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### Of Desi, J. Lo and Color Matters: Law, Critical Race Theory the Architecture of Race

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OF DESI, J. LO AND COLOR MATTERS: LAW, CRITICAL RACE  
THEORY THE ARCHITECTURE OF RACE<sup>1</sup>

IMANI PERRY

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“People be screamin’ ‘what’s the deal with you and so and so?’ I tell them niggas mind their biz but they don’t hear me though.”

“I’m real” Jennifer Lopez.

The uproar over Jennifer Lopez’s use of the “n-word” in her song “I’m Real” has largely been forgotten, but it was a fascinating cultural moment. Lopez was astonished at any implication that her use of the word might be racist. Ja Rule, the African American rapper who penned the lyrics argued that the furor was nonsensical because, as he said, “[S]ince when Boricuas ain’t been niggas too?”

There was a certain logic to his statement. The social exclusions experienced by Puerto Ricans, whom John Ogbu classifies as “caste-like” minorities,<sup>2</sup> are markedly similar to those experienced by African Americans. On measures ranging from health, to education, income, and employment, Puerto Ricans and African Americans show similar levels of marginalization. Legal scholar Pedro Malavet, describing the racism that is embedded in the ongoing colonization of Puerto Rico, writes

[I]n the case of Puerto Ricans, the colonization of the island, and the legal definition of Puerto Rican citizenship as second class, mark the most obvious elements of oppression. The social construction of Puerto Ricans as being inassimilable because they belong to a single, inferior, non-white

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<sup>1</sup>This essay began as a paper delivered at the Eighth Annual LatCrit Conference, City and the Citizen: Operations of Power, Strategies of Resistance, Cleveland-Marshall College of Law, Cleveland State University May, 2003. I greatly benefited from feedback offered by fellow conference participants, especially Frank Rudy Cooper, Devon Carbado, Tayyab Mahmud and Margaret Montoya.

<sup>2</sup>Anthropologist John Ogbu has defined three types of minority groups: autonomous (i.e. religious), voluntary (i.e. immigrants) and involuntary (i.e. enslaved or colonized peoples.) The group of involuntary minorities he also describes as caste-like. He argues that while voluntary minorities believe in the proverbial American Dream, and buy into its methods of achieving success, caste-like minorities who have experienced persistent racism tend to try to hold on to their cultural distinctiveness to distinguish themselves from the oppressive mainstream. Ogbu’s argument is echoed in the work of Marxist sociologist Robert Blauner and in his descriptions of the categories “colonized minority” and “voluntary migrant.”

race is both the basis for identifying the victimized group and the harm caused to them by the United States.<sup>3</sup>

Anecdotally, the response to J Lo's linguistic flourish varied within the black community. Some were offended, others shared Ja Rule's opinion. It is likely that in areas of the Northeast where there is greater geographic and cultural intimacy between Puerto Ricans and Black people, one would find fewer offended responses.<sup>4</sup> But given Lopez's public image, the tension about how to respond to this incident has broad cultural implications. Any response to this episode is partially dependent on how she is read culturally. Do we read her as the hip hop generation woman of color from the Bronx who once graced the side of Sean Combs? Or do we read her as the various roles she has played, crossing racial borders to become a white leading lady, her hair and skin lightened, and romantically partnered with Hollywood golden boy Ben Affleck? Aren't these respective readings in fact narratives of race and racial membership, filled with implication and proxy?

Jennifer Lopez, despite being categorized as part of the "Latin Explosion" in U.S. popular culture, has often been identified either with black or white communities. Black largely in music, white largely in film. Perhaps because this is a country where, despite claims of multiculturalism, we continue to have a racial consciousness largely defined by a black-white binary.

LatCrit<sup>5</sup> scholars have critiqued the black white binary that dominated the first generation of Critical Race Theory scholarship. In this critique they have attempted to shift the center of race theory from its original focus on African Americans struggles against white racism, to include Latinos and other people of color as the frames of reference for analyses of racial issues. While the critique of the black white binary has at times been fraught with the tension that often appears when multiple groups are struggling against their respective experiences of oppression, it has served to broaden critical race theory, and to open new streams of inquiry. In critiquing the black white binary, Richard Delgado has argued that "binary thinking may exceptionalize and thus obscure other experiences, or create over identification with whites, or serve to pit minority groups against each other."<sup>6</sup> He also writes "[T]he truth is that all the groups are exceptional; each has been racialized in different ways; none is the paradigm or template for the others."<sup>7</sup> I agree, but want to suggest that the manners in which the groups are racialized are interdependent and mutually constructed. Critical Race Theory has challenged the liberal models of color

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<sup>3</sup>Pedro Malavet *Reparations Theory and Postcolonial Puerto Rico: Some Preliminary Thoughts*, 13 LA RAZA L.J. 387, 404 (2002).

<sup>4</sup>Lopez uses the word in the colloquial fashion often heard in hip hop where the word "Nigga" is often used interchangeably with person or man within the context of urban black community.

<sup>5</sup>LatCrit theory centralizes and voices Latina/o experiences, issues and concerns in legal thought, law and policy.

<sup>6</sup>Richard Delgado, *Is Derrick Bell's Toolkit Fit to Dismantle That Famous House?* 75 N.Y.U. L. Rev. 8 (2000).

