIS MARION YOUNG, *JUSTICE AND THE POLITICS OF DIFFERENCE* 57-58 (1990).

27. *Id.* at 57.

28. For a detailed exploration of the racial adversity faced by Black professionals today, see ELLIS COSE, *THE RAGE OF A PRIVILEGED CLASS* (1993).

gain some class privilege that separates them from people of color at the lower end of the socioeconomic spectrum. By virtue of income level, professionals of color can enjoy expensive cultural experiences that are both educational and reinforce cultural pride, where people of color with lesser means cannot. For example, Robin Barnes explains how her daughter was privileged to experience the musical *Black Heroes in the Hall* at twenty-five dollars per seat "only because of her socioeconomic class."<sup>29</sup> Professionals of color also enjoy relative economic stability and do not have to face some basic life issues such as stable housing and employment, provisions for health care, receipt of public benefits, unionization and gendered labor segregation.<sup>30</sup> Professionals of color possess the cultural capital necessary to successfully handle public and private bureaucracies, including the education system, private schools, government regulators, banks and other credit and lending institutions. Finally, professionals of color engage in "respectable" careers that engage them in and expose them to the culture and values of the upper middle class. While people of color are often not treated with "respectful distance or deference" by strangers in first encounters, they will usually receive such respect once people discover that they are professionals.<sup>31</sup>

The class privileges possessed by professionals of color affect how they are viewed by both whites and other people of color. This process begins once people of color enter into white-dominated educational institutions.<sup>32</sup> As Margaret Montoya writes, "[a]cculturation into the dominant culture is a concomitant of education . . . changes in friends, clothes and recreational preferences [occur] . . . students adopt the masks of dominant culture which manifests the negative values ascribed to [people of color]."<sup>33</sup> Identifiable within the institutions in which they work or participate, racist white

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29. Barnes, *supra* note 21, at 1647.

30. See BROOKS, *supra* note 6, at 67-105 (describing problems faced by the African-American working class). Members of the working-class, defined by Brooks as families with annual household incomes ranging from \$10,000 to \$25,000, *id.* at 67, "have to be smarter consumer spenders, more careful financial planners, and better disciplined in general than middle-class households." *Id.* at 69. "These characteristics are not easy to sustain when one lives under the stress of a job that may be low-paying, uninteresting, physically demeaning, or closely supervised—circumstances that diminish one's ability to shape the events in one's life." *Id.* (footnote omitted).

31. YOUNG, *supra* note 26, at 58.

32. An event that may only occur for those few who make it to college, given the persistence of *de facto* school segregation and the current dismantling of affirmative action programs designed to increase minority enrollment. See *infra* notes 139-141 and accompanying text; see also Johnson, *supra* note 4, at 1439-40.

33. Margaret Montoya, *Mascaras, Trenzas y Greñas: Un/masking the Self While Un/braiding Latina Stories and Legal Discourse*, 17 HARV. WOMEN'S L.J. 185, 192-93 (1994).

colleagues may carve out exceptions for these people of color.<sup>34</sup> Concurrently, other people of color may recognize professionals of color as class privileged through their mode of dress and speech, and sometimes, through their disassociation or disdain for their own "underprivileged" communities.<sup>35</sup> These views affect both how other people treat professionals of color and how professionals of color view themselves. In some ways, this situation creates subtle pressure both for professionals of color and non-professionals of color to disassociate themselves from each other.<sup>36</sup>

At the other end of the class spectrum, poor communities of color are becoming increasingly alienated from and castigated by mainstream society.<sup>37</sup> Many of the problems of poor people of color stem from structural changes in the economy, including the loss of manufacturing jobs in the cities, the increase in service jobs and factory relocation outside of the United States.<sup>38</sup> Mainstream society has "libeled" poor people of color,

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34. How often have we, either directly or from friends, heard the familiar comment, "You are not like the other (Mexicans, Blacks, Asians), you're different"? As racist and patronizing as comments like these are, we must still recognize that they confer a certain amount of privilege to the recipient within the limited group that recognizes the exception.

35. See Micaela di Leonardo, *Boyz on the Hood*, NATION, Aug. 17/24, 1992, at 178, 183 (reviewing Elijah Anderson's book *Streetwise*, which points out Chicago middle class blacks' discomfort for being mistaken for "street blacks"). Working class and poor people of color may also express disdain for their upwardly mobile counterparts. Photojournalist Camilo José Vergara has found such sentiments in many poor and working class Black neighborhoods. See Carlos José Vergara, *A guide to the ghettos*, NATION, March 15, 1993, at 342. He reports that a Chicago construction worker called Blacks who moved to the suburbs "imitation white people." *Id.* A Newark woman called such people sell-outs "who need to take a good look in the mirror." *Id.*

36. See Bert N. Corona, *Chicano Scholars and Public Issues in the United States in the Eighties*, in HISTORY, CULTURE AND SOCIETY: CHICANO STUDIES IN THE 1980S 11, 12 (Mario T. García et al. eds., 1985) ("Under the pressures of 'conform-or-else' many [Chicano] scholars have succumbed to the demand to accept the establishment's philosophies and ideology."). Dr. Alvin Poussaint notes:

There's a lot of pressure on the black middle class to stay black . . . It's a kind of contradiction. Your kids are living in an integrated community, and you want them to feel part of the community, participating equally in it. Then you feel very ambivalent about it psychologically when they do.

WINANT, *supra* note 16, at 63 (quoting Joel Garreau, *Competing Bonds of Race and Class*, WASH. POST, November 30, 1987, at A1). For those who push further upward into white dominated institutions, "[v]ery few of us escape that sense of isolation, the sad impossibility of our pseudo-assimilation . . ." Patricia J. Williams, *Nothing But the Best*, NATION, Nov. 18, 1991, at 632, 637; see also Louis Freedburg, *Urban Blacks Find New Hope, and Pain, in Suburbs*, S.F. CHRON., Feb. 22, 1993, at A1, A11 (African-American child growing up in a white suburb states "I always felt like I did not fit in").

37. See Jerry G. Watts, *Reflections on the Rodney King Verdict and the Paradoxes of the Black Response*, in READING RODNEY KING/READING URBAN UPRISING 236 (Robert Gooding-Williams ed., 1993); Barnes, *supra* note 21, at 1645-47.

38. See BROOKS, *supra* note 6, at 110. One strategy proposed to counter the flight of jobs from inner cities is transporting inner city workers to the suburbs, which have experienced steady job growth recently. See Felicity Barringer, *Hire Cities' Poor In the Suburbs, A Report Urges*, N.Y. TIMES, Dec. 4, 1992, at D18.

especially Latino immigrants and the Black poor,<sup>39</sup> as “hyperpariahs,”<sup>40</sup> with “no independent will,”<sup>41</sup> and stereotyped them under racial coding as “welfare queens,” criminals, *a la* Willie Horton, and lazy. Not only are they racially coded, but they are used “as scapegoats for all the nation’s ills,”<sup>42</sup> and depicted politically as the cause of our budget deficits and crime problems.<sup>43</sup> The racial nature of this libel spills over to all people of color regardless of class standing, as Robin Barnes explains: “[as] long as whites remain indifferent to the large numbers of Blacks, especially our children, who are dying in the street . . . how can Black professionals go into employment settings expecting a presumption of qualification, respect, and professional competence . . . ?”<sup>44</sup>

Though racism affects all people of color directly, people of color at different locations along the socioeconomic spectrum will be concerned about different specific economic and racial issues. Professionals of color are more likely to be concerned about child care, affirmative action policies, glass ceilings, enrolling their children in selective colleges and graduate schools and buying a house in the suburbs. African-Americans in the professional and managerial class continue to face a host of problems attributable to a white-dominated work environment, including “[I]oneliness, disaffection, stress, hypertension . . . ‘complex racial discrimination’ (sophisticated or unconscious racial discrimination, frequently accompanied by nonracial factors), and de facto segregation . . . .”<sup>45</sup> Working class African-Americans, by contrast, are likely to be

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39. See Barnes, *supra* note 21, at 1645.

40. Watts, *supra* note 37, at 239.

41. Barnes, *supra* note 21, at 1645.

42. *Id.*

43. See, e.g., Alan K. Simpson, *Prop. 187 Federal-style: Bills are merely sensible attempts to save tax dollars and reduce illegal immigration*, SAN JOSE MERCURY NEWS, June 21, 1996 (arguing that legislation that would eliminate public assistance to undocumented immigrants is justified by “welfare abuse, overcrowded schools, demands for ‘multicultural’ curriculums, rising crime, and expensive and time-consuming deportation procedures”); *Public Wants Fewer Immigrants*, S.F. CHRON., July 23, 1993, at A26 (national poll shows that 56% of the country feels that immigrants cost taxpayers too much). *But see* George Ramos, *Immigrants A Boon to State, Study Says*, S.F. CHRON., June 10, 1996 (study by the Tomas Rivera center shows that immigrants return a net surplus over a lifetime when tax revenues and costs for education and social services are compared); NEW CALIFORNIA COALITION, IMMIGRATION AND WELFARE: MYTHS AND FACTS, March 1993 (explaining that undocumented immigrants are ineligible for welfare benefits, legal immigrants receive welfare at much lower rates than the general population, and immigrants pay more in taxes than they use in services) (copy on file with author).

44. Barnes, *supra* note 21, at 1647.

45. BROOKS, *supra* note 6, at 40.

concerned more with maintaining stable employment and adequate housing<sup>46</sup> and are more likely to face housing discrimination in the form of redlining, blockbusting and steering.<sup>47</sup> Finally, people of color in poverty face the severe socioeconomic problems of unemployment, "unusual vulnerability to the 'low-wage explosion' (the poverty level wages paid by many newly created jobs)," crime, drugs, gangs, as well as economic exploitation,<sup>48</sup> poor educational facilities,<sup>49</sup> inadequate housing,<sup>50</sup> and the discriminatory siting of hazardous waste facilities in their neighborhoods.<sup>51</sup> It is also important to recognize that the lower on the socioeconomic spectrum one gets, the less likely she will have the time, resources or trust in the legal system to challenge instances of racial discrimination or economic exploitation.<sup>52</sup>

As people of color become stratified along class lines, they begin to face increasingly different socioeconomic issues and manifestations of racism

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46. See *id.* at 70-72.

47. *Id.* at 71-72. "Steering" occurs when real estate agents deliberately direct African-Americans to minority or mixed neighborhoods and whites to predominantly white neighborhoods. *Id.* at 72. Redlining is the refusal to lend mortgage money to persons residing in predominantly minority neighborhoods. *Id.* Blockbusting occurs when real estate agents frighten white homeowners into selling their homes for below market prices to prevent a "minority invasion," and then sell those homes to minorities at inflated prices. See Arthur M. Louis, *Insurance Suit Cites Redlining*, S.F. CHRON., Mar. 3, 1996, at B1, B2.

48. Numerous businesses have evolved to exploit residents of low-income neighborhoods, including "check cashing" and rent-to-own operations that charge exorbitant and unconscionable fees for their services, a disproportionate amount of liquor stores that sell mediocre goods for high prices, and malt liquor and tobacco advertisements that target low-income Black and Latino consumers. See, e.g., David Saltonstall, *Malt liquor has a potent appeal to inner-city kids*, OAK. TRIB., April 26, 1993, at A1. In addition, low-income people of color are often forced out of their neighborhoods as they become upgraded. This process is called gentrification, a term used to describe "a trend whereby previously 'underdeveloped' areas become 'revitalized' as persons of relative affluence invest in homes to begin to 'upgrade' the neighborhood economically." *Business Ass'n of Univ. City v. Landrieu*, 660 F.2d 867, 874 n.8 (3d Cir. 1981); see also Jon C. Dubin, *From Junkyards to Gentrification: Explicating a Right to Protective Zoning in Low-Income Communities of Color*, 77 MINN. L. REV. 739 (1993).

49. See generally JONATHAN KOZOL, *SAVAGE INEQUALITIES* (1991).

50. See, e.g., JOINT CENTER FOR HOUSING STUDIES OF HARVARD UNIVERSITY, *THE STATE OF THE NATION'S HOUSING* 11-17 (1994).

51. See, e.g., *CONFRONTING ENVIRONMENTAL RACISM* (Robert Bullard ed. 1993); Ralph Santiago Abascal, *California Rural Legal Assistance and Environmental Justice*, 14 CHICANO-LATINO L. REV. 44 (1994); Luke Cole, *Empowerment as the Key to Environmental Protection: The Need for Environmental Poverty Law*, 19 ECOLOGY L.J. 619 (1992).

52. BROOKS, *supra* note 6, at 70 ("unlike middle-class individuals, most working-class people lack the time, money, and flexibility to pursue Title VII litigation, which is both expensive and protracted"); Gerald P. López, *The Work We Know So Little About*, 42 STAN. L. REV. 1, 7 (1989) ("Low income women of color seldom go to lawyers, and they institute lawsuits a good deal less frequently than anybody else. More particularly, they convert their experiences of oppression into claims of discrimination far less often than they (and everybody else) press any other legal claim").

and concern themselves with very different life issues. This widening gap may threaten political solidarity among people of color in the movement against racial subordination. While class antagonisms have existed historically within the African-American community,<sup>53</sup> they took place within the context of nearly complete segregation.<sup>54</sup> As Howard Winant explains, "[a] community once knitted together by survival imperatives in a segregated society and bound up by internal 'thick' relationships of intracommunal labor, commerce, residence, and religion has now been divided [primarily along class lines]."<sup>55</sup> The upward and "outward"<sup>56</sup> mobility permitted by anti-discrimination law has concurrently resulted in class stratification among people of color.<sup>57</sup> Increasing class stratification and its production of interest divergence and different experience of racism threaten solidarity among people of color in the quest for racial justice.

Professor Bill Hing warns that "[e]litism among people of color, based on educational or economic privilege, can threaten the solidarity necessary to make a thriving multiculturalism possible."<sup>58</sup> He offers two examples of this rift. First, he notes that "it has never been clear whether integration is the solution desired by the majority of the black community in all circumstances,"<sup>59</sup> despite the Black mainstream leadership's support of that solution. Indeed, many urban ghetto residents have recently expressed "a yearning to close ranks, to re-emerge from destitution and to prosper among themselves."<sup>60</sup> Second, he points to "[y]oung urban African-Americans' thorough rejection of both 'black mainstream culture' as well as the 'white mainstream culture.'"<sup>61</sup> Similarly, journalist Nathan McCall describes a

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53. See e.g., E. FRANKLIN FRAZIER, *BLACK BOURGEOISIE* (1957).

54. WINANT, *supra* note 16, at 62.

55. *Id.* at 63.

56. "Outward" means "out" of the ghetto, barrio, fields or reservation. This, by and large, has not occurred to large extent, as *de facto* housing segregation and illegal housing discrimination persist. See *supra* note 47 and accompanying text; *infra* notes 139-141 and accompanying text.

