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DIRECT DEMOCRACY, RACIAL GROUP AGENCY, LOCAL GOVERNMENT LAW, AND RESIDENTIAL RACIAL SEGREGATION: SOME REFLECTIONS ON RADICAL AND PLURAL DEMOCRACY

KEITH AOKI*

I. JEFFERSONIAN YEOMEN AND “ELITE CADRES OF MADISONIAN NOTABLES AND LEGAL ANALYSTS”: “DIRECT DEMOCRACY IS NOT NECESSARILY “RADICAL DEMOCRACY.”

I have been thinking about Bob Chang’s radical democracy project¹ that he has been working on recently and am very honored and grateful to be among the persons invited to participate in this Symposium. Allow me to give you a brief bit of biographical information that bears on some of the questions which arise in connection with a Symposium entitled, “Toward a Radical and Plural Democracy.” First, I graduated from law school in 1990, and if asked at that time, I would have considered myself extremely sympathetic to a left neo-Jeffersonian/Tocqueville-ian vision of a decentralized and democratized polity, having been strongly influenced by the work of Gerald Frug,² who has been working on the problem of how to progressively recharge local government law. Additionally, for the 15 years prior to getting out of law school I had lived in Boston and New York City—two cities not famed for their open government. Thus, a decentralized and more open vision of local politics had its attractions.

However, four years ago I moved to Eugene, Oregon and was initially pleased with the open-textured, good government image of Oregonian politics: none of that smoke-filled, boss-run, machine-style politics out here in the west. Oregon, like California, has had the initiative process (in which citizens may place ballot measures and initiatives for a vote, providing they

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1. See, e.g., Robert S. Chang, *Reverse Racism!: Affirmative Action, the Family, and the Dream That Is America*, 23 HAST. CONST’L.Q. 1115 (1996); Robert S. Chang, *The Nativist’s Dream of Return*, 9 LA RAZA L.J. 55 (1996); Robert S. Chang, *Passion and the Asian American Legal Scholar*, 3 ASIAN L.J. 105 (1996); Robert S. Chang & Keith Aoki, *Centering the Immigrant in the Inter/National Imagination*, 85 CAL. L. REV. (forthcoming 1997); see also ERNESTO LACLAU & CHANTAL MOUFFE, *HEGEMONY & SOCIALIST STRATEGY: TOWARDS A RADICAL DEMOCRATIC POLITICS* (1985).

2. See, e.g., Gerald E. Frug, *The Geography of Community*, 48 STAN. L. REV. 1047 (1996); Gerald E. Frug, *Decentering Decentralization*, 60 U. CHI. L. REV. 235 (1993); Gerald E. Frug, *The City as a Legal Concept*, 93 HARV. L. REV. 1057 (1980).

have collected enough signatures) in place since the early part of this century.³ Having a relatively sparse population (for example, Lane County, where I live, is approximately the size of the entire state of Connecticut) seemed to provide for increased contact between constituents and their representatives. However, not long after arriving in Oregon, I became aware of some of the drawbacks to the so-called "direct democracy" of government-by-initiative.⁴ In 1994, the Oregon Citizens' Alliance, an extremely conservative organization, managed to get an anti-gay rights initiative, Ballot Measure 13, on the ballot. While Oregon's Ballot Measure 13 was narrowly defeated,⁵ a like-initiative, Measure 2, narrowly won in Colorado, but was struck down by the Supreme Court in *Evans v. Romer* in 1996.⁶ Similarly, in 1992 Oregon voters approved a property tax cap, Measure 5, which like California's Proposition 13 has had devastating effects on higher education and provision of other important government services. Rather than describing myself as a neo-Jeffersonian, nowadays I guess I would call myself a born-again but somewhat chastened Madisonian (representative governance produced by a filtration of talent and checked by a judicial, by an "elite cadre of Madisonian notables and legal analysts" does not seem all that unappealing, particularly when one thinks about the alternative⁷), at least