<sup>7</sup>*Id.* at 15.

blindness, and integrationism for their inadequacies in responding to post-Civil rights era racial issues, and LatCrit has challenged the black white binary which animates that model. Expansion beyond the black white binary however should not simply consist of creating new binaries, or categorically treating each minority group, but instead should be the impetus for reconstructions of race discourse with national and international understandings of how groups have figured historically with respect to each other and white supremacy, and how we continue to deal with legacies, across national boundaries, of colonial racial constructs and contacts.

In this article I want to posit two ways in which a critique of the black white binary leads us to understandings of race and racism that are useful for the struggles of all peoples of color. The first is, the critique should lead us to advocate for an understanding of race as an architecture rather than categorical. LatCrit scholarship has introduced questions of language, nationalism, citizenship and border-crossing as part of critical race theory. These categories bring to the fore some of the meta-narratives that are part of how race is constructed, beyond the four “racial” classifications. I use meta-narrative here to refer to those grand stories used in a culture in order to legitimize mechanisms of social control. A meta-narrative of race might not refer directly to race, but yet is still a narrative used to legitimize racist practice. The meta-narratives race found in language, geography, and color are highlighted for Latinos, who are multi-racial, multinational and largely multi-lingual, but are not exclusive to Latinos in being constitutive of racialized experience. These meta-narratives of race suggest that we should not simply understand race as a function of membership in one of the four (or five) categories, but as part of a complex structure, and that elements of that structure beyond racial classification, should become part of racial jurisprudence. This structure is what I call the architecture of race.

The second argument is that when we focus upon race as an architecture it leads us away from a linear notion of racial hierarchy with white at the top and black at the bottom, and towards a sense that the distribution of power as it is related to race is a more detailed structure which is well understood by theoretical models such as the one posited by Patricia Hill Collins in her description of “matrices of domination.” Our jurisprudence should grow away from simple attention to race classification, towards a more nuanced assessment of power inequities. A number of scholars have begun to make such arguments through various sorts of inquiries tied to, but not exclusively regarding, race.

In making the arguments of this essay, I will be using a cultural studies approach to delve into questions of race that are relevant to law. Popular cultural images are reflections, as well as arguments for certain kinds of social ordering and ideologies. In particular, I will briefly consider how Latinos are imagined in the popular imagination as a point of entry for my two arguments.

I. THE ARCHITECTURE OF RACE<sup>8</sup>

In Anibal Quijano's article "Coloniality of Power, Eurocentrism and Latin America"<sup>9</sup> he provides a theoretical lens through which to understand how current power relations are descended from colonial legacies. Quijano defines coloniality of power as "[t]hat specific basic element of the new pattern of world power that was based on the idea of 'race' and in the 'racial' social classification of world population" and whose "most significant historical implication is the emergence of a Eurocentered capitalist colonial/modern world power that is still with us."<sup>10</sup> In the coloniality of power, the European individual is the modern, rational subject, while non-Europeans remain in a state of nature, and are objects for study, domination and exploitation. The logic of coloniality of power applies both to international relations and the categorization of nations, as well as to the structuring of groups and power within a nation.

Quijano's theory is in sympathy with the work of philosopher Charles Mills as articulated in his book *The Racial Contract*.<sup>11</sup> In this work Mills argues that the last five hundred years has been shaped by "the reality of European domination and the gradual consolidation of global white supremacy,"<sup>12</sup> which he identifies as a political system. The Social Contract articulated by Enlightenment philosophers was dependent upon the Racial Contract according to Mills because the establishment of what he terms a "racial polity" which partitioned non-whites from whites, allowed for the Social Contract theorists to assert the assumption that all white men were free. The racial contract consists of a set of meta-agreements between whites to categorize non-whites in a category not fully human, but humanoid, with inferior moral and legal status to whites. The agreement, while not conspiratorial, is "real" according to Mills. He writes, "No single act literally corresponds to the drawing up and signing of a contract, there is a series of acts...which collectively can be seen...as its conceptual, juridical, and normative equivalent."<sup>13</sup> Composed of geographies and genealogies of difference, racial others to European whites were constructed during the Enlightenment, and throughout the 19<sup>th</sup> century as non-rational, and outside of the social contract of the "citizen", the figure who in common law would be imagined as the reasonable person. This racial contract, according to Mills has ongoing power. Globally, bodies and nations were and are racialized in the genealogy of conquest, with whites imagined as the natural "rulers" of nation states as well as global political networks.

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<sup>8</sup>As a movement, LatCrit theory has centered Latino/a experience in legal thought, yet, has committed to contextualizing that experience within the larger spectrum of race and other group relationships. The philosophical premise of LatCrit is therefore sympathetic to the notion of an architecture of various kinds of social and political relationships with respect to race.

<sup>9</sup>1 NEPANTLA: VIEWS FROM THE SOUTH 551 (Michael Ennis, trans., Fall 2000).

<sup>10</sup>*Id.* at 552.

<sup>11</sup>*See generally* CHARLES MILLS, *THE RACIAL CONTRACT* (1997).

<sup>12</sup>*Id.* at 20.

<sup>13</sup>*Id.* at 20 – 21.