57. See *infra* notes 74-98, 155 and accompanying text.

58. Hing, *supra* note 4, at 909 n.178.

59. *Id.* (citing Brief for the Congress for Racial Equality as *amicus curiae*, *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971) (arguing against a school integration plan)); see also Johnson, *supra* note 4 (arguing in defense of publicly funded all-Black schools); John O. Calmore, *Spatial Equality and the Kerner Comm'n Report: A Back to the Future Essay*, 71 N.C. L. REV., 1487, 1517 ("Some of the black clients questioned us as to why we were all so intent on trying to move them out of their communities instead of working to improve those communities").

60. Vergara, *supra* note 35, at 342; see also Treadwell, *supra* note 12, at A8.

61. Hing, *supra* note 4, at 908 (citing *Young blacks reject black, white mainstream culture*, S.F. EXAMINER, May 27, 1992, at A2) ("Prominent African Americans such as Jesse Jackson and Magic

"younger, meaner generation [in the inner cities] now—more lost and alienated than we were . . . . We were at least touched by role models; this new bunch is totally estranged from the black mainstream."<sup>62</sup> The rift is not just limited to inner city youth, as journalist Charisse Jones writes:

When I moved to 53rd Street [South Los Angeles] last year, I was also an outsider. There were some who made sure I knew it. Who gave *her* permission to come live here? Where does *she* live? Why doesn't she study *her own* neighborhood?

I understood the resentment felt by people weary of a media that too often overlooks the good in their neighborhoods to focus on the sensational and simplistic. To some it didn't matter that I am African-American. I represented the Los Angeles Times, not their community.<sup>63</sup>

This distrust is based on class distinctions. At some point, Jones, her parents or her ancestors left the "neighborhood" for something better. Some feel, that by leaving, they failed to live up to their responsibility to the community. Others feel resentment toward one of their own who has "made it."<sup>64</sup>

According to Professor Alex Johnson, the socioeconomic split among people of color is reflected in the perspectives taken by legal scholars of color concerning racial justice. Under this view, scholars like Stephen Carter and Randall Kennedy speak with voices of color "free from any affiliation with the poor and oppressed."<sup>65</sup> By contrast, Critical Race theorists like Mari Matsuda and Richard Delgado repudiate "their own class-based positions and status to privilege the experiential framework of the oppressed classes."<sup>66</sup> Johnson favors the second approach:

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Johnson are no more effective than President Bush in reaching alienated urban black youths").

62. NATHAN MCCALL, *MAKES ME WANNA HOLLER: A YOUNG BLACK MAN IN AMERICA* 403 (1994).

63. Charisse Jones, *Coming Together in Anger and Charity*, L.A. Times, June 11, 1992, at A1, A29.

64. See *supra* note 35.

65. Johnson, *supra* note 8, at 2037.

66. *Id.* at 2039.

By embracing a communalistic experiential framework instead of an individualistic experiential framework, these critical race theorists have been able to more fully incorporate in their voice the experiential horizons of the socioeconomic poorer class of the dominated group and to include communal/community goals of this class.<sup>67</sup>

This communal approach finds its roots in many of the cultures of oppressed communities of color in America. As African-American opera director Hope Clarke notes, "the black community as I remember it, was very closely knit . . . we all took care of each other. We all watched each other's children."<sup>68</sup> bell hooks describes "growing up in a segregated small town, living in a marginal space where black people (though contained) exercised power, where we were truly caring and supportive of one another . . ."<sup>69</sup> Author Ana Castillo describes a similar situation in Chicago's Mexican communities:

[i]n an effort to minimize their social and spiritual alienation, the Mexican communities there developed and maintained solid ties to Mexican culture and traditions . . . We ate, slept, talked and dreamed Mexican. Our parishes were Mexican. Small Mexican-owned businesses flourished. We were able to replicate Mexico to such a degree that the spiritual and psychological needs of a people so despised and undesired by white dominant culture were met in our own large communities.<sup>70</sup>

One pleasant by-product for many communities of color during explicit racial segregation was a communal approach to living that could, in many ways, counteract the dehumanizing effects of racial subordination. While experiences of people of color have varied, and this communal experience has not been shared by many of us<sup>71</sup> (nor would any of us like to return to

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67. *Id.*

68. Allan Ulrich, *Black Beauty: Is George Gershwin's 'Porgy and Bess' the greatest American opera?* S.F. EXAMINER MAGAZINE, April 30, 1995, at 10, 12.

69. BELL HOOKS, *YEARNING* 35 (1990); see also HOOKS, *supra* note 1, at 6 (describing how "times apart from whiteness" in the segregated South "were for . . . reimagining and re-memembering ourselves . . . time for recovery and renewal").

70. ANA CASTILLO, *MASSACRE OF THE DREAMERS* 24-25 (1994).

71. See ROBIN D.G. KELLEY, *RACE REBELS* 39 (1994) (noting that the "romantic view of a 'golden age' of black community . . . when black professionals cared more about their downtrodden race than their bank accounts . . . [stands] in the place of serious historical research on class relations within



the days of explicit segregation), these experiences are worth noting inasmuch as they provide a site of resistance to the dominant culture and an alternative conception of racial justice.

This communal approach is necessary today to counter the tension between people of color produced by socioeconomic differences. Under this approach, different groups of people of color, e.g. African-Americans and Latinos, view all members of their ethnicity as part of the same "community" regardless of socioeconomic background.<sup>72</sup> This sense of community produces mutual obligations for members within each community toward each other, but most especially from class privileged members of the community toward underprivileged members. Of course, this view already exists to varying degrees among individuals in different "communities of color" across the socioeconomic spectrum.<sup>73</sup> I argue that this approach is essential to combating racial injustice. Part II explores how our legal system's principal tool against racial subordination, formal equal opportunity, has failed to incorporate this important notion of community and has instead contributed to dividing people of color along class lines.

## II.

### THE PROBLEMS POSED BY FORMAL EQUAL OPPORTUNITY

While the introduction of formal equal opportunity (FEO) into the American legal system ended *de jure* segregation and provided legal sanction against some forms of racism, aspects of the system have worked against people of color.<sup>74</sup> This Part examines some of the problems the system poses for racial justice, especially justice for socioeconomically disadvantaged people of color. First, I will describe how the pre-civil rights era system of racial domination was transformed into a system of racial hegemony that perpetuates white, male standards. Second, I will highlight how the alleged system of meritocracy works against people of color by giving some a stake in the system while denying others equal opportunity. Third, I will explain how the dominant paradigm's view of integration can

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African American communities.").

72. See *infra* notes 203-222 and accompanying text.

73. I will later engage in a more elaborate examination of the very concepts of "community" and "communities of color." See *infra* Part III.

74. I do not intend to engage in a criticism of rights *a la* Critical Legal Studies. I intend, rather, to explore how the American conception of rights has not gone far enough by failing to adequately recognize and respect communities of color.

often work against the empowerment of people of color at the lower end of the socioeconomic scale.

A. *From Racial Domination to Racial Hegemony*

Sociologist Howard Winant provides a detailed account of how racial subordination continues to persist even though official white supremacy has been legislated out of our legal system.<sup>75</sup> In the pre-civil rights era, the American legal system enforced segregation and racial exclusion and often initiated or condoned extralegal terror against people of color.<sup>76</sup> The Black civil rights movement permitted the entry of millions of racial minority group members into the political process and initiated sweeping reform, including voting rights, the establishment of limited avenues of economic and social mobility, the reform of immigration law, and state enforcement of civil rights.<sup>77</sup> The movement also transformed the political discourse by making white people “take notice of ‘difference’; [it] created awareness not only of racial identities, but also of the multiple differences inherent in U.S. culture and society.”<sup>78</sup>

However, the dominant paradigm rearticulated these ideas—equality, group identity and difference—into the classical liberal framework of competition, individualism and homogeneity.<sup>79</sup> The pervasiveness of liberal individualism in the “American Creed” has, according to many scholars, served as an impediment to achieving racial justice because of its failure to take into account systemic practices and communal attitudes toward race.<sup>80</sup> The developing law on race relations challenged that belief by dismantling a system of racial domination, but it preserved its hopeful content by limiting the scope of the law to individualized claims rather than recognizing the persistence of *de facto* systems of racial subordination.<sup>81</sup> Because people of all colors now had “equal opportunity,” their success and failure in the

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75. WINANT, *supra* note 16, at 24-26, 113-29.

76. *Id.* at 25.

77. *Id.*

78. *Id.* at 26.

79. *Id.*

80. See, e.g., RICHARD M. MERELMAN, REPRESENTING BLACK CULTURE 296 (1995) (arguing that the American Creed has not and cannot overcome racial domination); Johnson, *supra* note 8, at 2055; Gary Peller, *Race Consciousness*, 1990 DUKE L.J. 758, 778-79.

81. See Gerald Torres, *Local Knowledge, Local Color: Critical Legal Studies and the Law of Race Relations*, 25 SAN DIEGO L. REV. 1043, 1045 (1988).

economy and society must be attributed to individual "merit."<sup>82</sup> However, "[t]he conferring of rights did not appreciably change the circumstances of a black youth in North Philly or a *vato loco* in East Los Angeles. What was heralded as a great victory by liberals appeared to radicals as a more streamlined version of racial oppression."<sup>83</sup> As Professor Charles Lawrence explains, "[t]he new racist ideology began by declaring that racial discrimination had been eliminated."<sup>84</sup>

The new system of FEO did indeed provide a cover for a more subtle form of racial subordination, the white hegemony. Nineteenth Century social theorist Antonio Gramsci defined hegemony as "cultural, moral and ideological leadership over . . . subordinate groups."<sup>85</sup> A dominant culture enjoys hegemony when its point of view becomes a "common sense" shared by members of the dominant and subordinated groups.<sup>86</sup> Hegemony is achieved "through the *incorporation* of oppositional currents in the prevailing system of rule," and "*reinterpretation* of oppositional discourse in the prevailing framework of social expression, representation and debate."<sup>87</sup> Under hegemonic conditions, opposition and difference are co-opted rather than silenced, and often modified and stripped of their critical content.<sup>88</sup> While there can be no explicitly segregationist policies or forms of

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82. See WINANT, *supra* note 16, at 126; see also Calmore, *supra* note 6, at 207 ("racism today relies more and more on the concept of meritocracy to justify the continued hierarchical arrangement of race relations, status, position, wealth and power"). As Professor Horwitz explains:

Since the official American ideology accepts inequality as both an incentive and a reward for talent and industry, we are forced to distinguish between the indistinguishable. We are expected to accept social and economic inequality at precisely the moment that it is the best evidence of the existence of racial discrimination.

MORTON HORWITZ, *The Jurisprudence of Brown and the Dilemmas of Liberalism*, 14 HARV. C.R.-C.L. L. REV. 599, 611 (1979).

83. WINANT, *supra* note 16, at 28.

84. Charles R. Lawrence III, *Education for Black Power in the Eighties: Present Day Implications of the Bakke decision*, 10 NAT'L BLACK L. J. 58, 60 (1987).

85. A GRAMSCI READER: SELECTED WRITINGS 1916-1938 423 (David Forgacs ed., 1988).

86. MERELMAN, *supra* note 80, at 6.

87. WINANT, *supra* note 16, at 29; see also Michael Parenti, *How Monopoly Capital Dominates Culture*, POL. AFFAIRS, Mar. 1985, at 9-10 (dominant institutions socialize "people into attitudes and dedications that are functional to and supportive of, the existing system, while suppressing information and perspectives that are not.").

88. WINANT, *supra* note 16, at 29; see also MERELMAN, *supra* note 80, at 79 (arguing that American society has at once rejected and appropriated Black culture); COCO FUSCO, ENGLISH IS BROKEN HERE, NOTES ON CULTURAL FUSION IN THE AMERICAS 66-70 (1995) (examining the violent and coercive nature of cultural appropriation).

expressive culture reserved exclusively for whites, there is also no socially agreed upon space for oppositional discourse against the inequities and racism that still exist.<sup>89</sup> In such a structure, the dominant white culture still controls the social order through a mainstream political system that has little room for the inclusion and appreciation of difference.<sup>90</sup> Thus, while there is no official commitment to eliminating the dramatic social differences that persist, "rhetorical commitment to the sameness of persons makes it impossible to name how those differences continue to structure privilege and oppression."<sup>91</sup> Indeed, many in the dominant discourse turn historical racial subordination on its head and perversely define "racism" as behavior by individuals or groups which empowers people of color and deprivileges whites.<sup>92</sup>

In many ways the white hegemony is a much more effective means of racial domination than its predecessor. It allows for both the dominant and the dominated classes to believe "that the existing order, with perhaps some

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89. WINANT, *supra* note 16, at 29.

90. Thus, the dominant culture has maintained its privileged position, in part, by "accommod[ating] itself to the changed legal landscape." Torres, *supra* note 81, at 1045.

91. YOUNG, *supra* note 26, at 164. In fact, this commitment to universal "sameness" allows whites to react with amazement when their "whiteness" is critically assessed as a privilege signifier. As bell hooks explains:

[o]ften their rage erupts because they believe that all ways of looking that highlight difference subvert the liberal belief in a universal subjectivity (we are all just people) that they think will make racism disappear. They have a deep emotional investment in the myth of 'sameness,' even as their actions reflect the primacy of whiteness as a sign informing who they are and how they think.

HOOKS, *supra* note 1, at 34-35; see also MERELMAN, *supra* note 80, at 61 (explaining how a white teacher ignored racial differences and emphasized the universality of a black folk story).

92. MANNING MARABLE, *THE CRISIS OF COLOR AND DEMOCRACY* 6 (1992). Such thinking underlies some whites' claims of "reverse discrimination" and "too many special rights for minorities." See *id.*; see also Peller, *supra* note 80, at 773-74; Lawrence, *supra* note 84, at 60-61. The dominant culture's individualistic notion of discrimination ignores the reality of systemic racial subordination faced by people of color:

[T]he claims of discrimination [against people of color] and reverse discrimination, while superficially logically equivalent, are substantively quite distinct . . . "Reverse discrimination is discrete and does not follow the affected individual into her other endeavors, whereas original discrimination is symptomatic of widespread social attitudes that have affected [people of color] in varying degrees at all stages of their lives." Unfortunately, a claim of reverse discrimination in this context is just as powerful as the claim of racial or ethnic subordination.