3. GERALD E. FRUG, *LOCAL GOVERNMENT LAW* 824 (2d ed. 1994) ("The initiative and referendum are means by which voters can decide issues of city policy directly rather than by electing representatives to decide issues for them. An initiative is a piece of legislation placed on the ballot by means of a petition signed by a (legally-defined) number of voters. Passing an initiative can thus be a means of enacting legislation that completely bypasses the representative process, although sometimes an initiative allows the legislature an opportunity to accept or reject the proposal."); see also *City of Eastlake v. Forest City Enterprises*, 426 U.S. 668 (1976) (upholding the constitutionality of a municipal zoning ordinance which required 55% voter approval for any land use changes); *Meyer v. Grant*, 486 U.S. 414 (1988) (striking down Colorado statute that prohibited the use of paid initiative petition circulators).

4. David Sohonian, *The Origin of State Constitutional Direct Democracy: William Simon U'Ren and "The Oregon System,"* 67 *TEMP. L. REV.* 997 (1994).

5. Tracy Davies, Note, *Lewis v. Keisling: Sacrificing Simplicity and Avoiding "Discrimination"?*, 74 *OR. L. REV.* 341 (1995) (discussing the legal context of the 1993 Oregon Citizen's Alliance's (a conservative Christian organization) attempt to amend Article I of the Oregon Constitution through Ballot Measure 13, which was entitled "The Minority Status and Child Protection Act" and included language prohibiting "state and local governments from creating classifications based on homosexuality" or from enacting "laws or policies establishing affirmative action, quotas, or class status based on homosexuality," or using classifications such as "sexual orientation," "domestic partnership" or similar designations based on homosexuality." Oregon's Ballot Measure 13 was narrowly defeated in the November 1994 election. See David W. Dunlap, *The 1994 Elections: Homosexuals: Gay Politicians Cite Gains Amid Losses*, *N.Y. TIMES*, Nov. 14, 1994, at B9.

6. The U.S. Supreme Court held that Colorado's anti-gay rights amendment was unconstitutional on Equal Protection grounds. See *Romer v. Evans*, 116 S. Ct. 1620 (1996); compare also Francisco Valdes, *Queers, Sissies, Dykes and Tomboys: Deconstructing the Conflation of "Sex," Gender, and "Sexual Orientation" in Euro-American Law and Society*, 83 *CAL. L. REV.* 1 (1995).

7. The Federalist No. 10, at 82-83 (James Madison) (Clinton Rossiter ed. 1961). ("The effect of [delegation of the government to a small number of citizens elected by the rest is] to refine and enlarge the public views by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country . . . [I]t may well happen that the public voice, pronounced by the representatives of the people will be more

with regard to my observations of the initiative process in Oregon. However, once it becomes clear that “direct democracy” is not coterminous with “radical democracy,”⁸ it begins to be possible to rethink the democratic impulse undergirding them both.

My Essay has three main points (1) we had met the oppressors, and they are (at least partly) us; (2) are Asian-Americans Anglos? —how are we to frame a discourse between multiple racial and ethnic groups?, and (3) what do major demographic changes wrought by immigration mean for radical democratic politics? I think these three points are useful in discussing how to move toward a radical and plural democratic politics.

*A. We Have Met the Oppressors, and Are They (At Least Partially) Us?*⁹

The oft-quoted phrase, “we have met the enemy, and he is us,” is meant to be provocative. It questions the apparent ease of the move from identity politics into the development of political identity. Such questioning is evident in Robert Chang’s excellent and growing body of work, as a postmodern recognition of the thickness of identity, and is also captured by Chantal Mouffe’s idea of “subject positions.”¹⁰ Although the phrase is abstractly self-evident, its practical meaning remains unclear. However, the tradition of “new left” political activism sheds light on this question. It is

consonant to the public good than if pronounced by the people themselves [E]ach representative will be chosen by a greater number of citizens in the large than in the small republic, [therefore] it will be more difficult for unworthy candidates to practice with success the vicious arts by which elections are often carried; and the suffrages of the people being more free, will be more likely to center on men who possess the most attractive merit and the most diffusive and established characters.”); see also Federalist No. 16, *id.* at 117 (“The magistracy, being equally the ministers of the law of the land from whatever source it might emanate, would doubtless be as ready to guard the national and local regulations from the inroads of private licentiousness.”).