As scholar Devon Carbado has noted, the black-white binary does not privilege black people, nor was it authored by black people. Rather it is the outgrowth of history and ideology.<sup>14</sup> Nineteenth century eugenicists made sense of the world in terms of a hierarchy of races with whites at the top, blacks at the bottom, and others at various positions in the middle. Eugenics, with white and black as the definitive extremes, provides one of the intellectual origins of the black white binary. And slavery, as the means of the creation of the U.S. as a world power, provided the economic and legal origin of the black-white binary, with blackness being the mark of the unfree, and post slavery Jim Crow operating as a dramatic example of the “badges of servitude.”

Both Quijano and Mills understand race as part of the structure of empire, and both give us means for understanding how race is constructed within a nation, and how that national construction has a codependence with how race is constructed globally. One of the early lessons taught to any person studying race internationally is that race is constructed in different ways across the globe but the structures of power and inequality, based upon physiognomy, genealogy, economics and the history of conquest, are completely interrelated across national borders. Inquiries that lead us towards examination of this interrelatedness will enrich our understanding of how race operates as the U.S. becomes increasingly multi-cultural, multinational and multiracial.

Critical Race Theorists have used the term “intersectionality” to describe the complex reality of race, beyond simple categorization, exploring the intersections of our experiences as members of various groups (race, class, gender, etc.) at once. I choose the term architecture over intersection because while intersection implies the individual and personal experience, architecture refers to larger social arrangements and groupings. I hope this work provides useful introductory ideas about how to reconceive how we treat race legally, and how we should respond to the mistreatment of the racially oppressed.

## II. DESI ARNAZ, COLONIALISM AND COLORISM

Desi Arnaz and his wife, Lucille Ball, hosted the most popular television show of the 1950s. I have noticed anecdotally that if you mention this fact today people will wonder at the absence of controversy with respect to this “interracial” union. That a Latino actor and his white American wife were the two stars of the number one sitcom in the United States in the 1950s, without uproar or protest, only makes sense within the historical context of the racial contract and colonialism. The fact that Desi was understood by the American public as a white colonial elite or at least as possibly white, is what made the show possible, despite the fact that Cuba was conceived of as a colored nation.

Desi Arnaz’s autobiography offers a complex personal genealogy of a colonial elite. He describes the appointment of his great grandfather to the mayorship of Santiago by the Queen of Spain, and a family full of numerous elected officials, doctors, judges and the like. He describes himself ethnically as “French, Irish,

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<sup>14</sup>Devon Carbado, *Race to the Bottom*, 49 UCLA L. Rev. 1283 (2002).

Spanish and a little Cuban”<sup>15</sup> whereas Lucy is French Irish and German. He constructs himself as “white” in Cuba through his reference to black difference.<sup>16</sup> He speaks of what the blacks did, where they lived, their fealty to his family, his father’s noblesse oblige to them, and his early sexual experiences with black and mulata girls. Quijano describes the post-colonial independence of many Latin American nations like Cuba as “independent states of colonial societies.” Although they achieved independence from Spain, the minority European ruling class depended upon the colonial racial ideologies in order to continue the economic exploitation of black, Indian and Mestizo people. He argues this impeded the development of the modern nation state because such development would have been dependent upon a democratization that the ruling class was not willing to allow to develop alongside people of color.

The racial hierarchy of pre-revolutionary Cuba created in Desi Arnaz a man who could beautifully sing a praise song to a Yoruba deity, Babalu, and yet marry a white American woman without controversy. He was a white male of the ruling class in a colored nation.<sup>17</sup> The coloniality of power of pre-revolutionary (and some would argue post-revolutionary) Cuba, combined with United States racial politics creates interesting realities. In a 2000 New York Times article by Mirta Ojito she depicts the distinctive experiences of two men who immigrated to Miami from Cuba, one white-skinned and one black-skinned, and the manner in which their phenotypes determined their experiences here.<sup>18</sup> She describes the lingering racism that had been experienced by the black man in post revolutionary Cuba, despite its dramatic advances towards racial equality, and the virulent racism he experiences at the hands of conservative white Cubans in Miami. In contrast, speaking of Achmed, the white Cuban man, she writes “[W]hen he thinks about race, which is not very often, it is in terms learned from other white Cubans: American blacks, he now believes, are to be avoided because they are delinquent and dangerous and resentful of whites. The only blacks he trusts, he says, are those he knows from Cuba.”

Joel, the black Cuban, in contrast describes how being in the United States actually gave him a language to describe the racism he experienced in Cuba, and a sense of his own “rights” even as the racism he experiences here in the United States within and without his nationality is far more aggressive. Achmed says, “[I]t’s not that I’m racist...but even in Cuba, I had a vague sense blacks were different. That becomes more real here. In Cuba, everybody’s the same, because everybody’s poor.

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<sup>15</sup>It does not seem that Arnaz is using little in the way Dominican writer Julia Alvarez describes a “little color behind the ears” as a subtle reference to African Ancestry amongst Dominican elites. Rather he seems to be making a cultural reference here to Latin American reference to “what about your grandmother” to suggest the lack of racial purity, and African roots, is refuted in Arnaz’s narrative because he provides such a complete genealogy.

<sup>16</sup>Many scholars have noted how whiteness has been constructed in opposition to blackness, or that race gets its meaning through membership versus difference.

<sup>17</sup>Certain segments of the Miami Cuban community balk at the use of the term white to describe White Americans, preferring the term Anglo to demonstrate awareness that Anglos aren’t the only whites.