Torres, *supra* note 81, at 1060 (quotations and footnote omitted) (quoting Walthew, *Affirmative Action and the Remedial Scope of Title VII: Procedural Answers to Subordinate Questions*, 136 U. PA. L. REV. 625, 647 (1987)).

marginal changes, is satisfactory. . . ."<sup>93</sup> This state of affairs forecloses the imagination of alternative orders and, thus, perpetuates, more or less, the current social structure.<sup>94</sup> This makes it much easier for successful people of color to believe that the system is more responsive to their needs than under the previous system of explicit racial domination.<sup>95</sup> However, so long as communities of color are marginalized, racism persists, and the majority of people of color remain socially and economically oppressed, it makes little sense to believe that racial justice is within reach under current hegemonic conditions.

Some people of color may be placated by the notion that they are making progress; however, this situation is merely symptomatic of the operation of the white hegemony. The hegemony actually "cultivates the stratification of racially defined communities" in a "twofold strategy of accommodation" by (1) "going beyond mere tokenism to foster large-scale organization of pliable—and suitably rewarded—minority allies," and (2) "draining resources from low-income minority communities."<sup>96</sup> Winant theorizes that this then results in the concentrated unemployment and misery in low-income communities.<sup>97</sup> For these low-income communities of color, "the law of the land remains largely a matter of unrequited rights, for at bottom, [the problem of poor people of color] is the failure of at-large America to recognize, respect, and deal with them as human beings, a matter that transcends civil rights and citizenship status."<sup>98</sup> The remainder of this Part will examine how the "twofold strategy of accommodation" plays out in two FEO contexts: the employment and educational "meritocracy" and housing and educational "integration."

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93. Robert W. Gordon, *New Developments in Legal Theory*, in *THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* 413, 418 (David Kairys ed., 2d ed. 1990).

94. *Id.*

95. Note that the hegemonic system, though having this placating effect on successful people of color, also has the convenient result of assuring those in power that their position in society is perfectly legitimate. As Carl Gutiérrez-Jones opines, "the law's process of legitimation is, and always has been, aimed in good part at convincing the privileged that their actions are 'just.'" CARL GUTIÉRREZ-JONES, *RETHINKING THE BORDERLANDS, BETWEEN CHICANO CULTURE AND LEGAL DISCOURSE* 166 (1995).

96. WINANT, *supra* note 16, at 126, 128.

97. *Id.* at 128.

98. Calmore, *supra* note 6, at 243. The problem is intensified when you eliminate citizenship status, as the rhetoric of "no rights for illegal aliens" demonstrates.

## B. *The Meritocratic Paradigm*

The racial hegemony's key tool of legitimation is the meritocracy. Meritocracy is the system which rests on the fiction that people advance educationally and economically based on their merit alone. This notion denies the pervasive effects of the racism deeply imbedded within the core of the system<sup>99</sup> and the "pervasive and recurring class structure."<sup>100</sup> It also assumes that we have already developed accurate and useful ways of measuring potential for future success in school and on the job. It thus operates "not only to rationalize but to celebrate inequality . . . . It facilitates our callous indifference to the reality of adult inequality by loading the burden of advancement onto our children . . . systematically den[ying] the extent to which the odds of success are overwhelmingly stacked against those who start at the bottom . . . ."<sup>101</sup>

Obviously, some people of color, most often those with some degree of class privilege, succeed under the system and others, often those at the lower end of the socioeconomic scale, do not. This result has negative implications for the cause of racial justice. Such a result gives the "winners" a perceived stake in maintaining the status quo and the "losers" a feeling of low self-esteem.<sup>102</sup> For both, there is a social pressure to attribute their place in life to their individual merit and to neglect taking into account the social factors of class and racism.<sup>103</sup>

A key assumption of the system, "that any enterprising individual possessing a socially desirable talent can reap rewards through will, hard work and perseverance in educational endeavor"<sup>104</sup> and become socially mobile, simply does not play out in the real world. As Professor Alan Freeman explains:

Is it really "talent" that enables particular young people to advance? Or is it the dynastic impulse of elite schools to

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99. See WILLIAMS, *supra* note 10, at 102-04 (rejecting contemporary standards of merit and highlighting the need to uncover hidden prejudices within such standards); Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987) (arguing that racism is so deeply ingrained in our culture that its effect on people is often unconscious).

100. Freeman, *supra* note 15, at 363.

101. Alan Freeman, *Antidiscrimination Law: The View From 1989 in THE POLITICS OF LAW*, *supra* note 93, at 121, 143.

102. See Freeman, *supra* note 15, at 368-70; RICHARD SENNETT & JONATHAN COBB, *THE HIDDEN INJURIES OF CLASS* (1972) (exploring the reality of equal opportunity for those who have not "made it").

103. Freeman, *supra* note 15, at 369-70.

104. *Id.* at 377.

admit children of their graduates; the advantages in connection and status that can simply be bought for cash; the pre-existing networks of power that make for the availability of positions; or, the differential self-images internalized by the children of the poor and those of the rich in their daily contacts and interactions with teachers, as well as family members, who have already internalized their position in the equal opportunity game?<sup>105</sup>

The aggregate of these institutional realities demonstrates the fallacy of meritocracy. Instead of accurately gauging "talents," the meritocracy reproduces "relations of domination through the 'neutral' machinery of 'equal opportunity.'"<sup>106</sup> This point is intensified when we realize that "the same criteria that defined the 'standards' during the period of explicit racism continue to be used, as long as they cannot be linked 'directly' to racial factors."<sup>107</sup> Professor Richard Delgado writes, "treating [hiring] as a 'question of standards' is absurd . . . when you consider that [people of color] took no part in creating those standards."<sup>108</sup> Meritocracy, then, becomes "an inquiry as to whether a particular subject does or does not possess any of the cultural capital already more or less possessed by the powerful."<sup>109</sup> Thus, the meritocracy differs little from "the traditional status hierarchies that application of a merit principle was supposed to eliminate."<sup>110</sup>

This pattern is epitomized by the operation of standardized testing in our educational systems. Though the supposed central transmitter of "merit" to people of color is the educational system, we are still far from achieving equal educational opportunity for all children, especially low-income children of color.<sup>111</sup> Nonetheless, one of the major measures of success and

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105. *Id.* at 380.

106. *Id.* at 384.

107. Peller, *supra* note 80, at 778.

108. Richard Delgado, *Affirmative Action as a Majoritarian Device: Or, Do You Really Want To Be a Role Model?*, 89 MICH. L. REV. 1222, 1225 (1991) (footnotes omitted).

109. Freeman, *supra* note 15, at 384.

110. YOUNG, *supra* note 26, at 212.

111. For a vivid account of how far we have to go, see KOZOL, *supra* note 49; see also Johnson, *supra* note 4, at 1409-17; Anamaria C. Loya, Comment, *Chicanos, Law and Educational Reform*, 3 LA RAZA L.J. 28 (1990) (exploring how Chicanos use the law in the struggle to gain access to meaningful education); WILLIAM T. GRANT FOUNDATION COMM'N ON WORK, FAMILY AND CITIZENSHIP, *THE FORGOTTEN HALF: NON-COLLEGE YOUTH IN AMERICA* (1989).

placement (tracking in public schools and college admissions) are standardized tests. The problem with using these tests is that, as historically and currently formulated, they are culturally biased.<sup>112</sup> This is not surprising given one of the original motivations for standardized tests earlier in the century—to provide a means of excluding unwanted students of color and immigrants without explicitly discriminating against them.<sup>113</sup> Today, numerous studies conclude that standardized tests employed in educational settings correlate best with one's socioeconomic background, thereby disproportionately excluding Blacks, Latinos and other people of color and rewarding those who already own the predominant share of society's "cultural capital."<sup>114</sup> Yet these standards continue to be employed, even when "existing evidence call[s] into question the[ir] relevancy to any legitimate educational goal."<sup>115</sup> Thus, under the guise of merit, equal opportunity and objective and neutral criteria, the educational system serves to disproportionately aid the privileged and harm the underprivileged.<sup>116</sup>

Employment tests demonstrate a similar pattern. Most often, courts have found tests brought to a legal challenge merely correlate with other tests rather than the particular skills needed to perform the job.<sup>117</sup> For example, the test upheld by the United States Supreme Court in *Washington v. Davis*<sup>118</sup> purported to measure verbal ability. The only thing the lower

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112. See Freeman, *supra* note 101, at 143. For detailed descriptions of studies finding cultural bias, see NATIONAL CENTER FOR EDUCATION STATISTICS, DIGEST OF EDUCATION STATISTICS 29, 130 (1993); NATIONAL CENTER FOR EDUCATION STATISTICS, THE CONDITION OF EDUCATION 55, 244 (1993); TOWARDS A DIVERSIFIED LEGAL PROFESSION: AN INQUIRY INTO THE LAW SCHOOL ADMISSION TEST, GRADE INFLATION, AND CURRENT ADMISSIONS POLICIES (David M. White ed., 1981); see also Larry P. v. Riles, 793 F.2d 969 (9th Cir. 1984) (prohibiting the administration of nonvalidated IQ tests to Black children in California because of the cultural bias inherent in the tests).

113. See, e.g., Michael Feuer, *Testing, Testing: Social Consequences of the Examined Life*, 10 Issues In Sci. & Tech. 84 (1993) (book review); *The SAT's Dubious Origins*, U.S. NEWS & WORLD REP., Dec. 11, 1989, at 63. Because "the same criteria that defined the 'standards' during the period of explicit racism continue to be used," Peller, *supra* note 80, at 778, it is not surprising that the cultural bias of these tests persists.

114. See Freeman, *supra* note 101, at 143; Freeman, *supra* note 15, at 381-82; Mantsios, *supra* note 9, at 139-40; see also Troy Duster, *They're Taking Over! and Other Myths About Race on Campus*, in HIGHER EDUCATION UNDER FIRE 276, 280 (Michael Bérubé & Cary Nelson eds., 1995).

115. Charles R. Lawrence III, "Justice" or "Just Us": Racism and the Role of Ideology, 35 Stan. L. Rev. 831, 852 (1983); see also David M. White, *An Investigation into the Validity and Cultural Bias of the LSAT*, in Towards A Diversified Legal Profession, *supra* note 112, at 101, 208-38; ALLAN NAIRN & ASSOC., THE REIGN OF ETS: THE CORPORATION THAT MAKES UP MINDS (1980) (exposing defects in standardized tests).

116. Freeman, *supra* note 101, at 143.

117. See generally Freeman, *supra* note 15, at 381.

118. 426 U.S. 229 (1976).



court found it to measure, however, was the taker's ability to perform well on another written test, the one given at the end of recruit school.<sup>119</sup> Indeed, in the Title VII context, the Supreme Court has recognized that such tests may be employed as a more sophisticated way of discriminating against applicants of color.<sup>120</sup> Whether employed with discriminatory intent or not, standardized tests in both the employment and education context serve to perpetuate the inequity in our society rather than offer genuine equality of opportunity.

Likewise, other measures of merit, including interviews, educational background and extracurricular activities and affiliations, "serve to validate a person's pre-existing class status."<sup>121</sup> People who have the "right" status credentials<sup>122</sup> and demonstrate the "preferred behavioral and temperamental characteristics" are chosen over those who, often by virtue of class or cultural upbringing, do not.<sup>123</sup> As phrased by Professor Patricia Williams, "[s]tandards are nothing more than structured preferences."<sup>124</sup> Such measures often do not reflect "an authentic effort to seek out and identify the myriad human skills that might contribute to the social well-being of a community."<sup>125</sup> Instead, "[o]ther forms of knowledge or practice, deviant from the one that claims universality, are silenced, marginalized, dismissed, or simply ignored."<sup>126</sup> For example, skills such as effective listening, cultural sensitivity, and creativity may not be easily gauged by standard measures of merit.

Contemporary American private firms and public institutions have done little to "change the credentials enforced" by the meritocracy, nor have they devalued such measures "by validating a multiplicity of cultures and knowledges."<sup>127</sup> This situation runs counter to a vision of racial justice where "persons of color would not need to resemble successful whites to fit

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119. Freeman, *supra* note 15, at 381 (citing *Davis v. Washington*, 512 F.2d 956, 963 (D.C. Cir. 1975)).

120. See *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971).

121. Freeman, *supra* note 15, at 383.

122. As Iris Marion Young points out, "instead of coming from the 'right' family, they went to the 'right' school." YOUNG, *supra* note 26, at 212.

123. *Id.*

124. WILLIAMS, *supra* note 10, at 103; see also *id.* at 99 (standards are merely "mind funnels").

125. Freeman, *supra* note 15, at 383.

126. *Id.* at 384.

127. *Id.*

in, but would achieve success without sacrificing what is distinctive about themselves."<sup>128</sup>

Until the standard credentials of merit are successfully challenged and transformed, the meritocracy stands in place as a mechanism that not only perpetuates inequality but stratifies people of color along class lines. One positive result is that people of color, who were once unilaterally shut out from positions of power, now have a chance to succeed professionally and advocate changing the system. A negative result is that resources and talent that could be utilized to improve low-income communities of color are often drained.<sup>129</sup> The negative effects of such draining are both ideological and material. Ideologically, people of color who succeed are given the opportunity to buy into the meritocracy and lose any sense of obligation toward less privileged people of color. The dominant paradigm allows privileged people of color to say to themselves, "I am here because I deserve to be here," and allows them, along with whites, to point to underprivileged people of color and say "they are there because they deserve to be there." For some privileged people of color, like their class-privileged white counterparts, this snobbery lacks any acknowledgment of reciprocal obligations between the favored few and the multitude. Indeed, in their eyes they may have more in common with their counterparts "in office towers in Tokyo, Jakarta, Paris and Cairo than with people of [their] own race across town."<sup>130</sup> This plays out negatively both politically and economically.

Politically, people of color who enter into positions of influence do not, and cannot, under the constraints of the white hegemony, successfully stimulate positive change.<sup>131</sup> For example, the Latino political leadership in Los Angeles disassociated themselves from underprivileged Latinos in the 1992 Los Angeles civil unrest, choosing to focus their attention on denouncing Latino looters rather than speaking out against the racial and

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128. Richard Delgado, *Brewer's Plea: Critical Thoughts on Common Cause*, 44 VAND. L. REV. 1, 14 n.58 (1991); see also Johnson, *supra* note 4, at 1438 n.154 ("the ideal vision of integration may be achieved without requiring African-Americans to lose their unique cultural heritage and identity").

129. See WINANT, *supra* note 16, at 128; BROOKS, *supra* note 6, at 128.

130. Anthony Taibi, *Racial Justice in the Age of the Global Economy: Community Empowerment*, 44 DUKE L.J. 928, 957 (1995).

131. Jerry Watts gives the example of Tom Bradley's four terms as mayor of Los Angeles:

Bradley's tenure as mayor had an incredibly minute positive impact on the lives of the city's most economically marginal residents, many of whom are black and Latino. Whether the marginal impact of Bradley's mayoralty stems from his lack of initiative and concern or from the absence of sufficient resources, it became evident to many blacks in Los Angeles that local electoral politics were irrelevant to their plight.

