

KEVIN R. JOHNSON*

Latinas/os and the Political Process: The Need for Critical Inquiry

Migration from Mexico to the United States was a fact of life in the twentieth century. It continues in the new millennium, with more than 200,000 lawful immigrants from Mexico—the largest contingent of immigrants from any nation—coming to the United States in 2001 alone.¹ An important part of the nation's labor force,² Mexican immigrants primarily come to the United States for jobs and to join friends and family.³

Importantly, Mexican immigrants have settled not just in the Southwest, but live in urban and rural areas across the country.⁴ Indeed, the “Cambio de Colores (Change of Colors): Latinas/os

* Associate Dean for Academic Affairs, University of California at Davis, Professor of Law and Chicana/o Studies; Director, Chicana/o Studies Program (2000-01); A.B., University of California, Berkeley; J.D., Harvard University. This essay is an edited version of my remarks on the “Focusing the Electoral Lens: Capturing Post-2000 Latina/o and APA Political Strength in the Redistricting Process” panel at the Seventh Annual Critical Latina/o Theory (LatCrit VII) conference in May 2002 in Portland, Oregon. Thanks to Keith Aoki for organizing the panel and encouraging me to participate and Steve Bender for his central role in organizing the LatCrit VII conference. My co-panelists Keith Aoki, Kathay Feng, and Sylvia Lazos provided many insights that helped me develop the thoughts presented in this Article. Luis Fuentes-Rohwer, Mary Romero, and Maria Pabon Lopez offered helpful thoughts on a draft of this paper.

¹ See U.S. IMMIGRATION AND NATURALIZATION SERV., ANNUAL REPORT: LEGAL IMMIGRATION, FISCAL YEAR 2001, at 2 (2002).

² See American Immigration Law Foundation, *Mexican Immigrant Workers and the U.S. Economy: An Increasingly Vital Role*, IMMIGRATION POLICY FOCUS (Sept. 2002), available at www.aifl.org/pubed/focus/0902.pdf.

³ See Maria Elena Bickerton, Note, *Prospects for a Bilateral Immigration Agreement with Mexico: Lessons from the Bracero Program*, 79 TEX. L. REV. 895, 915 (2001). For stories of the difficult experiences of Mexican immigrants to the United States, see JIMMY BRESLIN, *THE SHORT SWEET DREAM OF EDUARDO GUTIÉRREZ* (2002); RUBEN MARTINEZ, *CROSSING OVER: A MEXICAN FAMILY ON THE MIGRANT TRAIL* (2001).

⁴ See ROBERTO SURO & AUDREY SINGER, BROOKINGS INST. CTR. ON URBAN AND METRO. POLICY & THE PEW HISPANIC CTR., *LATINO GROWTH IN METROPOLITAN AMERICA: CHANGING PATTERNS, NEW LOCATIONS* (2002), available at www.brook.edu/dybdocroot/es/urban/publications/surosinger.pdf; Bill Ong Hing, *Answer-*

in the Midwest” panel at the 2002 LatCrit VII conference⁵ would have seemed largely irrelevant only a decade ago.⁶

The fact that Latinas/os as a group will soon become the nation’s largest minority group, if they are not already, has received considerable, perhaps excessive, popular attention.⁷ Contributing to the changing racial demographics, the migration of persons from Asia has increased dramatically since the 1965 repeal of the discriminatory national origins quota system, with ripple effects felt in communities across the United States.⁸ Put simply, immigration is literally changing the face of the nation.

Scant attention, however, has been paid to the role that Latinas/os play in the nation’s political process.⁹ Although a coherent body of scholarship on the law of the political process has emerged over the last decade,¹⁰ legal scholarship on race and political representation has focused primarily on the political repre-

ing Challenges of the New Immigrant-Driven Diversity: Considering Integration Strategies, 40 BRANDEIS L.J. 861, 864-68 (2002).

⁵ LatCrit VII Program Schedule, Saturday, May 4, 2002, Concurrent Panel, Cambio de Colores: Latinas/os in the Midwest.

⁶ A recently published symposium on “Immigration in the Heartland” would have seemed wholly unnecessary as well. See Laura Rothstein, *Introduction to the Symposium Issue on Immigration in the Heartland*, 40 BRANDEIS L.J. 849 (2002).

⁷ See U.S. CENSUS BUREAU, OVERVIEW OF RACE AND HISPANIC ORIGIN: CENSUS 2000 BRIEF 3, tbl.1 (Mar. 2001) (reflecting Census 2000 data showing that Hispanics comprise over 12.5 percent, nearly thirty-five million people, of total United States population, nearly as large as the African American population). For analysis of the impact of the changing racial demographics of the United States on the civil rights agenda, see Kevin R. Johnson, *The End of “Civil Rights” as We Know It?: Immigration and Civil Rights in the New Millenium*, 49 UCLA L. REV. 1481 (2002).

⁸ See Gabriel J. Chin, *The Civil Rights Revolution Comes to Immigration Law: A New Look at the Immigration and Nationality Act of 1965*, 75 N.C. L. REV. 273 (1996) (analyzing Immigration Act of 1965 that resulted in dramatic change to racial demographics of immigration to the United States); 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) (analyzing tensions caused by increased immigration of people of color to this country).

⁹ For a notable exception, see Rodolfo O. de la Garza & Louis DeSipio, *Save the Baby, Change the Bathwater, and Scrub the Tub: Latino Electoral Participation After Seventeen Years of Voting Rights Act Coverage*, 71 TEX. L. REV. 1479 (1993); see also Joaquin G. Avila, *The Importance and Necessity of Political Integration*, 13 LA RAZA L.J. 43 (2002) (outlining needs for Latinas/os to focus on political process).

¹⁰ See Richard L. Hasen, *Election Law at Puberty: Optimism and Words of Caution*, 32 LOY. L.A. L. REV. 1095 (1999). Evidence of the maturation of this field is the publication of two casebooks. See DANIEL HAYS LOWENSTEIN & RICHARD L. HASEN, *ELECTION LAW: CASES AND MATERIALS* (2d ed. 2001); SAMUEL IS-SACHAROFF ET AL., *THE LAW OF DEMOCRACY: LEGAL STRUCTURE OF THE POLITICAL PROCESS* (2d rev. ed. 2002).

sentation of African Americans.¹¹ Given the changing racial demographics, the need exists for inclusion of other racial groups in this analysis.

Past voting rights litigation has benefitted Latinas/os, who historically have been locked out of the political process, particularly in the Southwest, just as African Americans have similarly gained in the South.¹² Given the rapid population transformations in the United States, we are likely to see novel voting rights litigation in the future.

Scholars and activists hoping to address Latina/o civil rights concerns, such as segregation, immigration law and enforcement, language regulation, educational equity, and labor protection, have no choice but to consider the political process. The need for political solutions to law reform is made readily apparent by the Supreme Court's 2002 ruling that the National Labor Relations Board could not award back pay to an undocumented Mexican immigrant whose employer violated federal labor law by discharging him for union organizing activities.¹³ Because the Court offered the final interpretation of federal law at issue in the case, the only likely remedy is through the political process.

LatCrit Theory can and should help fill the scholarly gap on Latina/o voting rights.¹⁴ As part of an initial foray into analyzing the role of Latinas/os in the electoral process, this Article ana-

¹¹ See, e.g., T. Alexander Aleinikoff & Samuel Issacharoff, *Race and Redistricting: Drawing Constitutional Lines After Shaw v. Reno*, 92 MICH. L. REV. 588 (1993); Lani Guinier, *[E]racing Democracy: The Voting Rights Cases*, 108 HARV. L. REV. 109 (1994); Richard H. Pildes, *The Politics of Race*, 108 HARV. L. REV. 1359 (1995) (book review); Terry Smith, *A Black Party?* Timmons, *Black Backlash and the Endangered Two-Party Paradigm*, 48 DUKE L.J. 1 (1998). This is another by-product of the tendency to view civil rights in Black/White terms. See Devon W. Carbado, *Race to the Bottom*, 49 UCLA L. REV. 1283, 1305-12 (2002) (analyzing critically the critique of the Black/White paradigm of civil rights discourse). See also Sylvia R. Lazos Vargas, *The Latina/o and APIA Vote Post-2000: What Does It Mean to Move Beyond "Black and White" Politics?*, 81 OR. L. REV. 784 (2003) (analyzing future of political process beyond the Black/White paradigm).