8. Derrick Bell, *The Referendum: Democracy’s Barrier to Racial Equality*, 54 WASH. L. REV. 1, 9, 13-21(1978) (“Far from being the pure path to democracy . . . , direct democracy, carried out in the privacy of the voting booth, has diminished the ability of minority groups to participate in the democratic process. . . . [and] because it enables the voters’ racial beliefs and fears to be recorded and tabulated in their pure form, the referendum has been a most effective facilitator of that bias, discrimination, and prejudice which has marred American democracy from its earliest days. . . . Direct legislation, the creation of progressives of another era, today poses more danger to social progress than the problems of governmental unresponsiveness it was intended to cure. . . . Appeals to prejudice, oversimplification of the issues, and exploitation of legitimate concerns by promising simplistic solutions to complex problems often characterize referendum and initiative campaigns.”).

9. This is a mangled paraphrase of the famous Walt Kelly phrase, “We have met the enemy and he is us.” See WALT KELLY, *POGO: WE HAVE MET THE ENEMY AND HE IS US* (1972).

10. See Chantal Mouffe, *Hegemony and New Political Subjects: Toward a New Concept of Democracy*, in MARXISM AND THE INTERPRETATION OF CULTURE 89-90 (Cary Nelson & Lawrence Grossberg eds., 1988) (“Within every society, each social agent is inscribed in a multiplicity of social relation—not only social relations of production but also the social relations, among others, of sex, race, nationality, and vicinity. All these social relations determine positionalities or subject positions and every social agent is therefore the locus of many subject positions and cannot be reduced to only one. . . . Furthermore, each social position, each subject position, is itself the locus of multiple possible constructions, according to the different discourses that can construct that position.”).

well represented in the Port Huron statement,¹¹ issued by the Students for a Democratic Society (SDS) as another important strand of “radical democracy.” In contrast with 1980s Reagan-Thatcherism, which envisioned a decentralized *public* state power, but valorized *private* power, the Port Huron Statement’s vision of radical democracy articulated not only the need to find decentralized forms of public authority,¹² but also the equally important need to search for ways to restrain and decentralize *private* power.¹³ Ralph Nader’s 1996 presidential candidacy contained elements of this strand of economic democracy,¹⁴ as does Michael Moore’s “Downsize This.”¹⁵ Elements of a broad-based populist agenda link this strand to earlier American Left progressive movements.¹⁶

However, one critique of the SDS was that it unthinkingly incorporated elements of sexist patriarchy into its day-to-day practices; while it was impor-

11. See *The Sixties Project: Primary Documents Collection: Port Huron Statement, 1962*, available at: <http://jefferson.village.virginia.edu/sixties/HTML_docs/Primary/Manifestos/SDS_Port_Huron.html> [hereinafter Port Huron Statement].

12. *Id.* (“We would replace power rooted in possession, privilege, or by circumstance by power and uniqueness rooted in love, reflectiveness, reason and creativity. As a social system we seek the establishment of a democracy of individual participation, governed by two aims: that the individual share in those social decisions determining the quality and direction of his life; that society be organized to encourage independence in men and provide the media for their common participation. In a participatory democracy, the political life would be based in several root principles: that decision-making of basic social consequence be carried on by public groupings; that politics be seen positively, as the art of collectively creating an acceptable pattern of social relations; that politics has the function of bringing people out of isolation and into community, thus being a necessary, though not sufficient, means of finding meaning in personal life; that the political order should serve to clarify problems in a way instrumental to their solution; it should provide outlets for the expression of personal grievance and aspiration; opposing views should be organized so as to illuminate choices and facilitate the attainment of goals; channels should be commonly available to relate men to knowledge and to power so that private problems—from bad recreation facilities to personal alienation—are formulated as general issues.”).