<sup>18</sup>Mirta Ojito, *Best of Friends: Worlds Apart*, N.Y. TIMES, June 5, 2000 at A.

Not so here." As though to suggest the free market allows natural racial differences to emerge, an argument consistent with racial contract ideology.

The article treats Joel's integration into the black American community and alienation from the largely white-skinned Miami Cuban community. The poignancy of reading about Joel's experience is heightened for the reader when one considers how exceptional it is to see a media treatment of a Latino with noticeable African ancestry. Black Latinos are obscured in our culture, and we are very rarely asked to consider the specificity of their racialized experiences.<sup>19</sup> The failure in general to attend to the diverse experiences of peoples of African ancestry props up the black white binary by dissolving all people of African ancestry into black American categorization, even as they may not identify racially as Black.<sup>20</sup> Black Latinos are virtually invisible in the pop cultural construction of Latinos. Notice also, in the careers of late actor Merlin Santana, and Miguel A Nunez Jr., two brown skinned and kinky haired Dominican men, and the Cuban and Puerto Rican actress Irene Cara, they have rarely played Latino characters.

However, this exclusion of Latinos with clear African ancestry from the public image of Latinos is not merely a function of the racial constructs of the United States. Colorism exists throughout Latin America and is reflected in Spanish language media, through standards of beauty and images of what a Latina looks like.<sup>21</sup> Carlos Flores observes that, It is rare to see Latinos of African descent on Spanish-speaking television or in movies. It is equally rare to see them advertising products in national Latino magazines. For a long time, Spanish-speaking television has portrayed Latinos of African descent and indigenous people as uneducated, lazy, sex driven, violent, sloppy, and untrustworthy. It is even more troubling to see the

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<sup>19</sup>Jennifer Hothschild notes that, "White Hispanic men earn more than black or dark-skinned Hispanic men; white Hispanic with little education or labor market experience succeed more in the job market than similarly situated black Hispanics." These results held even with standard social and economic controls ... Census data from 1970 and 1980 show that black Hispanics are much more residentially separated from Anglos than are white Hispanics in all of the ten metropolitan areas studied. Black Hispanics are, conversely, much more residentially integrated with African Americans than are white Hispanics. White and black Hispanics are also residentially separated from one another. White Hispanics are just as likely to live near Anglos as near black Hispanics, black Hispanics are more likely to live near U.S. blacks than near white Hispanics. When Hispanics are divided into three groups rather than two (with a self-titled "Spanish race" occupying the space between white and black), levels of separation for the newly added group fit in between the other two just as the skin color continuum would predict. Finally, the pattern of skin color hierarchy just described holds even with controls; as we have seen in the case of African Americans, skin color is not merely a stand-in for social class but rather generates a directly discriminatory response on its own." Jennifer Hothschild From Nominal to Ordinal: Reconceptualizing Racial and Ethnic Inequalities in the United States Paper Conference on "The Politics of Democratic Inclusion" Notre Dame University 2002.

<sup>20</sup>There is virtually no other nation in which the term "black" has as broad a racial definition as it does in the United States. In most nations, "black" is a term designated for the purely African, and other terms denoting racial admixture are used for others.

<sup>21</sup>Colorism is a term referring to bias or prejudice on the basis of relative lightness or darkness of skin color, generally suggesting a preference for, and privilege accorded to, lighter complexions.



Latino creating a perception that all Latinos look like Ricky Martin, Julio Iglesias, and Gloria Estefan. This Eurocentric model is evident whenever you tune to Spanish television programming. The actors, reporters, and talk show hosts are all basically blond and blue-eyed.<sup>22</sup> The history which fuels the structure of depictions of Latinos in Latin America and in the United States is of a shared logic. While nations have been treated as “colored” people within those nations have experienced hierarchies of color and ethnicity, both connected to the history of conquest.<sup>23</sup> This is not to say that white skinned Latinos do not face discrimination when they come to the United States. Rather, it indicates that we should be aware that there may be some diversity in the experience of racialization amongst different categories or subcategories of Latinos.

Reportedly, when Desi Arnaz and Lucille Ball had the final argument before their final break up, she hurled racial slurs at him saying, “I got enough on you to hang you. By the time I get through with you you’ll be broke as when you got here. You goddamn spic...you...wetback.”<sup>24</sup> This name calling apparently didn’t phase him, unsurprising given his identity in Cuba and the role he occupied in the United States. He wittily responded to her verbal assault by reflecting, “That would be something for a Cuban to be. The Straits of Florida are quite a bit wider than the Rio Grande.”<sup>25</sup>

Desi’s experience demonstrates how a person might have a privileged (white) body within the racial contract even as the nation from which that person emerges may suffer from all of the residues of colonialism and neo-colonialism, and moreover itself might be racialized in comparison with European nations and the United States. Lucy’s invectives indicate that perhaps Desi’s nationality, which *was* racially othered, put his whiteness in a precarious place.<sup>26</sup>

The Ojito article raises questions about the role of color and its relationship to race. Joel and Achmed are both Cuban, but Joel is classified as black and Achmed as white (perhaps) according to our dependence upon color as the primary although

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<sup>22</sup>Carlos Flores, RACE DISCRIMINATION WITHIN THE LATINO COMMUNITY DIÁLOGO, Winter Spring 2001 5.