Watts, *supra* note 37, at 243.

socioeconomic subordination that led to the unrest.<sup>132</sup> While Latinos in poverty, often recent immigrants, have little stake in the existing political order, their middle and upper class counterparts have more of a sense that their political demands will be incorporated into the political system.<sup>133</sup> Likewise, President Clinton's appointment of a diverse cabinet that "looks like America" in actuality produced a multiracial elite that looks and sounds like corporate America rather than being responsive to the needs of communities of color.<sup>134</sup>

Economically, people of color successful in the mainstream may not perceive a need to support institutions and businesses within low-income communities of color. Ties to working class and poor communities of color are weakened by the need for successful people of color to network and advance within white-dominated institutions, leaving them little time and energy for going outside of their professional environment and participating in those communities.

### C. *Integration*

Beyond its proliferation of the meritocratic paradigm, the white hegemony also advances integration as a vehicle to promote equal opportunity. In 1968, the *Kerner Commission Report* concluded that the future of our cities would be enhanced only through the combination of enrichment programs designed to improve the quality of life within the ghettos of America and programs designed to encourage integration of substantial numbers of Blacks into American society beyond the ghetto.<sup>135</sup> While integration into the white-dominant society became a national imperative during the civil rights era, the enrichment recommendation, which the *Report* warned must "be an important adjunct to any program of integration," has never occurred in full force.<sup>136</sup> Further, despite landmark civil rights advances such as the *Brown v. Board of Education*<sup>137</sup> decision and the Fair Housing Act,<sup>138</sup> *de facto* neighborhood and school segregation

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132. See Melvin Oliver et al., *Anatomy of a Rebellion: A Political-Economic Analysis*, in READING RODNEY KING/READING URBAN UPRISING, *supra* note 37, at 131.

133. *Id.*

134. See Eric Mann, *The Poverty of Corporatism*, NATION, Mar. 29, 1993, at 406, 411.

135. Calmore, *supra* note 59, at 1488 (citing REPORT OF THE NAT'L ADVISORY COMM'N ON CIVIL DISORDERS 395-407 (1968)).

136. *Id.*

137. 347 U.S. 483 (1954).

138. 42 U.S.C. § 3601 (1995).

continue to exist on a large scale.<sup>139</sup> Regardless of occupational status, income or educational achievement, Blacks are highly segregated from similar whites.<sup>140</sup> Finally, the limited gains that have been made in school desegregation face continual challenges from whites who deny responsibility for remedying such segregation.<sup>141</sup>

Under the "integration imperative,"<sup>142</sup> segregation in housing and schools was to be overcome by "the replacement of the ghettos by truly integrated and balanced living patterns."<sup>143</sup> In other words, the housing and educational conditions of African-Americans were to improve if they left their communities and move into white communities and go to white schools. Professor Gary Peller argues that "[c]urrent mainstream race reform discourse reflects . . . a tacit, enlightened consensus that integrationism—understood as the replacement of prejudice and discrimination with reason and neutrality—is the proper way to conceive of racial justice, and that the price of the national commitment to suppress white supremacists would be the rejection of race consciousness among African-Americans."<sup>144</sup>

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139. See GARY ORFIELD ET AL., *THE GROWTH OF SEGREGATION IN AMERICAN SCHOOLS: CHANGING PATTERNS OF SEPARATION AND POVERTY SINCE 1968* (1993); DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* (1993); A COMMON DESTINY: BLACKS AND AMERICAN SOCIETY 382 (Gerald D. Jaynes & Robin M. Williams, Jr., eds., 1989); Douglas S. Massey & Nancy A. Denton, *Hypersegregation in U.S. Metropolitan Areas: Black and Hispanic Segregation Along Five Dimensions*, 26 *DEMOGRAPHY* 373 (1989).

Even when certain school districts have achieved a fair degree of ethnic integration, white parents initiate moves to "secede" and form their own school districts in their own neighborhoods. See *Fullerton Joint Union High School Dist. v State Bd. of Educ.*, 32 Cal.3d 779 (1982); Lori Olszewski, *New Boundaries for West Contra Costa Schools*, S.F. CHRON., May 21, 1996, at A15-A16 (NAACP critical of newly drawn school district boundaries which have the effect of relocating white students away from predominantly black schools); Maria Alicia Gaura, *Secession Drive Stirs Talks of Racism*, S.F. CHRON., Jan. 19, 1996, at A1 (move to split a Santa Cruz County school district into two districts—one 80% white and one 85% minority and severely overcrowded); Mike Davis, *The Social Origins of the Referendum*, NACLA REPORT ON THE AMERICAS, Nov.-Dec. 1995, at 24, 28 (move to secede San Fernando Valley from the majority non-white Los Angeles Unified School District).

140. Douglas S. Massey, *Racial Segregation Itself Remains a Corrosive Force*, L.A. TIMES, Aug. 13, 1989, at A5.

141. See Calmore, *supra* note 59, at 1497.

142. See *id.* at 1492-1501.

143. 114 Cong. Rec. 2276 (1968) (remarks of Senator Walter Mondale, principle sponsor of the Fair Housing Act), *quoted in* Calmore, *supra* note 59, at 1493.

144. Peller, *supra* note 80, at 760.

Aside from highlighting the fact that integration has not occurred on a wide scale,<sup>145</sup> two general criticisms are leveled against this strategy from a perspective of color. First, as Malcolm X noted at the outset of the integration imperative, "integration" really means "integration into white institutions," thus assuming the superiority of white institutions over "of color" institutions.<sup>146</sup> This has profound effects on cultural identity as it can often require people of color to "give up their identity, deny their heritage."<sup>147</sup> As Alex Johnson explains, the integration imperative "is premised on white norms and culture" and implicitly rejects the unique culture and community of African-Americans.<sup>148</sup> Second, the integration imperative ignores the "nonsegregation" alternative<sup>149</sup>—the strengthening of neighborhoods and institutions of color that "implies both the right of people to remain indefinitely where they are, even if in ghetto areas, and the elimination of restrictions on moving into other areas."<sup>150</sup>

Alex Johnson argues that the key problem in the education context is a prevalent understanding of integration that conflates the process of integration with the ideal of integration.<sup>151</sup> The process of integration operates to bring more people of color into societal institutions; this is a mechanism by which the "ideal racially harmonized society is to be achieved."<sup>152</sup> By contrast, the ideal of integration is a "racially harmonized society."<sup>153</sup> Johnson argues that the ideal of integration can only be achieved

145. See Calmore, *supra* note 59, at 1496-1501. Calmore points out that integration has only occurred in fragments—in education, politics, employment, business and social interaction—without being linked to residential integration. *Id.* at 1497.

146. MALCOLM X, BY ANY MEANS NECESSARY: SPEECHES, INTERVIEWS AND A LETTER 17 (G. Breitman ed., 1970) ("what the integrationists, in my opinion, are saying, when they say that whites and blacks must go to school together, is that the white school is so much superior that just their presence in a black classroom balances it out"); see also STOKELY CARMICHAEL & CHARLES V. HAMILTON, BLACK POWER: THE POLITICS OF LIBERATION IN AMERICA 54-55 (1967) ("[Integration] reinforces, among both black and white, the idea that 'white' is automatically superior and 'black' is by definition inferior").

147. CARMICHAEL & HAMILTON, *supra* note 146, at 55. Carmichael continues, "The fact is that integration as traditionally articulated, would abolish the black community. The fact is that what must be abolished is not the black community, but the dependent colonial status that has been inflicted upon it." *Id.* For a discussion of the consequences of an extreme form of "integration"—the forced taking of a pill that would eliminate all indications of being Black—see Jerome McCristal Culp, Jr., *The Michael Jackson Pill: Equality, Race and Culture*, 92 MICH. L. REV. 2613 (1994).

148. Johnson, *supra* note 4, at 1423.

149. Calmore, *supra* note 59, at 1498.

150. ROBERT F. FORMAN, BLACK GHETTOES, WHITE GHETTOES AND SLUMS 46 (1971).

151. See Johnson, *supra* note 4, at 1402-03.

152. *Id.* at 1402 n.5.

153. *Id.* A "racially harmonized society" is "a situation in which blacks, whites, and others live together in amity, respecting one another's history and culture, in a society in which the races have

by respecting the unique African-American culture "through the maintenance and operation of *separate* institutions that allow African-Americans to join together."<sup>154</sup>

The integration imperative can also be criticized for its stratifying effects among people of color. By exerting pressure for socially mobile people of color to relocate into affluent, white neighborhoods without adequately providing any means for the strengthening of low-income communities of color, the imperative drains resources and talent away from the communities where they are most needed.<sup>155</sup> In particular, those who leave their communities can no longer serve directly as community leaders and role models.<sup>156</sup> Moreover, the dominant society actively discourages continued community obligations by proliferating secular values which emphasize the individual over the community.<sup>157</sup> As a result, young Blacks or young Latinos may be likely to view each other more as competitors than as "brothers and sisters, or as comrades in a struggle."<sup>158</sup> Thus, while integration may benefit upwardly mobile working and middle class people of color, it does not address the needs of those who cannot leave low-income communities.<sup>159</sup>

Scholars have recognized the deficiencies of the integration imperative and argued for strategies that would enrich African-American communities. For example, Professor John Calmore advocates "spatial equality," targeting "housing resources to revitalize existing communities of color 'in order to protect and affirm the right of minority residents to enhance their social and political cohesiveness by remaining in place if they choose to do so.'"<sup>160</sup> In the same vein, Alex Johnson argues that "[i]ntegral to the continued health

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equal, and equally observed, legal rights . . . ." Wicker, *supra* note 12, at 13. "Applied to racial relations in the United States today, that description fails in every particular." *Id.*

154. Johnson, *supra* note 4, at 1403.

155. See BROOKS, *supra* note 6, at 128; WINANT, *supra* note 16, at 128; see also *supra* note 129 and accompanying text. The extent to which this has actually occurred is a subject of debate among social scientists. Compare William J. Wilson, *Public Policy Research and the Truly Disadvantaged*, in THE URBAN UNDERCLASS 462-63 (Christopher Jencks & Paul Peterson eds., 1991) with Douglas Massey & Mitchell Eggers, *The Ecology of Inequality: Minorities and the Concentration of Poverty, 1970-1980*, 95 AM. J. SOC. 1153, 1153-86 (1990) and BART LANDRY, THE NEW BLACK MIDDLE CLASS 185 (1987).

156. BROOKS, *supra* note 6, at 128.

157. See, e.g., Anthony Parker, *Whose America Is It?*, SOJOURNERS, Aug.-Sept. 1990, at 11.

158. *Id.*

159. BROOKS, *supra* note 6, at 125-28.

160. Calmore, *supra* note 59, at 1495 (quoting Emily Paradise Achtenberg & Peter Marcuse, *Toward the Decommodification of Housing*, in CRITICAL PERSPECTIVES ON HOUSING 474, 480 (Rachel G. Bratt et al. eds., 1986)).

of [the African-American community] is the successful transmission of its values" through all-Black schools.<sup>161</sup> Underlying both of these strategies is a recognition of "the growing importance of black cultural and community affinities."<sup>162</sup>

#### D. *The Shortcomings of Formal Equal Opportunity*

Formal equal opportunity, through its conceptions of merit and integration, fails to achieve racial justice because of its individualistic nature and failure to recognize people of color as members of distinct communities of color.<sup>163</sup> The meritocracy, to a large extent, rewards those who can best learn the cultural capital of the white privileged classes, regardless of how far that body of knowledge varies from actual academic or job performance. The integration imperative requires people of color to assimilate into dominant culture institutions without any commitment toward strengthening the institutions within communities of color. Both of these aspects of formal equal opportunity serve to drain human and economic resources from local communities of color. They also reinforce low self-esteem for those that "fail" under the system and foster disassociation and a feeling of little obligation toward their community of color for those who "succeed." While formal equal opportunity has provided access for communities of color to a greater share of social goods, thus "creat[ing] the material conditions for those [communities] to remain viable,"<sup>164</sup> "adherence to this individualistic model will leave American government and society with little ability to deal with the cultural devastation that has occurred in America's inner cities."<sup>165</sup> It also contributes to the socioeconomic stratification of people of color thereby weakening communities of color as forces of self-empowerment and political empowerment in the larger society.<sup>166</sup> We now further explore the importance of "community" in the quest for racial justice further by

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161. Johnson, *supra* note 4, at 1422 (criticizing the United States v. Fordice, 112 S. Ct. 2727 (1992), decision and the Supreme Court's current conception of integration for failing to acknowledge and accommodate the reality of a unique and separate African-American culture).

162. Calmore, *supra* note 59, at 1506-07; see also Johnson, *supra* note 4, at 1402-03; Comment, *Black Neighborhoods Becoming Black Cities: Group Empowerment, Local Control and the Implications of Being Darker Than Brown*, 23 HARV. C.R.-C.L. L. REV. 415 (1988) (examining the implications of incorporating black neighborhoods as separate cities in an attempt to promote local control and responsiveness to the needs of the Black community).

163. See Robert J. Cottrol, *A Tale of Two Cultures: Or Making the Proper Connection Between Law, Social History and the Political Economy of Despair*, 25 SAN DIEGO L. REV. 989, 1021 (1988).

164. Torres, *supra* note 81, at 1067-68.

165. Cottrol, *supra* note 163, at 1021.

166. See *supra* notes 56, 74-98, 155 and accompanying text.

examining its meaning in American legal thought in general and how that meaning has failed to take into account the importance of communities of color.

### III.

#### STRENGTHENING COMMUNITIES OF COLOR FROM WITHIN

Given the socioeconomic division among people of color and the problems posed by our system of formal equal opportunity, I argue that a second and concurrent route to racial justice, beyond reforming the legal system, emerges: increasing the solidarity and strength of communities of color. American conceptions of community have failed to adequately take into account the needs of people of color. Thus, the "class-privileged" members of communities of color have to work toward empowering lesser privileged members of their communities in order to attempt to make up for the deficiencies of the larger political system. However, this argument makes little sense without first examining the different conceptions of community and how they play out in the quest for racial justice.

##### A. *Defining Community*

A discussion of the "community" concept involves at least two distinct ideas: "community" as an abstract description of a shared feeling among people and "community" as a tangible description of a shared geographic and cultural location. Thus, people within a "tangible" community may share the abstract "feeling" of community. John Calmore offers a nice general definition of community that really encompasses both notions: "Communities are based on things people hold in common. A community implies that its members' relationships are solidified by ties providing a feeling of collective identity, self-awareness, and affiliation."<sup>167</sup>

As a starting point to this discussion, we should recognize that people belong to multiple communities.<sup>168</sup> Because individuals participate in several communities (political, occupational, social, familial, racial, ethnic, gender), we each develop a multiple consciousness influenced by the values

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167. Calmore, *supra* note 59, at 1501. English professor Cordelia Chávez Candelaria offers a similar definition in the literary criticism context: "'Community' refers to a group of people associated together geographically and/or historically by common interests and traditions." Cordelia Chávez Candelaria, *Différance and the Discourse of "Community" in Writings by and About the Ethnic Other(s)*, in *AN OTHER TONGUE* 185, 186 (Alfred Arteaga ed., 1994); see also Ian Haney López, *The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice*, 29 HARV. C.R.-C.L. L. REV. 1, 54-61 (1994) (discussing the relationship between race and communities).