13. *Id.* (“The economic sphere would have as its basis the principles: that work should involve incentives worthier than money or survival. It should be educative, not stultifying; creative, not mechanical; self-directed, not manipulated, encouraging independence, a respect for others, a sense of dignity, and a willingness to accept social responsibility, since it is this experience that has crucial influence on habits, perceptions and individual ethics; that the economic experience is so personally decisive that the individual must share in its full determination; that the economy itself is of such social importance that its major resources and means of production should be open to democratic participation and subject to democratic social regulation.”).

14. See, e.g., RALPH NADER & WESLEY J. SMITH, *NO CONTEST: CORPORATE LAWYERS AND THE PERVERSION OF JUSTICE IN AMERICA* (1996); MARGARET M. BLAIR, *OWNERSHIP AND CONTROL: RETHINKING CORPORATE GOVERNANCE FOR THE TWENTY-FIRST CENTURY* (1995); DAVID I. LEVINE, *REINVENTING THE WORKPLACE: HOW BUSINESS AND EMPLOYEES CAN BOTH WIN* (1995); DAVID M. GORDON, *FAT AND MEAN: THE CORPORATE SQUEEZE OF WORKING AMERICANS AND THE MYTH OF MANAGERIAL “DOWNSIZING”* (1996).

15. MICHAEL MOORE, *DOWNSIZE THIS* (1996).

16. See TOM HAYDEN & CARL WHITMAN, *TOWARD AN INTERRACIAL MOVEMENT OF THE POOR* (1963); WINI BREINES, *COMMUNITY AND ORGANIZATION IN THE NEW LEFT, 1962-1968: THE GREAT REFUSAL* (1982); RICHARD FLACKS, *MAKING HISTORY: THE AMERICAN LEFT AND THE AMERICAN MIND* (1988); Stanley Aronowitz, *Towards Radicalism: The Death and Rebirth of the American Left*, at 81 in *RADICAL DEMOCRACY: IDENTITY, CITIZENSHIP AND THE STATE* (David Trend ed., 1996).

tant to rail against U.S. imperialism abroad, as exemplified by the Viet Nam War, what should be done about imperialism at home, that is, as in the feminist claim that the “personal was political?” What do you say about an invisible norm that might explicitly or implicitly support the cartoonish statement: “You gals go and make the coffee while we guys plot the revolution?”

So, even in its inception, there was a serious problem of inclusion/exclusion. Who are “we,” who are “they,” and what happens when the world turns out to be more complicated than the “white hat/black hat” dichotomy allows? What do you do when it turns out that some of “them” is in “us” and some of “us” is in “them?” A theoretical account of the multiplicity and fluidity of identity, both group and individual, well serves a chastened 1990s articulation of radical democracy—it creates the space to account for ways in which our micro-practices may undermine that solidarity, even though we may be on the same side.¹⁷

Specifically, there are at least six situations in the United States where a chastened awareness of the fluidity (and complexity) of the oppressor/oppressed relationship may be relevant. First, Affirmative Action creates an opposition between Latinas/os, African-Americans, and Asian-Americans. Latinas/os and African-Americans may find commonality in opposing the end to such programs, but what are we to make of attempts to deploy Asian Americans as “victims” of Affirmative Action (along with White males)? What could this mean? How do we articulate a common political agenda to organize along with Affirmative Action when traditional identity politics seems to call for solidarity with one’s group?¹⁸

Second, what happens with opposition to Official-English and English-Only laws?¹⁹ The problem here may be that Asian-Americans will be able

17. See, e.g., Eric K. Yamamoto, *Rethinking Alliances: Agency, Responsibility and Interracial Justice*, 3 AS. PAC. AM. L.J. 33 (1996); Eric K. Yamamoto, *Critical Race Paraxis: Race Theory and Political Lawyering in Post-Civil Rights America*, 95 MICH. L. REV. 821 (1997); Mari J. Matsuda, *Beside My Sister, Facing the Enemy: Legal Theory Out of Coalition*, 43 STAN. L. REV. 1183 (1991); 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); Reginald L. Robinson, “*The Other Against Itself*”: *Deconstructing the Violent Discourse Between Korean and African Americans*, 67 S. CAL. L. REV. 15 (1993); HOLLY SKLAR, *CHAOS OR COMMUNITY? SEEKING SOLUTIONS, NOT SCAPEGOATS FOR BAD ECONOMICS* (1995).