¹² See, e.g., *White v. Regester*, 412 U.S. 755 (1973); *Garza v. County of Los Angeles*, 918 F.2d 763 (9th Cir. 1990), cert. denied, 498 U.S. 1028 (1991); *Calderon v. City of City of Los Angeles*, 4 Cal. 3d 251, 481 P.2d 489, 93 Cal. Rptr. 361 (1971).

¹³ See *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137 (2002).

¹⁴ See Kathay Feng, Keith Aoki, & Brian Ikegami, *Voting Matters: APIAs, Latinas/os and Post-2000 Redistricting in California*, 81 OR. L. REV. 849 (2003). A workshop at LatCrit VII, *Focusing the Electoral Lens: Capturing Post-2000 Latina/o and Asian Pacific American Political Strength in the Redistricting Process*, attempted to commence a discussion on this important topic. See LatCrit VII Program Schedule, May 4, 2002.

yzes a fascinating voting rights case that reveals deep fissures within the Latina/o community and, in turn, implicates deeper concerns regarding electoral representation of all Latinas/os, including noncitizens. It concludes by considering the specter of conflict and the potential for coalition between different minority groups on political issues of concern in the new millennium.

I

CANO *V.* DAVIS: REDISTRICTING AND INTRA-LATINA/O CONFLICT IN CALIFORNIA

In California, a high-profile congressional redistricting dispute—to the surprise of many—revealed a deep internal conflict between the Mexican American Legal Defense and Education Fund (MALDEF), one of the leading Latina/o civil rights advocacy organizations in the United States, and Latina/o legislators. Conflicts like this, which may be seen with increasing frequency in the future given the nation's changing racial demographics, call for LatCrit analysis.

In *Cano v. Davis*,¹⁵ MALDEF challenged the redistricting scheme proposed by the California legislature for congressional districts based on 2000 Census data. MALDEF claimed that three of the districts diluted the voting strength of Latina/o voters. Specifically, one district had arguably been designed to protect Anglo-incumbent Howard Berman, a powerful United States congressman—essentially disenfranchising Latina/o voters. MALDEF contended that the redistricting violated the Voting Rights Act¹⁶ and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. A three-judge district court panel acknowledged that MALDEF's claims “raise challenging questions regarding the applicability of voting rights doctrines developed *in a fundamentally different context than the rapidly-changing multi-racial and multi-ethnic community that is present-day Southern California.*”¹⁷ In concluding that the redistricting scheme did not violate the law, the court noted that “Latino legislators and interest groups played a significant role in the 2001 redistricting process” and that the California state legislature was over twenty-two percent

¹⁵ *Cano v. Davis*, 211 F. Supp. 2d 1208, 1211-12 (C.D. Cal. 2002) (per curiam) (Reinhardt, Snyder, and Morrow, JJ.).

¹⁶ See Pub. L. No. 89-110, 79 Stat. 437 (1965) (as amended).

¹⁷ *Cano*, 211 F. Supp. 2d at 1211 (emphasis added).

Latina/o.¹⁸

The court further acknowledged the recent dramatic increase in the number of Latinas/os elected to office in California—no doubt reflecting the growing Latina/o population and increased Latina/o participation in the political process. As one commentator observed:

In 1990 there were only seven Latinos in the state Legislature and none in statewide office. But as 1999 close[d], there [were] six in the Senate alone, 23 total in the Legislature. The state Assembly ha[d] seen it's first and second Latino speakers, and a Latino—Cruz Bustamante—was elected lieutenant governor for the first time [in the twentieth] century.¹⁹

This sea change in Latina/o representation has transformed California politics. Consider, for example, that in 1994, then California Governor Pete Wilson successfully staked his reelection bid on Proposition 187, which is now widely viewed as anti-immigrant and anti-Latino and was opposed by an overwhelming majority of Latinas/os in the state.²⁰ In contrast, in his 2002 reelection campaign, California Governor Gray Davis carefully sought to navigate the demands of Latina/o legislators to sign laws that would require growers to arbitrate labor disputes with farm workers and to allow certain undocumented immigrants to obtain driver's licenses.²¹ Over the last few years, efforts to woo Latina/o voters have softened the political rhetoric on immigration.²²

Because of growing Latina/o political power, Latina/o legislators objected publicly to MALDEF's voting rights lawsuit in the

¹⁸ *Id.* at 1246-47. This percentage, however, compares to a state population that is close to one-third Latina/o. See U.S. CENSUS BUREAU, PROFILES OF GENERAL DEMOGRAPHIC CHARACTERISTICS 2000, 2000 CENSUS OF POPULATION AND HOUSING 1 (May 2001) (Tbl. DP-1), available at www.census.gov/prod/cen2000/dp1/2kh00.pdf.

¹⁹ Steve Scott, *Competing for the New Majority Vote*, CAL. J., Jan. 1, 2000, at 16, 18.

²⁰ See *infra* note 61 (citing authorities analyzing Proposition 187).

²¹ See Frank del Olmo, *Davis is Caught in Jaws of Two Latino Demands*, L.A. TIMES, Sept. 9, 2002, at A11; see also William Booth, *A Driver's License Debate in Calif.*, WASH. POST, Sept. 10, 2002, at A3 (analyzing controversy over California driver's license proposal); Rene Sanchez, *Farm Worker Pacts Stir Calif. Conflict*, WASH. POST, Sept. 23, 2002, at A3 (discussing debate over farm labor arbitration legislation pending in California). Although Governor Davis signed the farm labor bill into law, he vetoed the driver's license bill; consequently, the Latino Democratic Legislative Caucus refused to endorse him in the governor's race. See Robert Saladay, *Latino Caucus Rejects Davis*, S.F. CHRON., Oct. 5, 2002, at A3.

²² See *infra* text accompanying notes 68-69.

strongest of terms. Two outspoken liberal Latina California legislators wrote an op-ed for the *L.A. Times* with a title that minces no words: *MALDEF's Lawsuit is Racially Divisive*.²³ In their view, the lawsuit promised to breed racial animosity and disturb a carefully crafted political compromise that benefited Latina/o voters.²⁴ In its defense, MALDEF claimed that Latina/o legislators were not representing all Latinas/os, but were simply protecting their own political interests.²⁵ MALDEF President Antonia Hernandez stated bluntly that the legislators supported the redistricting plans "because their interests [in their own re-elections] were taken care of."²⁶ She further stated that "MALDEF is confident that we can demonstrate that the current districts will effectively suppress the political voice of thousands of Latinos for the next 10 years."²⁷

Cano v. Davis raises novel issues that go to the core of voting rights law. Some might even suggest that the schism among Latinas/os surrounding the legal dispute lends support to a provocative proposal for limited judicial review of redistricting schemes. One commentator, for example, has contended that although racial classifications ordinarily receive heightened scrutiny, limited judicial oversight is warranted in redistricting decisions because of the inherent difficulty of judicial review.²⁸

Given its analysis of issues of identity and power, LatCrit Theory is well situated to shed light on questions of political representation posed by cases such as *Cano v. Davis*. Here are just a few of the possible questions that might benefit from such analysis:

- *Does a political candidate need to be Latina/o to effectively represent the Latina/o community in the legislature?*²⁹

This question is raised directly by the challenge in *Cano v. Da-*

²³ See Martha Escutia & Gloria Romero, *MALDEF's Lawsuit is Racially Divisive*, L.A. TIMES, Nov. 1, 2001, at B13.

²⁴ See *id.*

²⁵ See *infra* notes 26-27 (citing authorities).

²⁶ See Kenneth Reich, *Latino Group Sues Over Redistricting*, L.A. TIMES, Oct. 2, 2001, at B1 (quoting Hernandez).