168. See Culp, *supra* note 8, at 63 & n.5.



of those multiple communities.<sup>169</sup> Feminist and Critical Race Theory have recognized the need to incorporate these multiple perspectives in the study of law and culture.<sup>170</sup> These works highlight the failure of American law and society to recognize and respect these multiple perspectives.<sup>171</sup>

One source of this failure is the dominant paradigm's conception of "community" itself. In this sense, I refer to community in the abstract, the underlying bond between people who belong to Calmore's tangible communities. Law contributes to this notion of community "primarily by establishing norms that identify a group as a people who owe to each other not merely some specific obligations, but loyalty whose boundaries are vaguely defined."<sup>172</sup> Thus, "[w]ithin a community of shared values, law dampens aggression and promotes cooperation, not only secondarily by establishing particularized rules of behavior . . . [but mainly] by standing as a totem, a symbol that community exists."<sup>173</sup> We can thus conceive of a "national community" with the Constitution, federal law and national history forming the core of the community's shared values. While these values have allowed for limited inclusion of new groups as fully participating members of the community, they have failed to effectively recognize or facilitate a sense of mutual responsibility among people of all colors toward each other as members of the national community.<sup>174</sup> Further, the national community has failed to accord political and cultural importance to the need for recognition of distinct ethnic communities and their "sub-cultures,"<sup>175</sup>

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169. Brown-Scott, *supra* note 4, at 1217-18.

170. See, e.g., Angela Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 615 (1990) (explaining how gender essentialism is dangerous because, "in the attempt to extract an essential female self and voice from the diversity of women's experience, the experiences of women perceived as 'different' are ignored or treated as variations on the (white) norm"); Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 WOMEN'S RTS. L. REP. 297 (1992).

171. As Professor Harris explains, "[The] voice [of 'We the People' in the Preamble to the United States Constitution] does not speak for everyone, but for a political faction trying to constitute itself as a unit of many disparate voices; its power lasts only as long as the contradictory voices remain silenced." Harris, *supra* note 170, at 583.

172. KENNETH L. KARST, *BELONGING TO AMERICA: EQUAL CITIZENSHIP AND THE CONSTITUTION* 189-216 (1989).

173. *Id.*

174. See *supra* note 4 and accompanying text.

175. In the face of this neglect and its concomitant failure to incorporate cultural aspects of communities of color into the dominant culture, "[a]ssimilation means cultural elimination." Torres, *supra* note 81, at 1070. American legislative measures have rejected ethnic subcultures in favor of a monolithic American culture by declaring English the official language, see CAL. CONST., ART. III, § 6, and narrowing or eliminating state affirmative action policies, see CAL. CONST., ART. I, § 31 (Proposition 209, the so-called "California Civil Rights Initiative," enacted November 1996). The American judiciary has rejected subcultures by allowing prosecutors to exclude "Hispanic" jurors from a

thus producing a disjunction between demographic reality and socio-political practice that expresses itself, at varying times, either as "situational accommodation" or "the marginalization of the subculture and its members." The white hegemony with its two-fold approach of racial accommodation<sup>176</sup> still underlies the values of this national community. Indeed, the enforcement of key antidiscrimination statutes such as Title VII "have become less effective . . . because the enforcement efforts have lost any commitment to a sense of community [instead making them tools of individualism]."<sup>177</sup> As a result, the national community has failed to incorporate into itself communities of color,<sup>178</sup> but has instead attempted to integrate and assimilate individual people of color into its white dominated institutions.<sup>179</sup> In doing so, the national community forgets that "America's cultural identity, values, and meanings cannot be separated from its past and present social relations of domination and power."<sup>180</sup>

The national community's treatment of the Chicano community, past and present, has created a deep skepticism of the law among Chicano artists and writers. Scholar Carl Gutiérrez-Jones, in his recent study of Chicano culture and legal discourse, characterizes Chicano cultural texts as extremely resistant to the discourses of American institutions "controlled by and for Anglos."<sup>181</sup> Gutiérrez-Jones explains that this skepticism reaches to the

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trial involving Spanish-speaking witnesses "on the grounds that [the jurors] might not accept official English translations of Spanish testimony," *Hernandez v. New York*, 500 U.S. 352, 360 (1991); by allowing employers to fire employees for speaking Spanish to one another during work time, see, e.g., *García v. Spun Steak*, 998 F.2d 1480 (9th Cir. 1993) (holding that employer doesn't violate Title VII by imposing a rule that prohibits a bilingual worker from speaking Spanish during working hours); see also Rey M. Rodriguez, *The Misplaced Application of English-Only Rules in the Workplace*, 14 CHICANO-LATINO L. REV. 67 (1994); and by not recognizing claims of racial discrimination where an employer forbids employees from wearing an African-American braided hairstyle, see *Rogers v. American Airlines Inc.*, 527 F. Supp. 229 (1981); see also Paulette Caldwell, *A Hair Piece: Perspectives on the Interaction of Race and Gender*, 1991 DUKE L. J. 365.

176. See *supra* note 96 and accompanying text.

177. *Culp*, *supra* note 147, at 2627 (citing *Connecticut v. Teal*, 457 U.S. 440 (1993)) (stating in both the majority and dissenting opinion that Title VII's primary aim is to protect individuals).

178. See Calmore, *supra* note 59, at 1515.

179. See *supra* notes 135-162 and accompanying text. One manifestation of this situation is the continued opposition to multicultural education leveled by many white scholars. Critics of multiculturalism argue that an increased focus on cultural heritage other than "American" heritage threatens to balkanize America into a set of warring tribes. See, e.g., ARTHUR SCHLESINGER, JR., *THE DIS-UNITING OF AMERICA* 70-73 (1991).

180. John O. Calmore, *Critical Race Theory, Archie Shepp, and Fire Music: Securing an Authentic Intellectual Life in a Multicultural World*, 65 S. CAL. L. REV. 2129, 2132 (1992).

181. GUTIÉRREZ-JONES, *supra* note 95, at 100.



Inferiority  
 is the new load . . .  
 I look at myself  
 and see part of me  
 who rejects my father and my mother  
 and dissolves into the melting pot  
 to disappear in shame . . . .<sup>185</sup>

Chicana university student Celestina Castillo notes the psychological effects of such disregard on Chicano youth:

Many [Chicanas] bleach their hair or wear blue or green contacts to hide their brown eyes . . . . I used to think it was them to blame, the ones wearing the contacts . . . . for not being aware . . . . [for being blind to reality]. I realized my own ignorance that they were not just blind but were blindfolded. As children we were never really taught who we really are. In the classrooms, Chicanos are dehumanized by being treated as incapable, less productive, and inferior. We've been told that we are "Americans"; that Jefferson, Madison and all those Anglo men are our "Founding Fathers" who brought us so much and we should be thankful. Indirectly, we are taught that the Anglo race is superior with rules like "Only speak English in the classroom." Many educators strip our Raza of their identity by anglicizing our names from Jaime to James or Maria to Mary.<sup>186</sup>

Thus, public education, by and large an institution of the national community, ignores and thus disrespects the Chicano community through its "color-blind, neutral" approach, which really ends up being a front by which to inject (or project) the white dominant culture onto somewhat defenseless youth.

This pattern also plays out in some of the political reform movements emerging today from political theory. One movement, communitarianism, has gained significant support inside<sup>187</sup> and outside<sup>188</sup> of academic

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185. RODOLFO GONZALES, *I AM JOAQUIN* at 6, 10, 51-52 (Bantam ed. 1972).

186. Celestina Castillo, *The White Blind Fold*, in STATEWIDE MECHA CONFERENCE PROGRAM, OCT. 11-12, 1991, at 3 (on file with *La Raza Law Journal*).

187. "Communitarianism, essentially a blend of welfare economics, socialist political theory, and postmodern ethics, has met a generally favorable reception in legal academia." Delgado, *supra* note 6, at 1938 (citing Note, *A Communitarian Defense of Group Libel Laws*, 101 HARV. L. REV. 682 (1988); Fried, *Liberalism, Community, and the Objectivity of Values*, 96 HARV. L. REV. 960 (1983); Sagoff, *The*

discourse. Legal theorist Wendy Brown-Scott criticizes communitarian theory for perpetuating this deficiency in its prescriptions for improving American society.<sup>189</sup> Proponents of communitarianism argue that we will build a more stable political community by exercising mutual responsibility toward each other as citizens.<sup>190</sup> Like Critical Race theorists, they believe that the emphasis on individual rights has limited the ability of both the state and private institutions to address the problems facing our communities.<sup>191</sup> To address this predicament, they propose emphasizing "civic duty and the role of the family, the school, the church, and the community in identifying and inculcating shared moral values."<sup>192</sup> Brown-Scott argues that this communitarian approach cannot address the state's subordination of African-Americans unless it proposes sharing power and eradicating, rather than controlling, racism.<sup>193</sup> This requires a race-conscious approach.<sup>194</sup>

Communitarianism's critique of American society, then, correctly identifies some of the detriment that occurs from the emphasis on individualism. However, it seeks to promote "shared moral values" that are, themselves, imbedded with bias against communities of color. It envisions America and its political subdivisions—states and cities—as "supracommunities" within which subgroup differences can be accommodated so long as they do not threaten the "core values" of the supracommunity.<sup>195</sup> However, it argues that too much emphasis on the "subgroup communities," including communities of color, threatens the vitality of the supracommunity.<sup>196</sup> This view fails to recognize the power differential inherent in who gets to determine the content of the "core

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*Limits of Justice*, 92 YALE L.J. 1065 (1983)). For a comparison of communitarianism to classical liberal theory, see Jeffrey Friedman, *The Politics of Communitarianism*, 8 CRITICAL REVIEW 297 (1994).

188. See Carson, *supra* note 5, at 120-21. One scholar, Amitai Etzioni, offers a popular version of the Communitarian platform. See AMITAI ETZIONI, *THE SPIRIT OF COMMUNITY* (1993).

189. Brown-Scott, *supra* note 4.

190. *Id.* at 1210.

191. See *id.*

192. *Id.* at 1211. As Ian Haney López notes, the communitarian conception of "community" focuses on "loosely joined groups of fellow citizens," a rosy, universalized view of society that neglects to look closely at the differing cosmologies and lifestyles that cultural groups, e.g. "communities of color," may possess within a larger society. See Haney López, *supra* note 167, at 54 & n.203.

193. Brown-Scott, *supra* note 4, at 1211.

194. *Id.*

195. See Etzioni, *supra* note 188, at 160.

196. *Id.*

values." It assumes that we have a set of "core values" in place that all communities, white and of color, can agree upon.<sup>197</sup> It views communities of color as threatening to the supracommunity instead of recognizing them as subgroups that, given the respect and support they deserve, can contribute to the supracommunity.

This argument, however, begs the question: what are communities of color? Two conceptions of "communities of color" explain how the term has been employed by scholarship concerned with racial justice, as both a reflection of societal usage and an academic descriptive term. First, scholars have used variations of the term to describe national ethnic groups and the cultural bonds they share, for example: the "African-American community" and the "Latino community."<sup>198</sup> This designation goes beyond mere designation of an ethnic group, however, because it recognizes that members of these communities self-identify as such and share common experiences and bonds that members outside of that community cannot share. Thus, members of an ethnic group may choose to participate or not participate as a member of their community of color, where they cannot choose to change their ethnic background. Second, scholars have employed the term to refer to a narrower designation of groups of people of color who share specific geographic places of residence, and often by virtue of this fact, specific forms of racial and socioeconomic subordination.<sup>199</sup> I will refer to this second conception as "localized communities of color." This conception, a subset of the first, recognizes that people of color who share common neighborhoods and lifestyles may also self-identify. Of course, an individual may identify as both a member of her "larger community of color" ("Soy Chicana"), and her "local community of color" ("La Colonia").<sup>200</sup> Both conceptions form the framework for which I would like to explore the racial justice strategy of "community-building."

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197. We, do, of course, need a set of "core values" for our society. See Hing, *supra* note 4, at 910. The mainstream, assimilationist view seeks to impose their version of "core values" on all members of society, regardless of their cultural background. See *id.* at 870-79. This view disrespects "lives, identities, and cultures of others." *Id.* at 911. Our "national community" will remain fractured until it genuinely seeks to respect and understand the perspectives of different communities of color and what these perspectives can offer to the general social good.

198. E.g., Brown-Scott, *supra* note 4, at 1216 (referring to the African-American community); Johnson, *supra* note 4, *passim* (discussing the African-American community); Hing, *supra* note 4, *passim* (discussing various communities of color); *id.* at 877 (referring to the Latino community); Jose A. Bracamonte, *Minority Critique of the Critical Legal Studies Movement: Foreword*, 22 HARV. C.R.-C.L. L. REV. 297, 297-99 (1987) (referring to the Chicano community).

199. E.g., Calmore, *supra* note 59, at 1515 ("inner-city communities of color"); Hing, *supra* note 4, *passim* (referring to various specific communities of color throughout); Dubin, *supra* note 48, *passim* (discussing "low-income communities of color").

200. Current Chicano scholarship criticizes the notion that any singular, monological Chicano "movement" or "culture" exists. See, e.g., Juan Bruce-Novoa, *Dialogical Strategies, Monological Goals: Chicano Literature*, in AN OTHER TONGUE, *supra* note 167, at 225, 242 n.1. Rather, this view

## B. *Forging Community Obligations*

The chief goals of "community-building" are to empower all members of a community across class lines and to consolidate community members into a potent political force within the dominant system. This is consistent with the idea of a "national community" and effectively works toward more effective integration "in the abstract." As Alex Johnson explains:

In order to integrate properly into society, African-Americans, like other ethnic groups, must proceed on their own terms from a position of strength and solidarity. The African-American community and the dominant white community cannot become one through forced integration, because that process reflects no choice and has the effect of locking African-Americans into inferior positions in society. Indeed, if anything is to be learned from this country's history, it is that people truly become a part of America's melting pot only when they enter the mix voluntarily, from a position of strength rather than from a position of weakness.<sup>201</sup>

To effectively work toward this goal, we must examine how the larger conception of "community of color" can work towards the linking the divergent interests of "local communities of color."