18. See, e.g., GABRIEL CHIN ET AL., *BEYOND SELF-INTEREST: ASIAN PACIFIC AMERICANS TOWARD A COMMUNITY OF JUSTICE: A POLICY ANALYSIS OF AFFIRMATIVE ACTION* (1996); Jerry Kang, *Negative Action Against Asian Americans: The Internal Instability of Dworkin’s Defense of Affirmative Action*, 31 HARV. C.R.-C.L. L. REV. 1, Winter, 1996; Frank H. Wu, *Neither Black Nor White: Asian Americans and Affirmative Action*, 15 B.C. THIRD WORLD L. J. 225, Summer 1995.

19. See, e.g., Juan F. Perea, *Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English*, 77 MINN. L. REV. 269, December, 1992; Steven W. Bender, *Consumer Protection for Latinos: Overcoming Language Fraud and English-Only in the Marketplace*, 45 AM. U.L. REV. 1027 (1996); Rachel F. Moran, *Bilingual Education as a Status Conflict*, 75 CAL. L. REV. 321 (1987); Antonio J. Califa, *Declaring English the Official Language: Prejudice Spoken Here*, 24 HARV. C.R.-C.L. L. REV. 293, Spring, 1989; RODOLFO ACUÑA, *OCCUPIED AMERICA: A HISTORY OF CHICANOS* (1988).

to forge coalitions with Latinas/os but find themselves opposed by African-Americans and Euro-Americans.

Third, what do globalization and increasing mobility (and unaccountability) of transnational capital mean for minority groups and immigrants within a racialized nation-state such as the U.S.?²⁰ What does PostFordism and flexible accumulation mean in terms of U.S. jobs being shipped offshore? What does this mean in terms of race relations within the U.S. and immigration laws, as well as rising levels of nativistic violence directed against immigrants and those that are perceived as "foreign" within the U.S.? What about the oppositions that may arise from Asian-American and Latina/o

20. See, e.g., DAVID J. ELKINS, *BEYOND SOVEREIGNTY: TERRITORY AND POLITICAL ECONOMY IN THE TWENTY-FIRST CENTURY* (1995); see also DAVID SLATER, *CONTESTING VISIONS OF THE GLOBAL: THE GEOPOLITICS OF THEORY AND NORTH-SOUTH RELATIONS*, 10 *MASS ALLA DEL DERECHO-BEYOND LAW, STORIES OF LAW AND SOCIAL CHANGE FROM LATIN AMERICA AND AROUND THE WORLD* 97, at 101-102 (1995) ("[Globalization] is a process which refers to the 'multiplicity of linkages and interconnections between the states and societies which make up the modern world system,' being in essence a phenomenon by which events, decisions and activities in one part of the world can significantly impact individuals and communities in quite distant parts of the globe. In one sense, it implies a grouping of processes whereby politics and social activities are becoming stretched across the globe; and in another sense, it captures an 'intensification in the levels of interaction, inter-connectedness or interdependence between States and societies which make up the world community'"); see also *GLOBALIZATION: CRITICAL REFLECTIONS* (James H. Mittelman ed., 1996); SASKIA SASSEN, *LOSING CONTROL? SOVEREIGNTY IN AN AGE OF GLOBALIZATION* (1996); STUART HALL, *THE LOCAL AND THE GLOBAL: GLOBALIZATION AND ETHNICITY IN CULTURE, GLOBALIZATION AND THE WORLD-SYSTEM: CONTEMPORARY CONDITIONS FOR THE REPRESENTATION OF IDENTITY* (Anthony D. King ed., 1991); William I. Robinson, *Globalization: Nine Theses on Our Epoch*, 38 *RACE & CLASS* 13 (1996); John Miller & Chris Tilly, *The U.S. Economy: Post Prosperity Capitalism*, 23 *CROSSROADS* 2 (1992); Martin Khor, *Global Economy and the Third World*, in *THE CASE AGAINST THE GLOBAL ECONOMY: AND FOR A TURN TOWARD THE LOCAL* (Jerry Mander et al. eds., 1996).