²⁷ See Dalondo Moultrie, *Panel Rejects Delay of Primaries*, L.A. TIMES, Nov. 7, 2001, at B4 (quoting Hernandez).

²⁸ See Luis Fuentes-Rohwer, *Baker's Promise, Equal Protection, and the Modern Redistricting Revolution: A Plea for Rationality*, 80 N.C. L. REV. 1353 (2002).

²⁹ For some preliminary thoughts on these and related issues, see Luis R. Fraga, *Latino Political Incorporation and the Voting Rights Act*, in *CONTROVERSIES IN MI-*

vis to the district of liberal Democrat Howard Berman, an Anglo member of Congress.³⁰ His district covers much of the heavily (over fifty-five percent) Latina/o San Fernando Valley in the greater Los Angeles area.

Issues at the core of Latina/o identity are implicated in the analysis of Latina/o political representation. As with African Americans and other racial minority groups, Latinas/os have opinions that span the political spectrum. No uniform “Latina/o view” exists on any particular issue.³¹ The question of the need for Latina/o elected officials to represent Latinas/os tracks the debates over essentialism and anti-essentialism of Latinas/os identity and whether there is any core characteristic binding all Latinas/os, which has been analyzed from the inception of Lat-Crit Theory.³² In considering this question, empirical data is lacking, although preliminary study has begun of the priorities of Latina/o politicians.³³

Apart from the question of the ability of politicians to effectively represent the Latina/o community, the election of Latina/o politicians arguably has a positive symbolic impact on the greater Latina/o community. Election of a minority signifies that the politician’s racial group has moved toward full membership in the community and demonstrated the possibility for upward mo-

NORITY VOTING: THE VOTING RIGHTS ACT IN PERSPECTIVE 278 (Bernard Grofman & Chandler Davidson eds., 1992); Suzanne Dovi, *Preferable Descriptive Representations: Will Just Any Woman, Black, or Latino Do?*, 96 AM. POL. SCI. REV. 729 (2002). Similar questions arose for African Americans when the first President Bush nominated Clarence Thomas, a conservative African American, to the Supreme Court. See A. Leon Higginbotham, Jr., *An Open Letter to Justice Clarence Thomas from a Federal Judicial Colleague*, 140 U. PA. L. REV. 1005 (1992) (suggesting skepticism about Thomas’s ability to appreciate African American experience in United States); see also Sherrilyn A. Ifill, *Racial Diversity on the Bench: Beyond Role Models and Public Confidence*, 57 WASH. & LEE L. REV. 405 (2000) (contending that state and federal courts need greater racial diversity or risk damaging judicial quality and legitimacy). Divides within the Latina/o community became apparent with President Bush’s nomination of Miguel Estrada, a conservative Honduran immigrant, to a prominent federal appellate court. See Darryl Fears, *For Hispanic Groups, A Divide on Estrada*, WASH. POST, Feb. 20, 2003, at A4.

³⁰ See *Cano*, 211 F. Supp. 2d at 1226-29.

³¹ See Kevin R. Johnson, *Some Thoughts on the Future of Latino Legal Scholarship*, 2 HARV. LATINO L. REV. 101, 131-34 (1997).

³² See Francisco Valdes, *Foreword: Under Construction—LatCrit Consciousness, Community, and Theory*, 85 CAL. L. REV. 1087, 1093-95 (1997).

³³ See Kim Geron & James S. Lai, *Beyond Symbolic Representation: A Comparison of the Electoral Pathways and Policy Priorities of Asian American and Latino Elected Officials*, 9 ASIAN L.J. 41 (2002).

bility and political integration.³⁴ This sense of belonging is particularly important in California given the history of Latina/o exclusion from the state's political processes.³⁵

- *Are Latinas/os of different national origin groups to be classified as a monolithic group for purposes of redistricting and voting rights litigation?*

Consider the Latina/o demographics of California: as of 1990, almost thirteen percent of the Latinas/os in California were Central American.³⁶ A large Central American community lives in parts of Los Angeles, now constituting a near majority of the population of South Central Los Angeles.³⁷ The perspectives and interests of Central Americans, who participated heavily in the Los Angeles riots that followed the acquittal of the police officers in the 1992 beating of Rodney King,³⁸ do not necessarily coincide with other Latina/o national origin groups. Persons of Mexican ancestry comprise the largest Latina/o national origin group in the greater Los Angeles area and have different perspectives and interests than Central Americans.³⁹ Tensions also simmer at times within the Mexican ancestry community.⁴⁰ These divergent interests exemplify one of the difficulties in analyzing the status of Latinas/os in the United States: the incredible diversities within the Latina/o community and the complexities of the interactions between national origin groups in different geographic parts of the country—an established topic of LatCrit inquiry.⁴¹ Florida (largely Cuban and Puerto Rican)

³⁴ See generally KENNETH L. KARST, *BELONGING TO AMERICA* (1989) (analyzing efforts of different groups to achieve full membership in U.S. society). For evaluation of benefits to the Latina/o community of the appointment of the first Latina/o to the United States Supreme Court, see Kevin R. Johnson, *On the Appointment of a Latina/o to the Supreme Court*, 5 HARV. LATINO L. REV. 1 (2002) (article also published at 13 LA RAZA L.J. (2002)).

³⁵ See *infra* text accompanying notes 43-47.

³⁶ See JON STILES ET AL., UNIV. OF CAL. LATINO POLICY RESEARCH PROGRAM, CALIFORNIA LATINO DEMOGRAPHIC DATABOOK 2-8 tbl.2.2 (1998).

³⁷ See *id.* at 2-25 map 2.15; David E. Lopez et al., *Central Americans: At the Bottom, Struggling to Get Ahead*, in *ETHNIC LOS ANGELES* 279 (Roger Waldinger & Mehdi Bozorgmehr eds., 1996).

³⁸ See MANUEL PASTOR, JR., TOMAS RIVERA CENTER, *LATINOS AND THE LOS ANGELES UPRISING: THE ECONOMIC CONTEXT* (1993); Robert Garcia, *Latinos and Criminal Justice*, 14 CHICANO-LATINO L. REV. 6, 6-11 (1994).

³⁹ See *supra* note 31 (citing authority).

⁴⁰ See Kevin R. Johnson, *Immigration and Latino Identity*, 19 UCLA CHICANO-LATINO L. REV. 197, 199-206 (1998).

⁴¹ See Johnson, *supra* note 31, at 129-38.

and New York (with large Puerto Rican and Dominican populations), to name a couple of states, have a very different national origin mix of Latinas/os than does California, Texas, and Arizona (with their large Mexican ancestry and Central American communities). In the future, scholars will need to address the impact of the diversity of Latina/o communities on electoral representation. Homogenizing Latinas/os does not offer a full appreciation of the richness of the different Latina/o communities. Indeed, one could envision future voting rights litigation in which Central Americans claim that Mexican American politicians acted to dilute Central American voting strength in California, that Cuban American politicians sought to dilute Puerto Rican voting power in Florida, and Dominicans making similar claims against Puerto Ricans in New York. Having analyzed Latina/o diversity in depth, LatCrit theory may prove helpful in exploring the commonalities and differences among Latinas/os with respect to electoral representation.

- *Should Latina/o legislators be expected to behave differently than other legislators in desiring to create and to act in the “best interests” of the Latina/o community?*

One would expect politicians generally to be concerned with their political fortunes. California has seen dramatic increases in the numbers of Latinas/os in the state legislature, which in turn has affected the redistricting of Congressional seats. Latina/o legislators, as other politicians are wont to do, presumably would seek to create districts that would benefit them politically.⁴² In *Cano v. Davis*, MALDEF appears to have asked something more of the Latina/o politicians involved in the redistricting than that of Anglo politicians—to ensure full and fair representation of the Latina/o community. If so, the question is whether this demand is appropriate and realistic. In some ways, MALDEF’s attempt may be seen as expressing a deeper dissatisfaction with the political process and desiring all politicians to treat different communities fairly in redistricting plans, whatever the political exigencies.