<sup>23</sup>Delgado writes, “anglocentric norms of beauty divide the latino and black communities, enabling those who most closely conform to white standards to gain jobs and social acceptance, and sometimes to look down on their darker-skinned brothers and sisters. Box-checking also enables those of white or near-white appearance to benefit from affirmative action without suffering the worst forms of social stigma and exclusion. Delgado, *supra* note 6, at 296.

<sup>24</sup>Desi Arnaz, A BOOK 316 (Buccaneer Books 1976).

<sup>25</sup>*Id.* at 317.

<sup>26</sup>Some critics have suggested that Desi’s popularity was due in part to his struggles with English, that white viewers identified his struggles with those of their parents and grandparents from the old countries of Europe. The history of the assimilation of European immigrants into whiteness is also a story of linguistic assimilation which is a precondition of “becoming white.” Interestingly, given that groups are identified generally either with whites or blacks in their integration into US culture, as critical race theorist Angelo Ancheta has argued, one often finds language to be a marker of how the group is perceived, with black English being a mark of otherness. This is particularly noteworthy in the rap music that comes from various peoples of color.

not nearly sole criterion for racial categorization. Color, like language and nationality, is one of the metanarratives of race. Colorism is intertwined with racism, although it is a distinct bias. Trina Jones, in her article *Shades of Brown: The Law of Skin Color*,<sup>27</sup> argues that colorism should be a legally cognizable category of discrimination. Jones finds bases for making color claims under 42 U.S.C. 1981 of the Civil Rights Act of 1866, and discusses cases in which Title VII of the Civil Rights Act of 1964 has been found to provide a remedy for interracial color discrimination.<sup>28</sup> Hence, she argues that there is a possibility that interracial colorism might be legally cognizable as well. Jones notes that “sociologists have found that even when researchers control for socioeconomic background, lighter-skinned Blacks fare better educationally and occupationally.”<sup>29</sup> Therefore, interracial colorism has serious material consequences and impact. Jones’s colorism argument is connected to the LatCrit critique of the black white binary precisely because race operates in Latin America in a fashion distinct from the way it does in the United States. For example, the 2000 census marked the first time in more than thirty years that Puerto Ricans living on the island were asked to identify themselves racially. The results were that almost 81% classified themselves as white. This means that, according to self-designation, Puerto Rico is “whiter” than the United States, where about 75% of the population identifies itself as white,<sup>30</sup> even as Puerto Rico is not viewed as a “white” nation.<sup>31</sup> While black Americans arguably have as much color diversity as many Latino groups, the role of color as opposed to race is relatively submerged due to the history of the one-drop rule.<sup>32</sup> Just as colorism exists amongst

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<sup>27</sup>Trina Jones, *Shades of Brown: The Law of Skin Color*, 49 DUKE L. J. 1487 (2000).

<sup>28</sup>*Id.* at 1544.

<sup>29</sup>*Id.* at 1512.

<sup>30</sup>It is important to note here that for many the self-designation as white (as it has been argued) simply refers to lighter coloring, or that there is the perception that a self designation as white might provide some future benefits individually or collectively. Finally, it is especially important to recall that such racial designation doesn’t necessarily have the emotional importance for Puerto Ricans as it does in the United States.

<sup>31</sup>Miriam Jiménez Román explains one of the tensions between Nuyoricans and Island Puerto Ricans as emerging from the sort of race consciousness developed by those born and raised in the United States. She writes, “certainly among the most disturbing of those influences for the island Puerto Ricans has been the Nuyoricans’ apparent obsession with race and racism and, most particularly, their identification with African-Americans. This rejection of Nuyoricans and their ideas about race cannot simply be attributed to an affirmation of Puerto Rican nationalism as against the colonizing metropole. This reluctance to engage racism as anything other than an imported “Gringo” problem is consistent with the exceptionalist posture typical throughout Latin America, where the myth of racial democracy has continued to dominate national discourse despite well-documented evidence to the contrary.” Miriam Jiménez Román, *Allá y Acá: Locating Puerto Ricans in the Diaspora(s)* DIALOGO, Winter Spring 2001.

<sup>32</sup>The one-drop rule was a general term to define the U.S. policy of considering a person African American (then Colored or Negro) if he or she had any known African ancestry. While racial designation was a matter of state law, and in various states at various times there were a range of levels of admixture that defined someone as black, most states came to adopt the one-drop rule in the early twentieth century.

African Americans, and preferential treatment is often afforded by whites to black of lighter complexion, colorism exists in many countries of Latin America, and people may bring that colorism with them when immigrating to the United States, a nation which reinforces or introduces greater colorism. More importantly, for this argument, color may matter to Latinos, even if racial categorization doesn't have great significance, and even if the primary identification is with an ethnicity or nationality rather than a race, or if the ethnicity is in fact a proxy or metanarrative of race itself as frequently is the case for Latin Americans living in the United States. Hence, "Mexican" bears the weight of a minority racial category in our culture, even as there are "white" Mexicans who may be privileged as a result of their white complexions.

Much ado has been made about Latinos displacing African Americans as the largest minority group in the United States. However, some critics have argued that whether or not this is true depends upon whether you count black Latinos amongst black people and not simply as Latinos. As a group they are under acknowledged in Latino imagery. They are also not acknowledged in the numeric accounting of black people. Whether they should be counted as "black" for the purpose of counting social groupings is a difficult question to answer, but the dilemma makes it clear that racial categorization alone is not enough to understand racialization.