See also BENNETT HARRISON & BARRY BLUESTONE, *THE GREAT U-TURN: CORPORATE RESTRUCTURING AND THE POLARIZING OF AMERICA* (1988); Raul Hinojosa, *Martin Carnoy and Hugh Daly, An Even Greater U-Turn: Latinos and the New Inequality*, in *HISPANICS IN THE LABOR FORCE: ISSUES AND POLICIES* (Edwin Melendez ed., 1991); see also Marlene Dixon et al., *Reindustrialization and the Transnational Labor Force in the United States Today*, in *THE NEW NOMADS: FROM IMMIGRANT LABOR TO TRANSNATIONAL WORKING CLASS* at 101 (Marlene Dixon and Suzanne Jonas eds., 1982):

Both in regard to the U.S. and the capitalist world more generally, we are focusing on a phase of capitalist accumulation . . . [involving] the 'transformation of working humanity into a 'labor force', a 'factor of production' . . . [T]his 'accumulation of misery' . . . occur[s] on two levels.

(1) The creation of a relative surplus population, a 'population of greater extent than suffices for the average needs of the self-expansion of capital.' . . . (i.e., a variable proportion of the labor force which may be employed when capital has a need for labor, and unemployed when the need declines) is not only a product, but indeed a condition . . . for capital accumulation, and its existence is a condition for the devaluation and degradation of the employed sector. . . .

(2) Even within the employed population . . . the secular product of capital accumulation is the devaluation . . . of waged labor. . . . [There has been] not only a change in the labor process itself (deskilling, intensification, etc.) but also an actual cheapening of labor power, as highly skilled work has been reduced to unskilled, and highly-paid workers have been replaced by cheap, unskilled labor. . . . [S]killed, highly-paid workers are being unemployed, while the participation of lower-paid women and immigrants is increasing . . . for the working population as a whole, wage levels are being lowered rather than raised. . . . [T]he tendency of this process is to subject an ever larger sector of the U.S. labor force to *superexploitation*. . . . to a reduction of wages below the level necessary for production and reproduction of labor power.

interests in relatively open immigration and those of African-Americans in keeping "good jobs" at home.²¹

Fourth, what does immigration mean for Latinas/os and Asian-Americans when it is juxtaposed against a nativistic interest in keeping America White and/or Anglo, racially, ethnically and culturally?²²

Fifth, what does all this flux and controversy over defining who "we" are as a people mean in the voting rights area? For instance, most of the cases after *Shaw v. Reno* have largely been decided in the South and mostly dealt with what Section 2 of the Voting Rights Act of 1965 means in the context of African-Americans and Whites.²³ What happens when voting rights cases have to deal with a complex matrix of groups that may be protected under Section 2, such as Latinas/os and African Americans in the Southwest and Asian-Americans, Latinas/os and African-Americans in California?²⁴

Sixth, what does radical democracy mean in the area of residential housing segregation? A very good book came out a couple of years ago written by Douglas Massey and Nancy Denton with the title, "American

21. WILLIAM JULIUS WILSON, *WHEN WORK DISAPPEARS: THE WORLD OF THE NEW URBAN POOR* 184 (1996); Enriqué Carrasco & M. Ayham Kose, *Income Distribution and the Bretton Woods Institutions: Promoting an Enabling Environment for Social Development*, 6 *TRANSNAT. LAW & CONTEMP. PROBS.* 1 (1996).

22. See Robert S. Chang, *The Nativist's Dream of Return*, 9 *LA RAZA* 55 (1996); Robert S. Chang, *Centering the Immigrant in the Inter/National Imagination*, 85 *CAL. L. REV.* (forthcoming 1997); see generally IMMIGRANTS OUT! THE NEW NATIVISM AND THE ANTI-IMMIGRANT IMPULSE IN THE UNITED STATES (Juan Perea ed., 1996).