Cano v. Davis marks a watershed in California politics and reveals the dramatic, and relatively quick, demographic and political changes that have occurred in recent years. A comparison

⁴² See VICTOR M. VALLE & RODOLFO D. TORRES, *LATINO METROPOLIS* 35-36 (2000) (suggesting that this is how Latina/o officeholders operate in Los Angeles).

of the case with a 1990 decision of *Garza v. County of Los Angeles*,⁴³ a major voting rights victory for Latinas/os, shows how political fortunes of Latinas/os have improved in a few years. In *Garza*, the court found that the redistricting of the Los Angeles County Board of Supervisors discriminated against Latinas/os in order to protect white incumbents.⁴⁴ The court addressed a vastly different political landscape for Latinas/os than that which emerged by 2000:

[W]e agree with the district court that the supervisors' intentional splitting of the Hispanic core resulted in a situation in which Hispanics had less opportunity than did other county residents to participate in the political process and to elect legislators of their choice. We conclude, therefore, that this intentional discrimination violated both the Voting Rights Act and the Equal Protection Clause.⁴⁵

This finding was supported by the simple fact that "no Latino had been elected to the five-member Board [of Supervisors] since 1874, *despite the fact that the population of Los Angeles county [sic] in 1990 was 37% Latino.*"⁴⁶ Soon after the court

⁴³ *Garza v. County of Los Angeles*, 918 F.2d 763 (9th Cir. 1990), *cert. denied*, 498 U.S. 1028 (1991).

⁴⁴ *See id.* at 771.

⁴⁵ *Id.* at 771. Judge Kozinski concluded that the evidence showed:

[A] continuing practice of splitting the Hispanic core into two or more districts to prevent the emergence of a strong Hispanic challenger who might provide meaningful competition to the incumbent supervisors. The record is littered with telltale signs that reapportionments going back at least as far as 1959 were motivated, to no small degree, by the desire to assure that no supervisorial district would include too much of the burgeoning Hispanic population.

Id. at 778 (Kozinski, J., concurring and dissenting in part).

The district court in the case addressed issues that have been considered by Lat-Crit theorists, such as the definition of the Latina/o community, *see Johnson, supra* note 31, at 117-38, for purposes of the redistricting claim, *see Garza v. County of Los Angeles*, 756 F. Supp. 1298, 1325-27 (C.D. Cal.), *aff'd in part, vacated in part*, 918 F.2d 763 (9th Cir. 1990), *cert. denied*, 498 U.S. 1028 (1991).

⁴⁶ J. Morgan Kousser, *Shaw v. Reno and the Real World of Redistricting and Representation*, 26 RUTGERS L.J. 625, 707 (1995) (emphasis added). For a thorough history of the redistricting decisions challenged in *Garza*, *see* J. MORGAN KOUSSER, *COLORBLIND INJUSTICE: MINORITY VOTING RIGHTS AND THE UNDOING OF THE SECOND RECONSTRUCTION* 69-137 (1999) [hereinafter KOUSSER, *COLORBLIND INJUSTICE*]. *See generally* RODOLFO F. ACUÑA, *ANYTHING BUT MEXICAN: CHICANOS IN CONTEMPORARY LOS ANGELES* (1996) (analyzing history of anti-Mexican sentiment in greater Los Angeles); Ian F. Haney López, *Institutional Racism: Judicial Conduct and a New Theory of Racial Discrimination*, 109 YALE L.J. 1717 (2000) (considering history of institutional racism in selection of grand juries in Los Angeles County).

approved a new districting scheme, voters elected the first Latina, Gloria Molina, to the Los Angeles County Board of Supervisors.⁴⁷

Mainstream criticism of *Garza* shows the need for LatCrit voting rights analysis. For example, Professor Daniel Farber chided the court for having “constructed an [sic] ‘Hispanic seat’ on the five-person Los Angeles County Board of Supervisors.”⁴⁸ Such criticism ignores the evidence in *Garza* that the Board of Supervisors had intentionally split the Latina/o population for decades to dilute Latina/o voting power, and that the court’s redistricting order was designed to remedy intentional vote dilution.⁴⁹ Professor Farber further alleges that, because most persons of Mexican ancestry identify as “white” for census purposes, the “utility of redistricting” is less beneficial to Latinas/os than African Americans.⁵⁰ The elusive logic of this syllogism fails to analyze critically the meaning of Latina/o identification as “white.” Professor Farber’s reasoning does not account for the fact that the census does not offer a clear classification alternative for Latinas/os given that “Hispanic” is an ethnic, not a racial, category; nor does it acknowledge that Latinas/os have long felt pressured to claim a “white” identity to avoid discrimination.⁵¹ Finally, Professor Farber claims that less residential segregation of Latinas/os than African Americans makes redistricting to equalize Latina/o

⁴⁷ See LINDA CHAVEZ, *OUT OF THE BARRIO* 55-56 (1991); KOUSSER, *COLOR-BLIND INJUSTICE*, *supra* note 46, at 134-37.

⁴⁸ Daniel A. Farber, *The Outmoded Debate Over Affirmative Action*, 82 CAL. L. REV. 893, 925 (1994).

⁴⁹ See *supra* text accompanying notes 43-47. Part of the problem with Professor Farber’s analysis may be its primary reliance on Peter Skerry, *Not Much Cooking: Why the Voting Rights Act is Not Empowering Mexican-Americans*, 11 BROOKINGS REV. 42, 43 (1993). See Farber, *supra* note 48, at 925 nn.183-85. Skerry’s controversial views about Latinas/os have provoked considerable criticism. See, e.g., Ian F. Haney López, *Race, Ethnicity, Erasure: The Salience of Race to LatCrit Theory*, 85 CAL. L. REV. 1143, 1205-07 (1997) (criticizing analysis in PETER SKERRY, *MEXICAN AMERICANS: THE AMBIVALENT MINORITY* (1993)); Rodolfo de la Garza, *A Questionable Book on Mexican-Americans*, DALLAS MORNING NEWS, Feb. 27, 1994, at 6J (summarizing criticism by panel of experts of PETER SKERRY, *MEXICAN AMERICANS: THE AMBIVALENT MINORITY* (1993)).

⁵⁰ Farber, *supra* note 48, at 925.

⁵¹ See Sylvia R. Lazos Vargas, *Deconstructing Homo[geneous] Americanus: The White Ethnic Immigrant Narrative and Its Exclusionary Effect*, 72 TUL. L. REV. 1493 (1998); George A. Martínez, *The Legal Construction of Race: Mexican-Americans and Whiteness*, 2 HARV. LATINO L. REV. 321 (1997); Luis Angel Toro, “A People Distinct from Others”: *Race and Identity in Federal Indian Law and the Hispanic Classification in OMB Directive No. 15*, 26 TEX. TECH L. REV. 1219 (1995).

electoral power problematic,⁵² without mentioning that housing and school segregation has plagued Latinas/os for the entire twentieth century, especially in the Southwest.⁵³ Along these lines, a 1999 study of school segregation, which is directly linked to residential patterns, in the United States concludes that: “[t]he data shows continuously increasing segregation for Latino students, who are rapidly becoming our largest minority group and have been more segregated than African Americans for several years.”⁵⁴

In sum, Latinas/os historically have been locked out of the political process. Slowly but surely, as the evolution from *Garza* to *Cano* demonstrates, this is changing. However, Latinas/os have largely been on the sidelines in the scholarly analysis of race and voting rights issues. LatCrit Theory has much to offer in gaining a better understanding of electoral representation in a multiracial America.

II

ELECTORAL REPRESENTATION OF ALL LATINAS/OS

Cano v. Davis touches on larger issues of political representation of Latinas/os in the United States that up until this point, have not yet been thoroughly examined. Immigration raises significant concerns regarding political representation of minority groups with sizeable immigrant components, such as Latinas/os and Asian Americans.⁵⁵ This is especially true in California, where a relatively large Latina/o immigrant population resides.

The political representation of immigrants in a representative democracy has long raised thorny questions.⁵⁶ A most funda-

⁵² See Farber, *supra* note 48, at 925.