Just as ethnicity is distinct from race, color is as well, and both distinctions are infused in the complicated attempt at racial classification of Latinos in the United States. The United States government understands that Hispanic is not a race, but it is often treated as such. The United States District Court acknowledged as much in *United States v. Ortiz*, essentially coming to the conclusion that hispanicity was a matter of identity rather than biology or phenotype.<sup>33</sup> Hence, we have the census categories, white not Hispanic, black not Hispanic, indicating that one might be white or black and Hispanic, although implicitly putting the designation within racial categorization because it is amongst black, white, Native American, and Asian. This is done presumably because Latinos face racism and are constructed racially, even if the designation Hispanic or Latino is not a racial one. This is not simply because the term Latino often operates in the United States imagination as a proxy for Mestizo, but also because of the histories of colonialism, and coloniality of power as experienced by the majority of people of Latin America. Nationality has much to do with the way hispanicity is racialized, but language, and other elements are significant as well. Is a black skinned Latino like Joel racially black? We know that race is a social construct, and that even as being Latino is not a racial membership technically, we know the otherness in the construction of Latinos is a function of racialization, so perhaps he is, culturally speaking, racially Latino. Might the racism he experiences be a function of either color, or language or national origin? If we say, for our purposes as legal thinkers, that he is black, whereas Achmed is not, are not we confusing race with phenotype. In countries where the one-drop rule did not exist, the genealogy for "whites" is often not purely European. So potentially two people with the same racial make up could be classified as members of different racial groups because of ethnicity. Imagine that Achmed is 1/16th African

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<sup>33</sup>897 F.Supp. 199, 203 (E.D. Pa. 1995); See also 49 C.F.R. § 26.5 (2004) (stating the federal government of the United States defines Hispanic as the people of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race).

genealogically, as is an African American woman named Tia. But in the United States, Achmed is identified racially as white, while Tia is identified racially as black. I venture to say that this distinct designation is not necessarily inaccurate because, as we know, race is socially constructed. Notwithstanding identical genealogy, their relationships to the architecture of race in the countries of their origins, and in the current cultural landscape, are what create their racial identities.

Thinking along these lines we might easily get ourselves caught in a mess of designation and definitions that shows the inanity of race, and we might be encouraged to give up by simply committing to the existing categories and fudging everyone into one of those categories. However, the critical work that has been done on colorism pushes us to add further sophistication to how we think of race. Harvard professor of Government, Jennifer Hothschild, has done research on color, and has shown how within every “racial” group in the United States, one finds lighter skin privilege. Hothschild’s work supports Trina Jones argument to include color as an unacceptable basis for discrimination for the purposes of Civil Rights Law. Hothschild proposes that we think of race and ethnicity in the United States according to three principles, skin color, identity and stigmatization along traditional categories. She writes, 1) skin color is closely linked with conventionally defined success both across and within nominal racial/ethnic groups with exceptions for individuals and perhaps even small or unusual nationalities; 2) racial or ethnic identity and commitment to that identity do not necessarily follow the skin color hierarchy; and 3) stigmatization and discrimination continue to operate at the level of traditional nominal categories.<sup>34</sup> Color is simply one of a number of factors in the architecture of race that matters alongside what is technically defined as race. Seeing the role color plays for Latinos both in Latin America and the United States supports this observation.

The lightness of Jennifer Lopez’s body perhaps affords her greater professional access. Lopez often plays white characters in a sort of reversal of earlier times when white actors often played Latinos (Al Pacino, Natalie Wood, Janet Leigh.) The contemporary image of Lopez and a handful of others who smoothly cross racial borders is a dangerous obfuscation, a descendant of Desi’s unproblematized entry into United States popular culture. If we treat “Latino” as a cultural group, which is proxy for race, in the way we treat race legally and rhetorically in our culture, then the creation of the image of Lopez tricks the audience out of knowing the racism experienced by Puerto Ricans as a group and individually. Her public image is a poor representative of Latina racial experience. Jennifer Lopez has acted white in more films than she has as Latina. In *Out of Sight*, one scene stands out in which she is fighting off a dark skinned Central American Latino who is presented as both a bumbling idiot and evil. Her lighter body, with greater moral and aesthetic integrity in the logic of the film, is contrasted against his.

*Maid in Manhattan* presents a quite romantic image of the experience of a Latina domestic who becomes sexually involved with a powerful white man, to be contrasted to that in the film *Bread and Roses*. *Bread and Roses* is director Ken Loach’s feature about a young Mexican immigrant woman who becomes part of the movement to unionize the largely Mexican female population of janitors in

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<sup>34</sup>Hothschild, *supra* note 19.

downtown Los Angeles. The central character, and her sister, are sexually vulnerable and threatened by men who have economic power over them. Her sister's spirit is broken by the sexual exploitation she experiences. In contrast *Maid in Manhattan* is a Cinderella story, an unproblematic encounter with an upper class Republican senatorial candidate, who describes her as "Mediterranean looking."