The starting point for this challenge is largely one of fostering identification with the larger community of color among all group

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recognizes that many local manifestations of a common culture have arisen without sufficient coherence to justify such terminology. *Id.*; cf. *Castorena v. City of Los Angeles*, 34 Cal.App.3d 901, 907 n.6 (1973) (questioning whether "Barrio" Chicanos share a community of interest with Chicanos living elsewhere in the city); Richard Delgado, *Essentialism and Antiessentialism*, in *CRITICAL RACE THEORY: THE CUTTING EDGE* 281-82 (Richard Delgado ed., 1995) (posing the question "Is the black (or Chicano) community one or many?").

201. Johnson, *supra* note 4, at 1451. This idea of temporary separation for the purposes of future voluntary integration from a position of strength was recognized by at least some white scholars during the Black Nationalism movement of the late 1960s. As one white scholar wrote:

[T]he hope, however vague, of real and independent self-determination is a powerful tool for evoking black strength and creating unity and purpose. This kind of separatism with its anti-integrationist ideology may, as a matter of fact, serve as a device for helping achieve integration in the future by giving Negroes a new sense of worth, dignity, and power now and thereby forcing the white community into greater concessions.

Richard Newman, *Black Power, Black Nationalism, Black Rebellion*, in *BLACK POWER AND BLACK RELIGION* 28 (1987).

members.<sup>202</sup> This involves, first, recognizing a unique larger community of color and, next, identifying oneself with that community. The larger community of color, whether it be the African-American community or the Chicano community,<sup>203</sup> manifests as a distinct "community" as a result of both internal and external forces. Internally, members of the community constitute a social group, as defined by Iris Marion Young: "a collective of people who have affinity with one another because of a set of practices or a way of life."<sup>204</sup> For example, members of the African-American community have a shared history and a culture that developed from their shared history.<sup>205</sup> Likewise, members of the Chicano community share a history and culture that gives each member a certain degree of affinity.<sup>206</sup> Moreover, not only do members of these communities share history and culture, but they share the largely immutable characteristic of ethnicity.<sup>207</sup> Externally, communities of color are called into existence because of their distinct treatment by the dominant society, both officially and unofficially. This treatment is historically and typically subordinating, but sometimes benign.

The value of communities of color that the national community usually ignores is their critical importance for some "in providing a sense of identity, fulfillment and self-confidence."<sup>208</sup> Alex Johnson explains how

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202. See Gerald Torres, *Critical Race Theory: The Decline of the Universalist Ideal and the Hope of Plural Justice: Some Observations and Questions of an Emerging Phenomenon*, 75 MINN. L. REV. 993, 997 (1991) ("recognition and preservation of group membership is important to community building and to the creation of justice").

203. I choose the "Chicano community" here rather than the larger "Latino community" because the members of the former coalesce more tightly in their history, tradition and social practices. See Johnson, *supra* note 2, at 67-72 (discussing the divergent segments of the heterogeneous Latino community). Chicanos fit within the larger Latino community because of a shared history of oppression within the United States and a high degree of similarity in social practices, including language and tradition. However, the larger Latino community remains situated, in the abstract, between the larger national American community and the larger community of color in many respects because of differences in national heritage, culture and linguistic variation. My focus also reflects a West Coast bias, for if this were written by a Latino on the East Coast, it would be just as easy to focus on the Puerto Rican community.

204. YOUNG, *supra* note 26, at 186.

205. See, e.g., Johnson, *supra* note 4, at 1415. "There are certain customs and values among African Americans that transcend socioeconomic boundaries. African American culture also has elements that are both similar to and different from the mainstream, white American culture." BROOKS, *supra* note 6, at 147.

206. See generally RODOLFO ACUÑA, *OCCUPIED AMERICA: A HISTORY OF CHICANOS* (3d ed. 1988); ROSAURA SÁNCHEZ, *CHICANO DISCOURSE* 16-28 (1994) (discussing the relationship between Chicano language and culture). For a recent account of Chicano history and culture, focusing on Chicana political and spiritual empowerment, see Castillo, *supra* note 70.

207. See Johnson, *supra* note 4, at 1415.

208. Hing, *supra* note 4, at 870.



communities of color provide "valuable [though not easily quantifiable] socializing functions."<sup>209</sup> One's ethnic community supplements the family's socialization role by "teaching and enforcing appropriate social norms of behavior,"<sup>210</sup> including "norms of cooperation, promise-keeping and honesty."<sup>211</sup> One's ethnic community can also provide a source of pride, self-esteem and common cause.<sup>212</sup> These communities may not only challenge the dominant culture but develop alternative social visions.<sup>213</sup> Indeed, it is the vision of shared goals against racial subordination that fueled the civil rights movement. As Professor Culp states, "[c]ommunities and the differences those communities produce have importance and power that individuals do not . . . ."<sup>214</sup>

History professor Rodolfo Acuña offers an example of the empowering influence community action can have on individual members of a community of color:

Last February we held a march [in Santa Barbara] called "Old Chicano Days" in response to the annual "Old Spanish Days" parade held in August. More than 2000 people walked down State Street. We showed that we can take the streets at any time—in a positive way. Taking the streets *legally* is empowering. Little kids came up to me and said, "I was going to drop out of school; after this march I feel like I am someone." The key is simple: we [the Chicano community] must provide an alternative to writing on the walls.<sup>215</sup>

Thus, the community can call itself into more relevant existence for its individual members through action. However, the community's existence is just the first step in community membership.

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209. Johnson, *supra* note 4, at 1416.

210. *Id.*

211. *Id.* (quoting Jennifer Roback, *Plural But Equal: Group Identity and Voluntary Identification*, SOC. PHIL. & POL'Y, Spring 1991, at 60, 63).

212. See Loya, *supra* note 111, at 50.

213. See Torres, *supra* note 81, at 1061.

214. Culp, *supra* note 147, at 2626.

215. Rodolfo Acuña, *Chicano Professor Takes on the UC System*, 14 CHICANO-LATINO L. REV. 171, 174 (1994). For an account of Professor Acuña's successful discrimination lawsuit against the University of California Regents, see Elizabeth Martínez, *Brown David v. White Goliath*, Z MAGAZINE, Jan. 1996, at 57-62.

The second step is "identifying" with the community. Alex Johnson explains that there are two parts to this process.<sup>216</sup> First, the outside world recognizes the individual as a particular ethnicity.<sup>217</sup> Second, "and much more difficult," the individual who is visibly a member of the particular ethnic group or who acknowledges her ethnic heritage "chooses to share this status by acknowledging the presence—and thus the shared subordinated experience of other [members of her ethnic community]."<sup>218</sup> Another aspect of "identifying," and of particular significance to this discussion of community-building, is "its transcendence across class lines."<sup>219</sup> Members of an ethnic community, through their identification with their community, "are able to construct and identify a place within the larger society that provides a relatively autonomous sphere within which social life is lived and created . . ."<sup>220</sup> Indeed, "cultural membership affects our very sense of personal identity and capacity . . . 'cultural heritage, the sense of belonging to a cultural structure and history, is . . . a source of emotional security and personal strength [that] . . . affect[s] our very sense of agency.'"<sup>221</sup>

However, both a national community that fails to recognize the value of communities of color,<sup>222</sup> and the diverging political interests that emerge from the socioeconomic stratification of people of color,<sup>223</sup> place pressure on individuals to diminish their identification with their larger community of color. Successful people of color are given "the assimilationist choice"<sup>224</sup> to

216. See Johnson, *supra* note 4, at 1448.

217. *Id.* Under this rule of recognition certain individuals who are not easily identifiable as members of their ethnic community may "pass" as white. *Id.* at n.169. However, the overwhelming majority of African-Americans are easily identifiable as such. *Id.* Most Latinos are easily identifiable as such, though a significant minority can easily pass as white. Here, we can draw a distinction between ethnic identity and racial identity. As Roy Brooks explains, "[w]hereas one's ethnic identity (e.g., one's Irishness) can be turned off in the public domain, one's racial identity (e.g., one's African-Americanism or Blackness) cannot be hidden . . ." Roy L. Brooks, *Race As An Under-Inclusive and Over-Inclusive Concept*, 1 AFR.-AM. L. & POL'Y REP. 9, 29 (1995).

218. Johnson, *supra* note 4, at 1448. This "is as simple as one African-American saying hello to another African-American as they pass each other on a predominantly white campus, even though they may never have seen each other before and even though neither would do the same [say hello] if the other was not African-American." *Id.*

219. *Id.* Johnson gives the example of upper middle-class African-American students speaking to and acknowledging an African-American janitor at their college. *Id.*

220. Torres, *supra* note 81, at 1062.

221. Johnson, *supra* note 4, at 1451 (quoting WILL KYMLICKA, *LIBERALISM, COMMUNITY, AND CULTURE* 175 (1989)).

222. See *supra* notes 172-181 and accompanying text.

223. See *supra* note 12 and accompanying text.

224. Torres, *supra* note 81, at 1067.

adopt the styles and norms of the dominant culture. For some, this also means not "identifying" with other members of one's own community of color and consciously choosing not to interact with them.<sup>225</sup> In fact, "assimilationist" people of color may philosophically object to "the existence of a separate and unique [community of color] that stands apart from the mainstream."<sup>226</sup> For others, despite their identification, their careers and professional involvements may not allow them the time to engage in community activities as much as they would like. Their need for ethnic community may be fulfilled by ethnically-based professional organizations, churches or political groups. Such community-centered and culturally-based associations may provide cathartic safe havens given the isolation and alienation people of color may face in the professional world.<sup>227</sup> Nonetheless, participation in their larger community of color becomes merely one involvement among many, and it may be an involvement that extends only to a privileged sector of their community of color.

On the other end of the socioeconomic spectrum, working class and poor people of color also experience pressures to distance themselves from their larger community of color. Interest divergence means that people of color on the lower end of the socioeconomic scale will not identify with the concerns of middle-class and professional people of color.<sup>228</sup> Issues of concern to professionals of color may receive more press time and space in both the mainstream and ethnic media than the issues faced by working class and poor people of color due to the media's class bias. Further, working class and poor people of color may feel resentment toward successful people of color who do not provide leadership or economic support for financially strapped local communities of color. Finally, in local low-income communities of color, the absence of professionals and other role models creates a distance in experience and cultural sharing between people of color across the socioeconomic spectrum.<sup>229</sup>

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225. See Johnson, *supra* note 4, at 1447.

226. *Id.* at 1449 (discussing African-American assimilationists); see also SÁNCHEZ, *supra* note 206, at 22-23 (discussing Chicano assimilationists).

227. See *supra* notes 20-22, 31, 45 and accompanying text.

228. See *supra* notes 35-36 and accompanying text.

229. See Johnson, *supra* note 4, at 1442-43. Johnson describes talking with a high school friend in inner city Los Angeles, after one year as a Princeton undergraduate. After briefly catching up, Johnson's friend reveals the sense of distance between them: "Look man, I gotta split. Places to go, people to see. It's good catching up with you and all but you've changed my man. I don't think we gonna do too much hanging out this summer. Half the time I can't even understand you. You don't have to impress me throwing those big words around. I know you a college boy and I proud of you. One of the homeys is going to make it." *Id.*

The rise of gang membership has been attributed, in part, to a disaffection from both mainstream society and "mainstream" communities of color.<sup>230</sup> Though "there is no agreement on what gangs are or how to determine gang membership," some experts focus on the gang as a "psycho-social support group."<sup>231</sup> Given the desperation and depressed economic conditions of inner cities,<sup>232</sup> gang membership provides a sense of community that may be lacking in an inner-city youth's life.<sup>233</sup> Author Luis Rodriguez explains:

Gangs are not alien powers. They begin as unstructured groupings, our children, who desire the same as any young person. Respect. A sense of belonging. Protection. The same thing that the YMCA, Little League or the Boy Scouts want . . . . Gangs flourish when there's a lack of social recreation, decent education or employment. Today, many young people will never know what it is to work. They can only satisfy their needs through collective strength—against the police, who hold the power of life and death, against poverty, against idleness, against their impotence in society.<sup>234</sup>

Gangs provide the sense of belonging that neither the national community nor their community of color provide. They serve to substitute for this lack of "community." As one gang member explains: "Being in a gang means if I didn't have no family, I'll think that's where I'll be. If I didn't have no job,

230. See Susan L. Burrell, *Gang Evidence: Issues for Criminal Defense*, 30 SANTA CLARA L. REV. 739, 739 n.2 (1990). In some areas of the United States, it is reported that particular gangs have operated for more than sixty years—a Latino youth in Los Angeles may be a fourth generation gang member. *Id.*

231. See *id.* at 748-49.

232. "In communities with limited resources like Humboldt Park and East L.A., sophisticated survival structures evolved, including gangs, out of the bone and sinew tossed up by this environment." LUIS J. RODRIGUEZ, ALWAYS RUNNING, LA VIDA LOCA: GANG DAYS IN L.A. 8 (1993).

233. See Burrell, *supra* note 230, at 750-51 (citation omitted).

234. RODRIGUEZ, *supra* note 232, at 250. Indeed, far from concluding that gangs are "alien powers," one recent study found that "the supposed 'anti-social' behavior of gangs differed little from the often celebrated business practices of America's corporate elite." Joe Wilson, *Corporate Ethics and Gang Culture*, S.F. CHRON., July 25, 1996, at B17. Berkeley professor Martin Sanchez Jankowski's ten year study of street gangs in Los Angeles, New York, and Boston found a number of similarities between corporate America's focus on low materialism, gross consumption, and socially destructive practices such as downsizing, and the ruthless and destructive activity of many street gangs. *Id.* Some gang members interviewed even acknowledged that they pattern their behavior after the example set by corporations. See *id.*

that's where I'd be. To me it's community help without all the community."<sup>235</sup> Some have even characterized gang membership as transmitting cultural knowledge, as one member of the New York Latin Kings describes: "It's . . . like a Latino education for people who can't afford a \$15,000 tuition."<sup>236</sup> Certain organized gangs have even made improvement of their local communities of color an official goal of their organization.<sup>237</sup>

So we can see a similar pattern emerging on opposite ends of the socioeconomic spectrum. Both professionals of color and inner city youth of color fulfill a need for community by forging associations based on their ethnicity. However, the concerns of each type of association are vastly different and reflect the interest divergence among people of color. Both reflect the concerns of a "local community of color," and, in the process, some of the concerns of the "larger community of color," but neither foster, in any broad sense, a linking of interests or feeling of mutual responsibility for the well-being of the larger community of color. Moreover, organizations which exist to serve and represent larger communities of color have declined in membership and following in recent years.