⁵³ See George A. Martínez, *Legal Indeterminacy, Judicial Discretion and the Mexican-American Litigation Experience: 1930-1980*, 27 U.C. DAVIS L. REV. 555, 574-606 (1994).

⁵⁴ See GARY ORFIELD & JOHN T. YUN, RESEGREGATION IN AMERICAN SCHOOLS 3 (1999).

⁵⁵ See U.S. CENSUS BUREAU, PROFILE OF THE FOREIGN-BORN POPULATION IN THE UNITED STATES: 2000 at 2 (2001) (providing data showing that over ten percent of the U.S. population, and twenty-five percent of the California population, was born outside the United States).

⁵⁶ See Kevin R. Johnson, *Los Olvidados: Images of the Immigrant, Political Power of Noncitizens, and Immigration Law and Enforcement*, 1993 BYU L. REV. 1139, 1218-24. For a summary of the kinds of voting rights issues affecting Asian Americans, which resemble those of Latinas/os, see Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 CAL. L. REV. 1241, 1300-03 (1993).

mental one is who, if anyone, represents noncitizens in the political process? Counted as persons for census purposes, immigrants currently are considered in the allocation and distribution of political and other government benefits that are based on population.⁵⁷ All noncitizens, however, are denied the right to vote. Disenfranchisement applies to long-term lawful permanent residents who, for whatever reason, have not naturalized to become United States citizens, as well as to undocumented immigrants.

Several years ago, Professor Jamin Raskin published a well-received article calling for voting rights for lawful permanent residents (legal immigrants) in local elections.⁵⁸ The article appears to have spawned little more than academic interest; few localities permit voting by lawful permanent residents in local elections.⁵⁹ It is fair to conclude that the proposed extension of the franchise has not caught fire.

Importantly, the immigrant voting rights proposal was limited only to lawful permanent residents, not undocumented immigrants. Currently, several million undocumented immigrants, including many Mexicans, are denied any direct input into the political process, however long they may have spent in the United States. Thus, undocumented persons may live in the country for many years without any direct political voice.

Legislators have not given the possible expansion of the right to vote serious consideration, perhaps because of the ready availability of other more politically viable, less far-reaching strate-

⁵⁷ See *Garza v. County of Los Angeles*, 918 F.2d 763, 773-76 (9th Cir. 1990), *cert. denied*, 498 U.S. 1028 (1991); *Federation for American Immigration Reform v. Klutznick*, 486 F. Supp. 564, 576-77 (D.D.C.), *dismissed for want of jurisdiction*, 447 U.S. 916 (1980). Efforts also have been made to exclude noncitizens from the population base considered in redistricting decisions. See Carl E. Goldfarb, Note, *Allocating the Local Apportionment Pie: What Portion for Resident Aliens?*, 104 *YALE L.J.* 1441 (1995); see also *Calderon v. City of Los Angeles*, 481 P.2d 489 (1971) (invalidating Los Angeles City Council districting scheme based on number of registered voters, rather than all persons, in districts); Charles Wood, *Losing Control of America's Future—The Census, Birthright Citizenship, and Illegal Aliens*, 22 *HARV. J.L. & PUB. POL'Y* 465, 469-93 (1999) (contending that Congress should act to preclude the Census Bureau from including "illegal aliens" in apportionment base used in redistricting).

⁵⁸ Jamin B. Raskin, *Legal Aliens, Local Citizens: The Historical, Constitutional and Theoretical Meanings of Alien Suffrage*, 141 *U. PA. L. REV.* 1391 (1993); see Gerald M. Rosberg, *Aliens and Equal Protection: Why Not the Right to Vote?*, 75 *MICH. L. REV.* 1092 (1977) (making similar proposal).

⁵⁹ See Raskin, *supra* note 58, at 1461-67 (discussing case of Takoma Park, Maryland).

gies. Extending the franchise to noncitizens—the mere proposal of which would likely generate a firestorm of controversy—no doubt appears less appealing in contrast to the alternatives. This is especially true in a time when the liberality of securing United States citizenship has come under attack.⁶⁰

Naturalization campaigns are one way to increase political participation of immigrant communities. In the 1990s, the federal government affirmatively encouraged naturalization and the transformation of immigrants into citizens through the Citizenship USA program, which attempted to streamline and accelerate the naturalization process.⁶¹ During this time, naturalization rates, particularly of Mexican immigrants, increased dramatically.⁶² The increase, however, was not necessarily for the best of reasons. Many immigrants pursued naturalization to avoid possible deportation imposed under harsh immigration laws passed in 1996 and to ensure access to benefits that the welfare reform legislation of that same year denied them.⁶³ Immigrants understandably felt under siege in an era commenced by California's Proposition 187, which was sought to deny public benefits to undocumented immigrants and facilitate their deportation.⁶⁴ Naturalization petitions thus were submitted in record numbers out of

⁶⁰ See PETER H. SCHUCK & ROGERS M. SMITH, *CITIZENSHIP WITHOUT CONSENT: ILLEGAL ALIENS IN THE AMERICAN POLITY* (1985) (questioning long legal tradition of bestowing citizenship by virtue of birth in United States); *infra* text accompanying notes 61-67 (discussing claims that Clinton administration abused the naturalization process for partisan political ends).

⁶¹ See Doris Meissner, *Putting the "N" Back Into INS: Comments on the Immigration and Naturalization Service*, 35 VA. J. INT'L L. 1, 3 (1994).

⁶² See U.S. DEP'T OF JUSTICE, 1998 STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE 170 (2000). Changes in Mexican law permitting dual nationality also have contributed to the increase in the naturalization of Mexican immigrants. See T. ALEXANDER ALEINIKOFF, *BETWEEN PRINCIPLES AND POLITICS: THE DIRECTION OF U.S. CITIZENSHIP POLICY* 30-36 (1998); Jorge A. Vargas, *Dual Nationality for Mexicans*, 35 SAN DIEGO L. REV. 823 (1998).

⁶³ See Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (1996); Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (1996); Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996).

⁶⁴ See Ruben J. Garcia, Comment, *Critical Race Theory and Proposition 187: The Racial Politics of Immigration Law*, 17 CHICANO-LATINO L. REV. 118 (1995); Kevin R. Johnson, *Public Benefits and Immigration: The Intersection of Immigration Status, Ethnicity, Gender, and Class*, 42 UCLA L. REV. 1509 (1995); Kevin R. Johnson, *An Essay on Immigration Politics, Popular Democracy, and California's Proposition 187: The Political Relevance and Legal Irrelevance of Race*, 70 WASH. L. REV. 629 (1995) [hereinafter Johnson, *Proposition 187*].

fear, not necessarily out of a desire for political participation or to show allegiance to the United States.

The federal government's efforts at facilitating naturalization ended abruptly in the late 1990s. The Citizenship USA program came under heated attack for allegedly being motivated by partisan political ends—namely, adding Democrats to the voting rolls.⁶⁵ Republicans charged the Clinton administration with naturalization “abuse” as some immigrants legally ineligible for naturalization (because of, for example, criminal convictions) secured citizenship and thus, voting rights.⁶⁶ Consequently, the enthusiasm of the federal government for naturalization efforts has waned⁶⁷ and has been further dampened by national security concerns in the wake of September 11, 2001.

A growing Latina/o population and a high naturalization rate have increased the number of eligible Latina/o voters. Political candidates now aggressively pursue the Latina/o vote.⁶⁸ However, different groups of Latinas/os have different amounts of political power depending on the votes that can be delivered. For example, while President Bush has been careful not to alienate voters of Mexican ancestry by embracing immigration and other

⁶⁵ See, e.g., Bob Barr, *High Crimes and Misdemeanors: The Clinton-Gore Scandals and the Question of Impeachment*, 2 TEX. REV. L. & POL. 2, 44-50 (1997) (contending that abuse of naturalization process was one of many grounds justifying the impeachment of President Clinton). The Justice Department's Office of the Inspector General found that the Clinton Administration had not acted for political ends in its Citizenship USA program, although some naturalization petitions were erroneously approved due to hasty processing. See *IG Report Finds INS's "Citizenship USA" Program Was Flawed, But Not for Political Reasons*, 77 INTERPRETER RELEASES 1198 (2000).