Lopez has a distinct level of access for a Latina actress, but her image<sup>35</sup> fails to bring to the table a discourse about Puerto Rico, and in particular the manner in which as a semi-colony it experiences the wounds of racism. The mid-twentieth century history of white actresses playing Latina characters offers clues as to how racism is implicated in the Hollywood project. While those films offered a pretense of struggling against prejudice and exclusion through their characters, they do so in reality only because there has been an imagined failure of assessment on the part of anybody who discriminates against these women. The message is, these are really white people not racial others, therefore, they should not be excluded. Hence, the audience is not forced to confront its racism either in the physiognomic imagination; nor in the reality of the actors behind the film. In the contemporary landscape we are encouraged to be inclusive, not because of an anti-racist impulse, but because we are told "look she really is (almost) white."<sup>36</sup> Chicana feminist writer, Cherrie Moraga, has written, "U.S. Latinos represent the whole spectrum of color and class and political position, including those who firmly believe they can integrate into the mainstream of North American life. The more European the heritage and the higher the class status, the more closely Latinos identify with the powers that be. They vote Republican. They stand under the U.S. flag and applaud George Bush for bringing "peace" to Nicaragua. They hope one day he'll do the same for Cuba so they can return to their patria and live a "North American style" consumer life. Because they know in the United States they will never have it all. They will always remain "spics," "greasers," "beaners" and "foreigners" in Anglo-America."<sup>37</sup>

Not only then are we not seeing the reality of colorism experienced by many Latinos, but moreover the entrée afforded by lighter color, often obscures the other metanarratives of racism experienced by Latinos, even those who are white-skinned, as suggested by Cherrie Moraga's critique. Hence my argument about color is two-fold. One is that color matters, and that it should become part of our jurisprudence of race, but two color, like racial category, is insufficient on its own. It is posed here as an example. One that is compelling because it becomes so tricky as more people of more colors from different places are together in one nation, but of course language, citizenship, and geographies all contain metanarratives of race. Failure to acknowledge metanarratives of race leads us to failing to respond to numerous sites of racism. Jones describes the distinction between color and racism, and the dangers

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<sup>35</sup>I am careful here to distinguish the image from the individual. Celebrities are "corporate" creations, in both senses of the word, group and commodity. Lopez's image is not equivalent to her identity and in fact might be oppositional to it.

<sup>36</sup>There is also the traditionally racist depiction of Latinas in film. The contrast between the two images creates a division, the good (read: assimilable and white skinned) Latina, and the bad (read: stereotypical racial other) Latina.

<sup>37</sup>Cherrie Moraga, *Art in America Con Acento*, LATINA WOMEN'S VOICES FROM THE BORDERLANDS 214 (New York, Simon and Schuster, 1995).

of simply absorbing colorism into racism by saying, “The danger is that if courts focus solely on race, they may overlook discrimination based on skin color because it may be difficult to believe that a person who hires Blacks will engage in discrimination against other Blacks, or that a person who is Black would discriminate against another Black person. If however, courts understand colorism, then they are more likely to perceive the intricate ways in which people discriminate even within racial categories.”<sup>38</sup> Linguistic or cultural bases for racism against Latinos may manifest in a variety of ways, and may be impacted by color, or nationality, both in inter and intra-racial instances of discrimination. When one adds to that the varieties of groups within different “categories” of people of color, the number of potential failures in recognizing racism grows exponentially. However, categorical additions are not the sophisticated response, rather, considering the political architecture that surrounds groups and identities is necessary.

The value of looking to Latino experience to consider how color and race interact is matched by the value of looking at language. Moreover, the specific experiences of Latinos assist us in understanding how these issues are relevant for the racialization of all peoples of color. In the case of language as a meta-narrative of race, it is not simply whether one speaks English or Spanish or Creole, that is racialized but also whether one speaks Black English or Tejano Spanglish, Nuyoricanese, or Jamaican Patois. Power inequities exists not simply between languages with armies and navies, but between those without either.<sup>39</sup>

### III. THE MATRIX

The overarching matrix of domination houses multiple groups, each with varying experiences with penalty and privilege that produce corresponding partial perspectives, situated knowledges, and, for clearly subordinated groups, subjugated knowledges. No one group has a clear angle of vision. No one group possesses the theory or methodology that allows it to discover the absolute truth or, worse yet, proclaim its theories or methodologies as the universal norm evaluating other groups experiences.<sup>40</sup>

The discourse of multiculturalism which is generally speaking, about multiple categories, rather than the structural relationships between and within categories, fails us in that it disregards a history where color castes, half castes, racial castes, and

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<sup>38</sup>Jones, *supra* note 27.

<sup>39</sup>Noam Chomsky said, “a language is a dialect with an army and a navy.” Gloria Anzaldua writes, “Chicano Spanish is as diverse linguistically as it is regionally...if you really want to hurt me, talk badly about my language. Ethnic identity is twin skin to linguistic identity- I am my language. Until I can take pride in my language, I cannot take pride in myself. Until I can accept as legitimate Chicano Texas Spanish, Tex-Mex, and all the other languages I speak. I cannot accept the legitimacy of myself.” (Her observation ties into the experience of those teachers who recognized Ebonics as a language being assaulted by blacks and whites alike for seeing the legitimacy of black English as Language.)