To forge obligations that bind people within a larger community of color across class lines, local communities of color, whether they be neighborhoods, professional organizations, community-based organizations, churches, or youth organizations, need to "identify" with each other in a meaningful way. In order to achieve the changes needed to counteract racial subordination across socioeconomic lines, "identity and consciousness are essential . . . [t]here must be a sense of common goals, shared values, culture, and pride."<sup>238</sup> The disempowering information received and internalized by all people of color, but especially low-income people of color, from the dominant society must be challenged and transformed by counteracting community perspectives.<sup>239</sup> This can be done most effectively

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235. JOHN HAGEDORN WITH PERRY MACON, *PEOPLE AND FOLKS: GANGS, CRIME AND THE UNDERCLASS IN A RUST BELT CITY* 131 (1988).

236. Stephan Talty, *The Power of King Love*, 10 SPIN 12, Mar. 1995, at 60, 66. The Almighty Latin King Nation (ALKN) denies that it is a gang despite police and FBI reports to the contrary. *Id.* at 63. With over 3,000 members in New York City alone, the ALKN, reminiscent of the Black Panthers, plans to achieve nonprofit status and institute leadership and socialization programs, renovate crumbling buildings and conduct "media relations training." *Id.* at 108. The ultimate goal is "community uplift" for Latinos, but the challenge is to avoid the criminal activities that may accompany the organization's gang roots. *Id.*; see also Lucas Rivera, *Anatomy of a King*, VIBE, Sept. 1996, at 167-170.

237. See Talty, *supra* note 236, at 108; *Family Values: The Gangster Version*, HARPER'S MAGAZINE, Apr. 1995, at 18-20 (printing the official rules of the Los Soldados Nation, a Latino gang based in Hartford, Connecticut).

238. Loya, *supra* note 111, at 50.

239. See *id.*

by a concerted effort on the part of members of local communities of color, community leaders, professionals and intellectuals to organize and redefine our notions of the "larger community of color," whether it be the African-American community or the Latino community, in ways that are more inclusive and look closely at the interests of those in the community who are the most disadvantaged. I advance this not-so-novel argument in a way that calls for personal involvement by all those who can afford to do so. In these difficult times, we must each exert a personal responsibility toward our community of color to the best of our abilities. However, being optimally effective requires concerted, collective action—"community-building" in a way that forges stronger bonds and feelings of mutual obligation among people of color across socioeconomic divisions.

In a sense, this approach adopts communitarian theory and applies it to the specific context of communities of color. As Alex Johnson explains, the core of communitarianism is "the emphasis on community, the individual's situatedness within that community, and the dialogic in the community as a methodology for achieving 'right' actions leading to good consequences."<sup>240</sup> This approach views the individual differently than the liberal individualism that prevails in the dominant discourse. Instead of viewing the individual "atomistically as the sum of parts separate from others," this approach views the individual "as part of the community, simultaneously shaping the community to which he belongs and being shaped by it."<sup>241</sup> Thus, "the individual makes choices, shares his views and receives the shared efforts of others through a continuing dialogue within the community."<sup>242</sup> This vision allows all members to be included in the community and all voices to be heard.<sup>243</sup> Precisely because the dominant culture, the national community, fails to hear voices of color with recognition and respect, communities of color must build this "community," to the extent that it does not already exist, on their own and for themselves.

This vision of community-building does not place "self-help" at the center of the quest for racial justice. Indeed, Richard Delgado notes "[t]he black and brown middle class is too small to carry out a rescue operation [of the nonwhite poor] of the magnitude needed."<sup>244</sup> Nonetheless, if the "national community," at this point in time, refuses to do it, we can at least

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240. Johnson, *supra* note 8, at 2055.

241. *Id.* at 2056.

242. *Id.*

243. *Id.* at 2061.

244. Delgado, *supra* note 6, at 1930.

do what we can to start the process, as one method of achieving positive social change among many. This project seeks to replicate some of the feeling of solidarity for the racial justice cause that arose during the civil rights movement.<sup>245</sup> The entire "community of color" will benefit from action that strives toward political solidarity, activism and cultural pride.

For middle-class people of color this means reinvesting in local communities of color, mentoring those attempting to enter college or the job market, getting involved in programs that teach "cultural capital," and programs that instill cultural pride. Professor Roy Brooks proposes a number of support networks, including an "adopt a family" program whereby members of the African-American middle class work on a long-term basis with poor families to provide them with inside knowledge about education, jobs and financial management.<sup>246</sup> Businessman George Fraser offers a specific approach for networking the African-American community, based on the principle "each one must reach one and teach one."<sup>247</sup> Scholar Manning Marable advocates for the creation of "Freedom Schools" which identify young people with an interest in community-based struggles and teaches them about their own community leaders and strategies for positive social change.<sup>248</sup> Two of the asserted goals of the October 16, 1995 "Million Man March" on Washington, D.C. were to organize Black political unity<sup>249</sup> and to "keep economic power within the black community."<sup>250</sup> Slowly, but thankfully, private-owned but community-based financial and health care institutions have begun to emerge to more adequately address the needs of community members.<sup>251</sup> My goal here is not to develop the entire

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245. One of the great leadership characteristics of Dr. Martin Luther King, Jr., during the civil rights movement was his ability to tie into all networks of the Black community and serve as a mediating force between different factions of the civil rights movement. *The X-Files*, S.F. EXAMINER MAGAZINE, Feb. 19, 1995, at 20, 22-23 (interview with Professor Claybourne Carson). A renewed effort at community-building should strive to generate the feeling of solidarity King did, both within specific communities of color and between different communities of color.

246. See BROOKS, *supra* note 6, at 132-36.

247. GEORGE FRASER, *SUCCESS RUNS IN OUR RACE: THE COMPLETE GUIDE TO EFFECTIVE NETWORKING IN THE AFRICAN-AMERICAN COMMUNITY* (1994).

248. MARABLE, *supra* note 92, at 256.

249. *Excerpts From Farrakhan Talk: 'Still 2 Americas, One Black, One White,'* N.Y. TIMES, Oct. 17, 1995, at A20.

250. Karen De Witt, *Themes From a March Resonate: In One School, a Lecture on Economics and Empowerment*, N.Y. TIMES, Oct. 18, 1995, at A14.

251. For example, a newly formed insurance agency, African American Church Health & Economic Services, has begun marketing health care plans in Black churches. Carl T. Hall, *Insurer Enlists Black Churches To Pitch Policies*, S.F. CHRON., Oct. 3, 1995, at E1. The agency promises to invest 50% of its profits to a community-service foundation. *Id.* In addition to recycling money into black community development, participants also expect to push preventive health programs and pressure

"community building" project, but to provide some theoretical bases and concrete examples of how such a project might operate to better our communities.<sup>252</sup>

In the end, all of these efforts must be organized and directed at empowering the entire "community of color." In this way, individual communities of color will become stronger and more effectively contribute to the national community.<sup>253</sup> Part IV explores the role of the intellectual, which refers to anyone who theorizes about means of achieving racial justice, in this community-building project.

#### IV.

#### THE INTELLECTUAL'S ROLE IN COMMUNITY-BUILDING

Intellectual input into community-building pursuits is indispensable. Intellectuals should not be the centerpiece or leadership of any community-building movement, but they must provide new ways of conceptualizing "community" as it relates both to a community's differences with the dominant society and its differences within. Once this task is done, the community itself must decide how to receive the theory, how to modify it if necessary, and how to put it to use. This part offers an overview of the particular themes that should be explored, who should be the subject of such a pursuit, and provides some methodological suggestions for such a pursuit.

Intellectuals concerned with combating racial subordination have much to contribute to the community-building project. In general terms, this pursuit can be divided into three categories that mirror what John Calmore calls "oppositional cultural practice": "challenging dominant regimes of truth, creating a critical consciousness, and summoning a heroic tradition

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major health care organizations to include more Black doctors in their provider networks. *Id.*

In East Oakland, an area with few banks but plenty of exploitative check-cashing outlets, the Black-owned Allen Temple Federal Credit Union is thriving. See Chauncey Bailey, *Ethnic credit union grows*, Oak. Trib., Apr. 21, 1995, at A11. On a national scale, the National African Leadership Summit seeks to organize Black economic, health, insurance, and adoption initiatives. See Ron Daniels, *The Promise of the Million Man March*, Z MAGAZINE, Jan. 1996, at 21, 22.

252. Nor do I explore the important question of "authenticity" within any given community; that is, who should lead the community or define the characteristics that constitute membership in the community. As a general matter, I suggest Alex Johnson's approach of self-identification and continuing dialogue within the community. See generally Johnson, *supra* note 4. This approach resists "essentializing" communities and neglecting the multitude of differences that will exist between members of any given community. See HOOKS, *supra* note 1, at 240-50 (calling for tolerance and appreciation of the multiple subjectivities Black individuals possess); Delgado, *supra* note 200, at 281 (discussing essentialism).

253. Another approach for political strength is a multi-ethnic unity movement, which entails linking the interests of different communities of color. See MARABLE, *supra*, note 92, at 255-56. Such action must go further than the current "Rainbow Coalition" approach; it must entail "community-based struggles," consciousness-raising and protest. See *id.* at 175-77.



[running through the history of different communities of color]."<sup>254</sup> Dominant regimes of truth are challenged by those who criticize the dominant paradigm's conception of racial justice and articulate how this conception actually works to marginalize communities of color.<sup>255</sup> Critical consciousness is "the power of the subordinated to understand subordination and to derive means of liberation from it."<sup>256</sup> Critical consciousness is created by work that builds upon the challenges to dominant regimes of truth to produce the intellectual bases from which people of color can identify as such and receive recognition and respect from the dominant culture.<sup>257</sup> "Summoning heroic traditions" is a pursuit that identifies and builds upon the culture, struggles, achievements of communities of color, and the contributions of people of color to the national community.<sup>258</sup> This provides insight and alternative perspectives that can be utilized to empower communities of color and influence the dominant discourse. I add a fourth avenue of inquiry to these three categories: exploring the divisions within specific communities of color and how they can be reconciled.<sup>259</sup>

### A. *Barriers Between Theory and Practice*

The problem for community-building is not that intellectuals have failed to pursue the areas most needed to inject recognition and respect of

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254. Calmore, *supra* note 180, at 2205.

255. See *supra* notes 74-98 and accompanying text.

256. Mari J. Matsuda, *Pragmatism Modified and the False Consciousness Problem*, 63 S. CAL. L. REV. 1763, 1778 (1990); see generally Paulo Freire, *Education for Critical Consciousness* 41-58 (Continuum Publishing ed. 1973) (advocating critical consciousness as a means for liberating oppressed people).

257. "[T]he myths and realities of racial domination are contested through countermyths of racial solidarity. The empowering capability of identity politics involves the production of these stories, these counternarratives." Stuart A. Clarke, *Fear of a Black Planet*, 94 SOCIALIST REV. 37, 55 (1995).

258. For examples of recent work that typifies this pursuit, see Margaret E. Montoya, *Law and Language(s): Images, Integration and Innovation*, 7 LA RAZA L.J. 147 (claiming the right to use the Spanish language in academic discourse as an important form of resistance against cultural and linguistic domination); Charles R. Lawrence III, *The Word and the River: Pedagogy as Scholarship as Struggle*, 65 S. CAL. L. REV. 2231 (1992) (exploring the African-American tradition of "the Word": teaching, preaching, and healing, and its application to legal pedagogy); Calmore, *supra* note 181 (presenting the "fire music" of jazz saxophonist Archie Shepp as a metaphor illustrating Critical Race Theory's experiential grounding, orientation, and oppositional and transformative potential).

259. Cf. Audre Lorde, *Age, Race, Class, and Sex: Women Redefining Difference*, in OUT THERE, MARGINALIZATION AND CONTEMPORARY CULTURES 281 (Russell Ferguson ed., 1990) (exploring differences among women and how to use them positively to achieve creative change in women's lives). For a provocative examination of how ethnic and gender collectivities are forged and the issues that surround coalition building within certain communities, see Lisa Tessman, *Beyond Communitarian Unity in the Politics of Identity*, 94 SOCIALIST REV. 55 (1995).

communities of color into the mainstream. Rather, the problem is that academic constraints and socioeconomic differences place barriers between intellectuals committed to racial justice and local communities of color. Of course, a scholarship of poverty law has developed addressing the unique problems of poor people of color and the role of the poverty lawyer. However, a more forceful academic approach to racial subordination will likely emerge from an intellectual pursuit that seeks to link the inquiry into racial subordination and community empowerment with the pursuit of community-building. The tension that emerges is one between theory and practice. While "CRT takes as its goal the liberation of people of color"<sup>260</sup> from racial subordination, it can only go so far as producing the theory in academic form. Whether the theory is translated into practice, whether in the change of attitudes, legal reform or consciousness-raising, is left up to the advocacy and social movements against racial subordination.

Thus, to aid the community-building project, intellectuals must find ways to soften the tension between their academic and professional pursuits and their involvement with their communities of color. Such an approach requires establishing a dialogue between intellectuals, social movements and local communities of color.<sup>261</sup> This dialogue will not only provide intellectuals with new sources of insight and closer ties to local communities of color, but it may lead to more widespread proliferation of empowering ideas into local communities of color.

I do not argue that this approach should be the centerpiece of academic pursuit against racial subordination, for it is highly impractical. However, I do see this approach as one way to build strong larger communities of color and more directly empower local communities of color. This approach requires first overcoming the constraints of the academy, building trust across the socioeconomic barriers, and opening new channels of communication through community-based organizations, consciousness-raising groups and popular culture.<sup>262</sup> What emerges is a view of theory that finds its ultimate value in the creation of a sense of community among people of color across the socioeconomic spectrum.

Critical race theorists and others critical of the dominant vision of racial justice within academia are in a unique position to provide the intellectual

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260. Harris, *supra* note 6, at 759.

261. Cf. MARABLE, *supra* note 92, at 256-57. Here, Marable describes an approach to multi-ethnic unity that includes building progressive research institutes to bridge "the distance between activists and community organizers of color, and progressive intellectuals who can provide the policies and theoretical tools useful in the empowerment of grassroots constituencies." *Id.*

262. I have approached these topics more broadly in Joseph Erasto Jaramillo, *Toward Transformative Critical Race Theory: Creating Communication Across the Class Gap*, 1 *HISPANIC L.J.* (forthcoming 1997).

framework and support for a community-building project that reaches across the socioeconomic spectrum. Those who have a sense of identification and knowledge about both sides of the "class" line and the "race" line, will be able to articulate ideas that can be understood both by the mainstream and underprivileged people of color. However, they may not be able to fully articulate the experience of their underprivileged counterparts given the extent to which they have assimilated into the system.<sup>263</sup> Candid two-way communication between the two groups<sup>264</sup> will help rebuild communities divided by the white hegemony and will help produce more effective theory.