⁶⁶ See, e.g., Linda Kelly, *Defying Membership: The Evolving Role of Immigration Jurisprudence*, 67 U. CIN. L. REV. 185, 204-08 (1998) (analyzing naturalization controversy and how Congressional reforms have significantly delayed the naturalization process); Ethan Wallison, *Immigration Controversy Prompts New Plan for INS*, CHI. TRIB., Feb. 10, 1998, at n.10 (reporting on efforts of Clinton administration to prevent naturalization of criminal aliens through Citizenship USA program); William Branigin, *Republicans Seek Probe of Immigration Program; Accelerated Naturalization Process Criticized*, WASH. POST, Nov. 2, 1996, at A3 (describing claims of Republican members of Congress of abuse by Clinton administration in efforts to facilitate naturalization of immigrants).

⁶⁷ See Kelly, *supra* note 66, at 207-08 (analyzing various changes in naturalization process that slowed down the processing of naturalization petitions); see also Catherine Yonsoo Kim, Note, *Revoking Your Citizenship: Minimizing the Likelihood of Administrative Error*, 101 COLUM. L. REV. 1448 (2001) (analyzing administrative denaturalization regulations promulgated after Citizenship USA controversy).

⁶⁸ See Ricardo Alonso-Zaldivar, *Latinos Give Bush High Job Approval Rating, Poll Shows*, L.A. TIMES, Aug. 21, 2002, § 1, at 10; Matea Gold, *Rivals Go After Davis' Latino Support*, L.A. TIMES, July 13, 2002, § 2, at 12.

policies that might be viewed as anti-Mexican, he does not face similar political constraints requiring him to immediately halt military bombing exercises in Vieques, Puerto Rico; the fact that United States citizens in Puerto Rico cannot vote in federal elections helps explain the federal government's policy choice.⁶⁹

Latina/o electoral representation will likely remain a problem in the foreseeable future. So long as immigration rates exceed naturalization rates, more noncitizen residents in the United States will lack the right to vote each year. Even if naturalization rates increase beyond immigration rates, low voter turnout has long plagued the Latina/o community.⁷⁰ Organizations such as the Southwest Voter Registration Education Project have attempted to register Latina/o voters.⁷¹ However, mobilization strategies focused on Latinas/os may be viewed as racially divisive—as playing the much-maligned “race card.” A notable example was the march, with the waving of Mexican flags, of opponents of Proposition 187 that resulted in a backlash among Anglo voters.⁷²

Class issues are also submerged in the discussion over the representation of noncitizens in the electoral process. For example, many immigrants, particularly undocumented ones, tend to work in low wage jobs.⁷³ The poorer the group, the less likely that its members will participate in the political process. Class issues,

⁶⁹ See John F. Harris, *Clintonesque Balancing of Issues, Polls; Role of Politics Evident in Bush's White House*, WASH. POST, June 24, 2001, at A1 (discussing President Bush's decision to continue use of bombing exercises in Vieques until 2003); Raymond Hernandez, *Both Sides Attack Bush Plan to Halt Bombing of Vieques*, N.Y. TIMES, June 15, 2001, at A1 (noting that Vieques bombing issue had developed into one of general Latina/o concern, which resulted in Bush compromise); see also Kevin R. Johnson, *Puerto Rico, Puerto Ricans, and LatCrit Theory: Commonalities and Differences Between Latina/o Experiences*, 6 MICH. J. RACE & L. 107, 116-17 (2000) (analyzing impacts of denial of political rights to U.S. citizens living in Puerto Rico); Ediberto Román & Theron Simmons, *Membership Denied: Subordination and Subjugation Under United States Expansionism*, 39 SAN DIEGO L. REV. 437, 492-93 (2002) (analyzing Vieques controversy as part of U.S. subordination of Puerto Rico). Professor Luis Fuentes-Rohwer suggested this comparison to me.

⁷⁰ See de la Garza & DeSipio, *supra* note 9, at 1491-1508; Kevin R. Johnson, *Civil Rights and Immigration: Challenges for the Latino Community in the Twenty-First Century*, 8 LA RAZA L.J. 42, 49-56 (1995).

⁷¹ See, e.g., Laura M. Padilla, “But You're Not a Dirty Mexican:” *Internalized Oppression, Latinos & Law*, 7 TEX. HISP. J.L. & POL'Y 59, 111 (2001); Roberto J. Manzano, *New Voters Beat Deadline to Register*, L.A. TIMES, Oct. 11, 2000, at B1.

⁷² See Johnson, *Proposition 187*, *supra* note 64, at 657.

⁷³ See generally GEORGE J. BORJAS, HEAVEN'S DOOR: IMMIGRATION POLICY AND THE AMERICAN ECONOMY (1999) (making similar arguments about immigrants generally).

long central to LatCrit Theory,⁷⁴ thus are relevant in analyzing the barriers to Latina/o voter participation.

In conclusion, Latinas/os face many formidable barriers to full political participation in the United States. The immigrant component of the Latina/o community cannot fully participate in the political process. Naturalization and political mobilization are the most viable remedies, as extension of the franchise to immigrants is a powerful, albeit politically problematic, alternative. These issues deserve scholarly attention and LatCrit inquiry.

III

INTERRACIAL TENSION OR POLITICAL COALITION?

The changing racial demographics of migration to the United States since 1965 will transform voting rights litigation and electoral reapportionment.⁷⁵ Tensions between established and emerging minority communities are almost inevitable.⁷⁶ Scholars and activists must pay attention to such tensions in order to facilitate necessary social change. LatCrit scholarship, focused on forming alliances,⁷⁷ has much to add to the study of future political coalitions between Latinas/os and other groups.

The stark division between African American and Latina/o voters in the 2001 Los Angeles mayoral election suggests that

⁷⁴ See, e.g., Christopher David Ruiz Cameron, *The Rakes of Wrath: Urban Agricultural Workers and the Struggle Against Los Angeles's Ban on Gas-Powered Leaf Blowers*, 33 U.C. DAVIS L. REV. 1087 (2000); Rachel F. Moran, *Demography and Distrust: The Latino Challenge to Civil Rights and Immigration Policy in the 1990s and Beyond*, 8 LA RAZA L.J. 1, 10 (1995); Maria L. Ontiveros, *To Help Those Most in Need: Undocumented Workers' Rights and Remedies Under Title VII*, 20 N.Y.U. REV. L. & SOC. CHANGE 607 (1993-94); Mary Romero, *Immigration, the Servant Problem, and the Legacy of the Domestic Labor Debate: "Where Can You Find Good Help These Days!"*, 53 U. MIAMI L. REV. 1045 (1999).

⁷⁵ See Deborah Ramirez, *Multicultural Empowerment: It's Not Just Black and White Anymore*, 47 STAN. L. REV. 957 (1995); William R. Tamayo, *When the "Coloreds" are Neither Black nor Citizens: The United States Civil Rights Movement and Global Migration*, 2 ASIAN L.J. 1 (1995).

⁷⁶ See Alexandra Natapoff, Note, *Trouble in Paradise: Equal Protection and the Dilemma of Interminority Group Conflict*, 47 STAN. L. REV. 1059, 1085-91 (1995). For contrasting views about the intergroup tensions between African Americans and Latinas/os in voting rights matters, compare Walter C. Farrell, Jr. & James H. Johnson, Jr., *Minority Political Participation in the New Millennium: The New Demographics and the Voting Rights Act*, 79 N.C. L. REV. 1215, 1219-30 (2001) (discussing heightened tensions), with Leo F. Estrada, *Making the Voting Rights Act Relevant to the New Demographics of America: A Response to Farrell and Johnson*, 79 N.C. L. REV. 1283, 1284-88 (2001) (downplaying tensions).