<sup>40</sup>Patricia Hill Collins, *BLACK FEMINIST THOUGHT : KNOWLEDGE, CONSCIOUSNESS AND THE POLITICS OF EMPOWERMENT* 237 (Boston: Unwin Hyman 1990).

national power, language and more all were and are tied to the ordering of the world. That said, even if you accept the argument that we should attend to race as an architecture, rather than as a list of categories, the challenge still exists as to how to do so in a matter that has legal coherence. One way is to add more suspect classifications. Another is to add a concept of enhancements to suspect classifications. Recent debates over affirmative action suggest that there are ways of accounting for this architecture. Affirmative action schemes which give points for race, depending upon region or national origin, or class, are beginnings towards architectural assessments of race which might provide clues as to how to begin to add such a way of thinking to Civil Rights Law. So, for example, if a defense to accusations of racism is made with evidence of having hired another person of color, that defense might be rebutted if there are distinctions between the people of color hired that are part of historically demonstrable metanarratives of race like color, or nationality, or socioeconomic class. Devon Carbado and Mitu Gulate's article, *The Fifth Black Woman*,<sup>41</sup> is a challenge to expand our understanding that identity, read more broadly than simple racial categorization, may play a significant role in the experience of racism and may provide a basis for a race jurisprudence that reflects that reality.

We need theoretical lenses through which to move towards architectural understandings of race. To that end, I want to propose that we embrace in Critical Race Theory a theoretical turn derived from Patricia Hill Collins concept of matrices of domination. Collins intellectual work centers black women's experience, but she moves from that to develop a broader theoretical model in which to consider oppression. In *Black Feminist Thought: Knowledge Consciousness and the Politics of Empowerment*,<sup>42</sup> Patricia Hill Collins articulated her model of matrices of domination. Collins argues for a structural analysis of the complex of sites of privilege, domination, and or, marginalization and impoverishment. In this work Collins suggests that identities are shifting in relationship to others, that there is nothing fixed about being oppressed or oppressor, but that we should look to the interlocking systems of oppression that exist which may privilege us in certain respects and oppress us in others. Collins argues against what she calls additive models of oppression, in which each kind of oppression (race, class or gender for example) is viewed independently. She writes that "additive models of oppression are firmly rooted in the either or dichotomous thinking of European masculinist thought... The emphasis on quantification and categorization occurs in conjunction with the belief that either/or categories must be ranked. The search for certainty of this sort requires that one side of a dichotomy be privileged while its other is denigrated. Privilege becomes defined in relation to its other."<sup>43</sup> Rather than an additive separate systems approach, Collins advocates that we look to the "social

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<sup>41</sup>Devon Carbado & Mitu Gulate, *The Fifth Black Woman*, 11 J. CONTEMP. LEGAL ISSUES 701 (2001). (In this article they use the notion of identity performance. They argue that different ways of performing one's racial or gender or other identity might lead to discrimination that other members of the given group who perform identity in an alternative fashion, might not experience).

<sup>42</sup>Collins, *supra* note 40.

<sup>43</sup>*Id.* at 222.

relations of domination.” Analogously, I want to suggest that we move beyond the categorizations and additive concept of various kinds of racial oppressions (taking a sub category of Collins analysis and delving deeper into it) and to propose that Critical Race Theory attempt to understand the social relations of racial domination in order to develop new models of redress that develop out of that holistic consciousness about race politics. Collins “matrix” is implicitly architectural, as the epigraph to this section indicates. She treats the interrelatedness of the various kinds of oppression that exists in our society, focusing primarily on race, class and gender. I believe it is also useful to look more closely at the single category of race which itself has multiple axes of oppression. Collins also looks at the various levels of oppression from personal, to group, to social institutional. Similarly, in a Critical Race Theoretical model, we might look to various levels of legal intervention, from intra to interracial discriminations, or from individual to institutional ones. Such work has begun, and been described as “post-intersectionality” or multidimensionality theory. As Darren Lenard Hutchinson has argued, “Multidimensionality theorists have attempted to move beyond intersectionality’s antiessentialist roots by examining questions of ‘intersecting’ privilege and subordination- rather than simply focusing on the lives of individuals such as women of color, who are excluded from ‘single issue frameworks.’<sup>44</sup> Such scholarship, like my own, owes significant debt to intersectionality theory even as it attempts to chart new territory. What distinguishes my call in this paper from multidimensionality theory (although my work is sympathetic to it) is that rather than examining the intersecting structures of power and subordination in the categories of race, class, gender, and sexuality, I am applying the idea of multiple dimensions or an architecture of power to the metanarratives of race in particular, as one vein of the politics of power and subordination.

In Race Jurisprudence and Civil Rights Law we should, in understanding the architecture or matrix, look to the threads of color, citizenship status, language, nationality, and geography. We should also consider the specificity of a given party’s location and situation with respect to privilege. We should ask, which group has power within the given context? Which group(s) is/are poor? Who is the authority, and who makes decisions? The concept of “rotating centers” that critical race theory has adopted in its expansion is not enough if we fail to see how those centers interact with or contradict each other, if we ignore the architectonics of our relationships to others, both oppressed and oppressors.

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<sup>44</sup> Darren Lenard Hutchinson *New Complexity Theories: From Theoretical Innovation to Doctrinal Reform* Symposium: Theorizing the Connections Among Systems of Subordination Responses and Commentary, UKMC L. REV. Winter 2002 at 435.