### B. *Methodological Suggestions: Reaching Beyond the Academy*

A review of the role of professional academics and the constraints imposed on them by universities reveals that, under the current hegemony, scholars of color are not in the best institutional position to achieve this goal. Accordingly, if CRT scholars and other academics are to aid the community-building project by developing theory and scholarship through two-way communication with underprivileged people of color, they must reach beyond the constraints of the academy when doing their work.

At its maximum, such intellectual activism would resemble the work of Ella Baker, a Depression-era African-American community organizer. Baker worked for various organizations, including the NAACP, the Southern Christian Leadership Conference and the Student Nonviolent Coordinating Committee.<sup>265</sup> From her organizational work, largely on behalf of African-American female laborers, she developed a radical critique of racism that highlighted its connection with capitalism and offensive state practices.<sup>266</sup> Her views on African-American liberation both derived from

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263. Professor Culp reasons that he speaks for the Black community inasmuch as "Black people say I do." Conversation with Jerome McCristal Culp, Jr., Professor of Law, Duke University School of Law (Feb. 16, 1995). This approach recognizes that we cannot essentialize members of an entire community, and individuals within a community will have different viewpoints about how to achieve racial justice. Thus, individuals within the community offer propositions and it is then up to the community, or individuals therein, to endorse and act, respond or reject. The issue of how we represent our communities in scholarship is important, and I seek to offer one way among many in this Comment.

264. The two groups I refer to are professionals of color, including scholars of color and working class and poor people of color. Sympathetic white scholars and activists should also be included in the community-building project, but I choose to focus on people of color so that intra-community issues can be explored.

265. Joy James, *Ella Baker: 'Black Women's Work' and Activist Intellectuals*, THE BLACK SCHOLAR, Fall 1994, at 8.

266. *Id.*

and contributed to her political activism.<sup>267</sup> Such intellectual activism today may seem impractical, but, given the dire needs of communities of color, it may be one extreme way to begin a community-building project that more fully involves members of communities of color across the socioeconomic spectrum. One need not become a community organizer or activist, but one can at least make a concerted effort to communicate racial justice ideas outside of the academy and within local communities of color.

Sociologist Jerry Watts argues that the interactive nature of this approach is essential. By doing little to open up possibilities for the urban poor, progressive intellectuals, in effect, participate in their marginalization.<sup>268</sup> The urban poor "become intellectual capital that we can use to bolster our critiques of American vulgarity," he writes, "but we don't, by and large, interact personally with them."<sup>269</sup> This does not mean that scholars must "drop their texts and . . . run to local community organizing."<sup>270</sup> It does mean that theory must be more "constructive" and geared toward "action," to frame it in terms of Rivers' critique.

Another reason why academics who want to orient their work toward "action" should be in active concert with the subjects of their theorizing is to avoid perpetuating the syndrome apparent in lawyering for the poor: the perpetuation of power positions between advocate and subject.<sup>271</sup> In poverty law, the lawyer often comes in, defines the problem, "solves" it for the client, then leaves, feeling better about herself. The client, however, does not feel better off, but is in the same position of power as before—dependent on the kindness of affluent "experts."<sup>272</sup> This all-too-common scenario highlights the failure to view clients, and in the context of intellectual community-building, underprivileged people of color, as experts who we should work *with* instead of perpetuating a "helpless victim" construct.<sup>273</sup>

Participation in local communities of color, especially socioeconomically disadvantaged ones, would do much to produce constructive and action oriented theory—even if that theory only gets articulated during communication within the community (as opposed to

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267. *Id.*

268. Watts, *supra* note 37, at 246.

269. *Id.*

270. *Id.*

271. Letter from Angela Harris, *supra* note 23.

272. See GERALD P. LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992).

273. *Id.*

academic publication). It would also more actively proliferate such theory, and hopefully critical consciousness,<sup>274</sup> into local communities of color, who can then put the theory to use.

The problem with traditional legal scholarship is that it tells us the voice of the disadvantaged has nothing to offer the development of scholarship and theory.<sup>275</sup> However, as Mari Matsuda writes, "[i]t is a lie that there is no knowledge, no theory, no eloquence among the poor," retrieving subordinated voices allows us to obtain "a truer account of social reality and human possibilities."<sup>276</sup> The experience and ideas of the socioeconomically disadvantaged members of our communities of color can add powerful meaning to an intellectual community-building project.

Incorporating such voices will require going beyond the bounds of traditional legal scholarship. For example, scholars may need to undertake field research or adopt an interdisciplinary approach, relying on the empirical and ethnographic research of others.<sup>277</sup> The real communication may not take place within the traditional confines of academia at all. A scholar's finished product may be reflected in a published article or essay, but the real work occurs when the actual communication takes place. Given the inaccessibility of academic literature to the general population, both in terms of distribution and reader interest, transformative theory that reaches underprivileged communities of color may take non-traditional forms, such as popularly published books, magazine articles, or pamphlets.

Intellectuals engaged in the community-building project should involve themselves in channels of communication that find wide dissemination in local communities of color. Popularized accounts of critical theory can, however, find their way into more mainstream media and ethnic-specific media.<sup>278</sup> By the same token, critical theorists should pay attention to what goes on in those sources of information. They provide important, though often biased, accounts of trends, attitudes, and narrative experience. This approach seeks to engage in exchange in discourse with these non-academic sources to produce both academic and non-academic literature and ideas for all people of color.

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274. See *supra* note 256 and accompanying text.

275. See Matsuda, *supra* note 256, at 1767.

276. *Id.* at 1768.

277. See *id.* at 1768.

278. Beginning in the 1960s and increasing more recently, media oriented toward the interests of people of color, and specific ethnic groups therein, have emerged. These include literary, political and musical journals and magazines, television networks, and radio stations. These provide sources of information and opportunities for proliferation of ideas that must be readily identified and utilized.

Manning Marable engages in this type of approach through his political commentary series, "Along the Color Line." This series is published in hundreds of African-American publications and a radio version is distributed to a number of radio stations throughout the United States.<sup>279</sup> Marable describes how this approach has made his scholarship and advocacy more informed:

Unlike most black theorists and essayists, I regularly receive abundant feedback from community leaders, students, feminists, labor union activists, and others. These constructive and critical responses are a corrective factor in my own work. The column has permitted me to maintain a kind of praxis, theoretical engagement and practical political involvement, which is rare.<sup>280</sup>

Other expressions of popular culture, including art and music, may provide rich sources of information as well. People of color "have traditionally had more access to cultural self-expression than to political and legal representation"; thus, popular culture has served as a "potent source of expression for many subordinated communities, incorporating [their] 'local knowledge.'"<sup>281</sup> Though, people of color have not always had control over their art, its production<sup>282</sup> and its subsequent use, their art nonetheless reflects their use of popular culture "to engage in interpretive battle with law and politics."<sup>283</sup>

For example, rap music provides scholars with a rich source of information and demonstrates the utility of popularized media messages in empowering underprivileged people of color. As a source of information, much of the rhythm and beat of rap music of the last decade-and-one-half can also be listened to as a catalogue of and commentary on the racism, subjugation, poverty and police brutality faced by underprivileged people of color, particularly the youth, today.<sup>284</sup> As Historian Robin Kelley writes,

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279. See MARABLE, *supra* note 92, at viii.

280. *Id.*

281. Naomi Mezey, Book Note, *Legal Remedies in Madonna's Closet: The Influence of Identity Politics, Popular Culture, and a New Generation on Critical Legal Studies*, 46 STAN. L. REV. 1835, 1859 (1994) (citing Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 335 (1987)).

282. *Id.* at 1859 n.145 (citing Matsuda, *supra* note 281, at 336 n.59).

283. *Id.* at 1860.

284. Long before police brutality against people of color came to the national attention, rap artists lamented and protested against its use. See Robin D.G. Kelley, *Straight From Underground*, NATION,

"knowing how young people see the world around them may provide a few building blocks for a more radical practice."<sup>285</sup> An approach that draws from the lyrics of rap music and their interpretation and effect on youth of color recognizes that "folks who occupy the social and spatial fringes of the postindustrial city experience life in ways that mainstream black political leaders or traditional intellectuals do not,"<sup>286</sup> and adds greatly to the ability of critical theory to capture the complete reality facing all people of color. Communication between scholars and rap artists, who may be uniquely positioned as "middle" people, linked to underprivileged communities and at the same time experiencing recent class privilege and fame, may also influence the production of more politically and theoretically informed rap music that will, in turn, influence the attitudes and behavior of underprivileged youth of color.

Likewise, the motion picture and television industries have much to contribute to the community-building project. Intellectuals should capitalize on allies in these industries to produce socially relevant and responsive films and shows. Director Spike Lee has recognized as much, and has aimed his recent film "Clockers" at the African-American community, calling for more community responsibility. "No one else is going to save [us]," Lee notes.<sup>287</sup> "If we sit around and think that Bob Dole and Newt Gingrich are going to do anything for us, if we have to rely on them for our salvation, then forget about it," he concludes.<sup>288</sup>

Finally, the power of African-American and Latino churches should be recognized and tapped as locations of organization and discussion.<sup>289</sup> Of course, this will necessarily entail an extensive examination of the "fourth-prong" of the community-building project, examining and reconciling the differences within specific communities of color. The October 16, 1995 "Million Man March" on Washington D.C. provides a prime example of this problematic situation. Led by Minister Louis Farrakhan of the Nation of

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June 8, 1992, at 793. This theme has developed into a "more systematic effort to understand the relationship between police repression and [the] political and economic powerlessness [of underprivileged people of color]." *Id.* at 794. Today, a large number of rappers—Black, Latino, Pacific Islander and others—"try to place their descriptions of police repression within a broader context of social control." *Id.*

285. *Id.* at 796.

286. *Id.*

287. Amy Dawes, *Movies: Spike Lee discusses "Clockers,"* *CAMBIO*, Sept. 1995, at 14.

288. *Id.*

289. See *supra* note 251 (discussing examples of community-based economic empowerment aided by church organizations). For a historical account of Black churches' role in facilitating community organization and action, see, e.g., KELLEY, *supra* note 71, at 40-43, 45, 46.

Islam, this march was perhaps the decade's seminal example of a "community-building" action, yet plagued with issues of racism, sexism and anti-Semitism. The goals of the march were laudable—"Black men coming together to oppose the drastic moves made against black people . . . we will discuss using the black vote around the interest of blacks, unity, economic development and family revitalization."<sup>290</sup> Yet, the presence of Farrakhan, viewed by many Jews as an anti-Semite and by many Americans as a hater, and the absence of Black women, led many to criticize the march as a deplorable event.<sup>291</sup> For the community-building project, this event signifies the need to give careful consideration to the ethical, gender and religious sensitivity of community-building actions. For example, to what extent should sub-groups within a given community-of-color yield their interests in order to achieve the "greater good"? This is a dilemma that intellectuals must examine and critique to more effectively contribute to community-building actions that seek to benefit communities of color without repressing sub-groups thereof.<sup>292</sup>

## CONCLUSION

Patricia Williams writes, "it is only by having lots of us on the inside [in the professional classes] that all of us black and white, can begin the next step in the legacy of the civil rights movement—debunking interactively not just the myth of black inferiority that exists in white minds but most particularly the myth of white superiority that exists in black minds: the humiliated, internalized self-deprecation that drives so many 'first' and truly best blacks into stern, isolated, perfectionist tailspins."<sup>293</sup> I argue that we cannot wait until there are enough of us, that the "national community" continues to reject us and there is no indication that things will get better

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290. Gregory Lewis & Elizabeth Fernandez, *Message of the March*, S.F. Examiner, Oct. 15, 1995, at A1. For an examination of the march's black political unity goals, see *Farrakhan Sets Black Vote Goal of '3rd Political Power'*, L.A. Times, Oct. 19, 1995, at A25. For an examination of how Blacks are putting the march's goals into action, see Teresa Moore, *Feeding the Momentum of Million Man March*, S.F. CHRON., Oct. 27, 1995, at A21.

291. See, e.g., A. M. Rosenthal, *The Swamp of Hatred*, N.Y. TIMES, Oct. 10, 1995, at A23; Comments of George Will & Cokie Roberts, *This Week With David Brinkley* (television broadcast Oct. 8, 1995) (Transcript # 728).

292. See, e.g., HOOKS, *supra* note 1, 240-50 (advocating for an approach to black identity that embraces differences within the community); CASTILLO, *supra* note 70, at 63-104 (exploring the roots of Latino sexism and subordination of women and gays); CORNEL WEST, RACE MATTERS 89 (1993) (noting the repression of Black gays by white and Black America).

293. Williams, *supra* note 36, at 637-38.



soon, so we must act now to strengthen our communities and combat the myths of racial inferiority within the minds of those in our communities.

To begin to do this to the degree that is necessary requires, at minimum, the three-step reflection I have attempted to make in this Comment. First, what are the divisions within a community of color? I have looked at a major one, the socioeconomic scale. The greater the gap between upwardly mobile people of color and poor people of color, the more we will see our interests diverge as we face different life issues and differing forms of oppression. This leads us to consider the second issue: how well does the current system of formal equal opportunity work? For if the system does not work, there cannot be true racial justice for all people of color. Skeptics have argued that it would not work for the majority of people of color, and, at this point in time, their prediction holds true. Not only has the system legitimized the inequality that exists, but it has, to some extent, contributed to the interest divergence among people of color along socioeconomic lines. Which leads us to the third inquiry: what do we do about it? The underlying theme of Critical Race Theory and other outsider jurisprudence rings loud and clear, take race and racism into account. Take it into account in the law, in policy, in your views about society, in your attitudes toward people, and in who you listen to and believe. So now, we continue sending this message and we wait for *them* to act.

Some of us may grow frustrated and impatient. There are local communities of color suffering and we feel that we must do something now. We must capitalize on our identification with our communities of color and work toward strengthening them, from the bottom on up. I believe there is a role for the intellectual in this project, whether inside or out of the academy. I believe theory and scholarship can bolster this position and demonstrate how it is not only useful but necessary. For in the long run, I believe that our nation, the national community, needs our communities of color, and it needs them to be strong. Until the national community realizes this, we, privileged people of color, professionals and concerned scholars of all colors, have a moral obligation to begin the work that needs to be done on a synergistic, collective level.

Antonia Hernandez, President and General Counsel for the Mexican American Legal Defense and Educational Fund, offers a powerful summation of this strategy as it applies to the Chicano community:

If we intend to improve the quality of life for our [own] community, we must commit ourselves to do the hard work necessary to make us viable members of this society. We must learn to deal with the things we can control so that we may *try* collectively to change the things we cannot control . . . . We must develop our own leadership to ensure that our

voice is heard, and we must strengthen our community from within . . . .<sup>294</sup>

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294. Antonia Hernandez, *Closing*, 14 CHICANO-LATINO L. REV. 179, 182 (1994) (from conference entitled "Latinos and the Law: 20 Years of Legal Advocacy and Lessons for Future Advancement").