⁷⁷ See Valdes, *supra* note 32, at 1094.

interracial conflict may often be just below the surface of many political controversies. For example, in a campaign in which Latino Antonio Villaraigoso was attacked in race-baiting television ads regarding his request that President Clinton pardon a drug offender,⁷⁸ eighty percent of Latinas/os voted for Villaraigoso while eighty percent of the African Americans supported the Anglo candidate.⁷⁹ Similarly, a few years before, in a Los Angeles suburb, middle class African Americans and others supported passage of a Los Angeles County ordinance that barred curbside job solicitation by predominantly Latina/o day laborers.⁸⁰ Liberal African American Yvonne Braithwaite Burke of the Los Angeles County Board of Supervisors supported the measure, with the backing of neighborhood activists and anti-immigrant groups.⁸¹ Although Burke denied that race motivated the adoption of the ordinance,⁸² others contended that simmering racial tensions fueled its passage.⁸³ Latina supervisor, Gloria Molina, proclaimed that the ordinance was “a shameful act. . . . [that] will be used against people—especially people of color.”⁸⁴ A court struck the law down on First Amendment grounds without addressing the racial undercurrent to its passage.⁸⁵

⁷⁸ See Beth Schuster & Matea Gold, *Attack Ad Shows Hahn Is a Hypocrite, Villaraigoso Says*, L.A. TIMES, May 31, 2001, § 2, at 3.

⁷⁹ See Johnson, *supra* note 7, at 1500-01. In some ways, this election may be an anomaly because the Anglo candidate's father, Kenneth Hahn, was a popular politician among African Americans in South Central Los Angeles who he had represented for many years. See Harold Meyerson, *A City Hesitates at Political Change*, N.Y. TIMES, June 8, 2001, at A25.

⁸⁰ See Patrick J. McDonnell, *Community Clashes with Day Workers*, L.A. TIMES, Mar. 14, 1994, at B1; Robert J. Lopez, *The Men Rush Each Vehicle That Pulls Over, Competing for the Chance to Earn Their Daily Bread*, L.A. TIMES, Feb. 27, 1994, City Times, at 13.

⁸¹ See *supra* note 80 (citing authorities).

⁸² See Yvonne B. Burke, *The Problem Up-Close*, L.A. TIMES, Jan. 25, 1994, at B7.

⁸³ See Nancy Cervantes et al., *A Case of Overkill to Curb Day Laborers*, L.A. TIMES, Jan. 25, 1994, at B7.

⁸⁴ Tracey Kaplan, *Supervisors Ban Curbside Job Solicitation*, L.A. TIMES, May 25, 1994, at B1 (quoting Gloria Molina).

⁸⁵ See, e.g., *Coalition for Humane Immigrant Rights v. Burke*, CV No. 98-4863-GHK (CTx), 2000 U.S. Dist. LEXIS 16520 (C.D. Cal. Sept. 12, 2000). Avoidance of the issue of racial discrimination is common when courts address the lawfulness of measures that disparately impact Latinas/os. See Johnson, *Proposition 187, supra* note 64 (analyzing importance of anti-Latina/o sentiment in campaign over Proposition 187 and failure of court to address the issue of racial discrimination); Kevin R. Johnson & George A. Martínez, *Discrimination by Proxy: The Case of Proposition 227 and the Ban on Bilingual Education*, 33 U.C. DAVIS L. REV. 1227 (2000) (analyzing how English language proficiency can serve as a proxy for race in controversy over bilingual education, although not addressed meaningfully by the court).

The changing nature of civil rights concerns in a multiracial America will complicate the building of coalitions. Immigration and immigrant rights have been, and will be, a critical civil rights issue for Latinas/os and Asian Americans. The heightened security measures adopted in the wake of the September 11, 2001 tragedy focus on noncitizens and, because most noncitizens in the United States are people of color, the measures will necessarily have disparate racial impacts.⁸⁶ For example, Congress passed a law imposing a United States citizenship requirement on employment in airport security jobs.⁸⁷ As a result, over eighty percent of the security screeners at San Francisco International Airport and about forty percent of those at Los Angeles International Airport, two cities with large Latina/o and Asian immigrant populations, faced job loss.⁸⁸ Immigration checks at airports across the country have resulted in arrests and deportations, primarily of persons of Latin American and Asian ancestry.⁸⁹ Efforts of the federal government to verify social security numbers of employees as part of the heightened security measures have spawned fear among Latina/o immigrants who worked under fraudulent documents.⁹⁰

Thus, matters typically of little concern to many United States citizens, including African Americans, may amount to serious civil rights issues for immigrants and the larger communities of which they are a part. For example, the denial of driver's licenses to undocumented Mexicans exacerbates fears of arrest and de-

⁸⁶ See generally Susan M. Akram & Kevin R. Johnson, *Race, Civil Rights, and Immigration Law After September 11, 2001: The Targeting of Arabs and Muslims*, 58 N.Y.U. ANN. SURV. OF AM. L. 295 (2002) (analyzing impacts of heightened security measures on people of color, particularly Arabs and Muslims).

⁸⁷ See Aviation and Transportation Security Act, Pub. L. No. 107-71, § 111(a)(2), 115 Stat. 597, 617 (2001).

⁸⁸ See Steven Greenhouse, *Groups Seek to Lift Ban on Foreign Screeners*, N.Y. TIMES, Dec. 12, 2001, at B10.

⁸⁹ See Rosanna Ruiz, *Airport Sweep Nets 143 Arrests*, HOUS. CHRON., Sept. 10, 2002, at A1; Ted Bridis, *D.C.-Area Airport Raids Net Nearly 100 Arrests*, CHI. TRIB., Apr. 24, 2002, at 12; Juliet V. Casey, *Operation Tarmac: Advocates: Hispanics Unfairly Targeted*, LAS VEGAS REV.-J., Feb. 9, 2002, at 1B; Patrick J. McDonnell, *200 Airport Workers in West Arrested by INS*, L.A. TIMES, Mar. 27, 2002, § 2, at 7; Steve Miletich, *20 Arrested at Sea-Tac to Be Handled Through Deportation Actions*, SEATTLE TIMES, Jan. 23, 2002, at B1; Matthew B. Stannard, *INS Holds 25 at Airports*, S.F. CHRON., Mar. 26, 2002, at A1; *INS Arrests 30 Airport Employees in Portland*, SEATTLE TIMES, Dec. 21, 2001, at B2.

⁹⁰ See Michael Riley, *Social Security Net Snares Illegal Workers*, DENV. POST, Sept. 8, 2002, at A24; Dawn House, *Social Security Checks Called 'Silent Raid' on Illegals*, SALT LAKE TRIB., July 14, 2002, at A1.

portation, limits access to jobs, and increases immigrant vulnerability to workplace exploitation.⁹¹ Acceptance of Mexican identifications by banks to open accounts may dramatically affect the lives of undocumented Mexicans who previously had been gouged by check cashing and wire transfer companies charging excessive fees for their services.⁹² Showing little sensitivity to such issues, the Supreme Court dismissed a challenge to Alabama's English language requirement for a driver's license that disproportionately impacted minority communities.⁹³ Latinas/os and African Americans may perceive themselves as having different interests on these and other issues, especially because both communities may see themselves as competing for jobs.⁹⁴

Despite perceived differences, African Americans and Latinas/os may find they have common interests on certain civil rights issues. Over time, combating racial discrimination has become more difficult to uncover and remedy. African Americans often are victimized by unconscious racism,⁹⁵ while Latinas/os and Asian Americans often suffer from similar discrimination through use of facially neutral proxies for race, such as immigration status and language proficiency.⁹⁶ Additionally, young African American and Latino men are over-represented in the criminal justice system and share common cause in removing the undue focus of race from law enforcement.⁹⁷ Finally, Latinas/os and African Americans share common problems with discrimination between their members based on relative skin color and physical appearance.⁹⁸

The potential for coalitions exists on voting rights concerns.

⁹¹ See Johnson, *supra* note 7, at 1504-05.

⁹² See Emily Bazar, *Card Offers ID, Banking Access to Immigrants*, SACRAMENTO BEE, Sept. 21, 2002, at A1.

⁹³ See *Alexander v. Sandoval*, 532 U.S. 275 (2001).

⁹⁴ See, e.g., Vernon M. Briggs, Jr., *Mass Immigration and the National Interest* 5 (1992); Jack Miles, *Blacks vs. Browns: African Americans and Latinos*, *The Atlantic*, Oct. 1992, at 41.

⁹⁵ See generally Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 *STAN. L. REV.* 317 (1987) (analyzing prevalence of unconscious racism resulting in discrimination).

⁹⁶ See *supra* note 85 (citing authorities).

⁹⁷ See Kevin R. Johnson, *The Case for African American and Latina/o Cooperation in Challenging Race Profiling in Law Enforcement*, 55 *FLA. L. REV.* 341 (2003).

⁹⁸ See Taunya Lovell Banks, *Colorism: A Darker Shade of Pale*, 47 *UCLA L. REV.* 1705 (2000); Kevin R. Johnson, "Melting Pot" or "Ring of Fire"? *Assimilation and the Mexican-American Experience*, 85 *CAL. L. REV.* 1259, 1291-93 (1997); Trina Jones, *Shades of Brown: The Law of Skin Color*, 49 *DUKE L.J.* 1487 (2000).

This is particularly true in the area of political representation where issues of common concern exist. For example, the negative impact of the distribution of wealth on African Americans and Latinas/os in the electoral process warrants examination.⁹⁹ At times, African Americans and Latinas/os have worked together to challenge discriminatory voting practices.¹⁰⁰ With the over-representation of Latinas/os and African Americans in the prison system, disenfranchisement of felons will be an important voting rights issue for both Latinas/os and African Americans for the foreseeable future.¹⁰¹ Potential conflicts in voting rights matters exist as well.¹⁰² Such conflicts seem more prevalent when the issue, such as redistricting, is seen as a zero-sum game, with African Americans losing at the expense of Latinas/os or vice versa.¹⁰³

In considering coalition strategies with African Americans, both Asian American and Latina/o communities must determine where they fit into a political mosaic that has been forged histori-

⁹⁹ See Spencer Overton, *Voices from the Past: Race, Privilege, and Campaign Finance*, 79 N.C. L. REV. 1541, 1544-52 (2001); see also Christopher David Ruiz Cameron, *The Labyrinth of Solidarity: Why the Future of the American Labor Movement Depends on Latino Workers*, 53 U. MIAMI L. REV. 1089, 1098-1103 (1999) (outlining economic disparities between Anglos and Latinas/os).

¹⁰⁰ See, e.g., *Nixon v. Kent County*, 76 F.3d 1381 (6th Cir. 1996); see also Sebastian Geraci, Comment, *The Case Against Allowing Multiracial Coalitions to File Section 2 Dilution Claims*, 1995 U. CHI. LEGAL F. 389 (1995) (contending that Latina/o, African American, and other racial minorities should not be aggregated in a voter dilution claim under the Voting Rights Act).

¹⁰¹ See John O. Calmore, *Race-Conscious Voting Rights and the New Demography in a Multiracing America*, 79 N.C. L. REV. 1253 (2001); see also Spencer Overton, *A Place at the Table: Bush v. Gore Through the Lens of Race*, 29 FLA. ST. U. L. REV. 469, 489-91 (2001) (analyzing how issues of race implicated in Supreme Court's decision of *Bush v. Gore*, 531 U.S. 98 (2000), yield lessons for other subordinated communities); Garcia, *supra* note 38 (analyzing Latinas/os in criminal justice system); Cruz Reynoso, *Hispanics and the Criminal Justice System*, in *HISPANICS IN THE UNITED STATES: AN AGENDA FOR THE TWENTY-FIRST CENTURY* 277 (Pastora San Juan Cafferty & David W. Engstrom eds., 2000) (1996) (same); Mary Romero, *State Violence, and the Social and Legal Construction of Latino Criminality: From El Bandido to Gang Member*, 78 DEN. U. L. REV. 1081 (2001) (analyzing case study in which police killed Latino youth with massive use of force).

¹⁰² See Ramirez, *supra* note 75, at 969-72 (analyzing Voting Rights Act challenge to redistricting scheme in Florida in *Johnson v. De Grandy*, 512 U.S. 997 (1994), which raised potential conflict between Latina/o and African American interests); J. Harvie Wilkinson III, *The Law of Civil Rights and the Dangers of Separatism in Multicultural America* 47 STAN. L. REV. 993, 1010-13 (1995) (to the same effect).

¹⁰³ See, e.g., Norman Matloff, *How Immigration Harms Minorities*, PUB. INTEREST, June 22, 1996, at 61; Orlando Patterson, *Race by the Numbers*, N.Y. TIMES, May 8, 2001, at A27.

cally by black/white conflict. In certain circumstances, possible coalitions of interest naturally exist between Asian Americans and Latinas/os on issues of immigration, immigrant discrimination, and language regulation, which do not necessarily fit into the African American civil rights agenda.¹⁰⁴ Representing an important example of coalition coming to fruition in a voting rights case, Asian Americans and Latinas/os cooperated in the Los Angeles County suburb of Monterey Park in a much publicized redistricting controversy. Both communities overcame tensions as the Mexican-American community saw the city change dramatically with Chinese immigration.¹⁰⁵ It is unclear whether this successful Asian American/Latina/o coalition will serve as a model for the future, or rather will be the exception to a rule of non-cooperation.

In sum, changing racial demographics will affect redistricting and the political process. Although potential exists for coalition between African Americans, Asian Americans, and Latinas/os,¹⁰⁶ collective action will require introspection and sensitivity by all involved. Far from inevitable, cooperation is unlikely if social justice is viewed as a zero-sum game.

CONCLUSION

LatCrit Theory has much to offer to the analysis of the role of race in the political process. Lessons of LatCrit Theory may shed much-needed light on the place of Latinas/os, Asian Americans, and African Americans in the United States. Voting rights cannot be fully understood in a multiracial America without consid-

¹⁰⁴ See Kevin R. Johnson, *Racial Hierarchy, Asian Americans and Latinos as "Foreigners," and Social Change: Is Law the Way to Go?*, 76 OR. L. REV. 347, 352-58 (1997).

¹⁰⁵ See Robert S. Chang & Keith Aoki, *Centering the Immigrant in the Inter/National Imagination*, 85 CAL. L. REV. 1395, 1417-46 (1997); Leland T. Saito, *Asian Americans and Latinos in San Gabriel Valley, California: Ethnic Political Cooperation and Redistricting 1990-92*, in LOS ANGELES—STRUGGLES TOWARD MULTIETHNIC COMMUNITY: ASIAN AMERICAN, AFRICAN AMERICAN, & LATINO PERSPECTIVES 55 (Edward T. Chang & Russell C. Leong, eds., 1994); see also ANGELO N. ANCHETA, *RACE, RIGHTS, AND THE ASIAN AMERICAN EXPERIENCE* 157-58 (1998) (observing that conflict may occur between Asian Americans, Latinas/os, and African Americans in redistricting schemes but is not inevitable if communities work together).

¹⁰⁶ See generally ERIC K. YAMAMOTO, *INTERRACIAL JUSTICE: CONFLICT AND RECONCILIATION IN POST CIVIL RIGHTS AMERICA* (1999) (analyzing potential for interracial coalitions).

ering the interplay and interests of all of these groups.¹⁰⁷

Many important questions will need to be addressed, such as the inherently difficult ones posed by *Cano v. Davis*. The analysis of such issues as redistricting and voting rights questions promises to be more complex with the growing Latina/o population in the United States, as well as the emerging Asian American population. To this point, the voting rights scholarship has lagged in analyzing issues of political representation affecting Latinas/os. Ensuring the representation of the entire Latina/o community in the United States should be of concern to all interested in true democracy. Moreover, to eradicate discrimination in the electoral process, the ability of African Americans, Asian Americans, and Latinas/os to overcome their differences and work together in the political process will be essential.

¹⁰⁷ See Kevin R. Johnson & George A. Martínez, *Crossover Dreams: The Roots of LatCrit Theory in Chicana/o Studies Activism and Scholarship*, 53 U. MIAMI L. REV. 1143, 1157-59 (1999).