23. See, e.g., *Bush v. Vera*, 116 S. Ct. 1941 (1996); *Shaw v. Hunt*, 116 S. Ct. 1894 (1996); *Miller v. Johnson*, 115 S. Ct. 2475 (1995); *Shaw v. Reno*, 509 U.S. 630 (1993); see also Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 *HARV. L. REV.* 1841, 1908-1909 (1994); LANI GUINIER, *THE TYRANNY OF THE MAJORITY: FUNDAMENTAL FAIRNESS IN REPRESENTATIVE DEMOCRACY* (1994); Lani Guinier, *The Supreme Court 1993 Term: (E)Racing Democracy: The Voting Rights Cases*, 108 *HARV. L. REV.* 109 (1994); DEVELOPMENTS IN ELECTORAL GEOGRAPHY (R.J. Johnson, F.M. Shelley & P.J. Taylor eds. 1990); see also Garrett Epps, *Of Constitutional Seances and Color-Blind Ghosts*, 72 *N.C. L. REV.* 401 (1994); see also Lisa A. Kelly, *Race and Place, Geographic and Transcendent Community in the Post-Shaw Era*, 49 *VAND. L. REV.* 227 (1996); Pamela S. Karlan, *Maps and Misreadings: The Role of Geographic Compactness in Racial Vote Dilution Litigation*, 24 *HARV. C.R.-C.L. L. REV.* 173 (1989); Pamela Karlan & Daryl Levinson, *Why Voting is Different*, 84 *CAL. L. REV.* 1201 (1996); Richard H. Pildes & Richard G. Niemi, *Expressive Harms, "Bizarre Districts" and Voting Rights: Evaluating Election-District Appearances After Shaw v. Reno*, 92 *MICH. L. REV.* 483 (1993); T. Alexander Alienkoff & Samuel Issacharoff, *Race and Redistricting: Drawing Constitutional Lines after Shaw v. Reno*, 92 *MICH. L. REV.* 588 (1993); A. Leon Higginbotham, Jr., Gregory A. Clarick & Marcella David, *Shaw v. Reno: A Mirage of Good Intentions with Devastating Racial Consequences*, 62 *FORDHAM L. REV.* 1593 (1994); Daniel Polsby & Robert Popper, *Ugly: An Inquiry into the Problem of Racial Gerrymandering Under the Voting Rights Act*, 92 *MICH. L. REV.* 652 (1993).

24. See Robert S. Chang & Keith Aoki, *Centering the Immigrant in the Inter/National Imagination*, 85 *CAL. L. REV.* (forthcoming 1997); Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 *HARV. L. REV.* 1841 (1994).

Apartheid: The Making of an American Underclass.”²⁵ Briefly Massey and Denton looked at the extraordinarily high degree of hypersegregation that prevails in and around major U.S. cities. Kimberlé Crenshaw commented that only in the U.S. can you find desegregated all-White neighborhoods, totally-integrated all-White workplaces and racially nondiscriminatory schools.²⁶ Massey and Denton contend that we have de facto levels of Black-White spatial segregation that equal pre-Mandela South Africa’s Capetown. What does this mean and how did it happen? Are racially discriminatory results with incredibly socio-economic disparate allocative efforts any less onerous because they’re produced by supposedly neutral *private* market mechanism rather than governmental edict? What happens when Latinas/os or Asian-Americans head into a White housing market and African Americans are excluded? In important ways, this underwrites the stability and indeed increases property values in those neighborhoods. Asian Americans and Latinas/os may be benefiting because for purposes of housing segregation, they are in some circumstances being treated as “*non-Black*,” rather than “*non-White*.”

B. Are Asian-Americans Anglos?²⁷

Our constructions of race and nationality are fluid. In a 1996 Harper’s colloquy,²⁸ Jorge Klor de Alva contended that African-Americans were

25. See, e.g., DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* (1993); see also John O. Calmore, *Racialized Space and the Culture of Segregation: “Hewing a Stone of Hope From a Mountain of Despair,”* 143 U. PA. L. REV. 1233 (1995); Reggie Oh, *Apartheid in America: Residential Segregation and the Colorline in the Twenty-First Century*, 15 B.C. THIRD WORLD L.J. 385 (1995); Joe T. Derden, *Accessibility to Housing: Differential Residential Segregation for Blacks, Hispanics, American Indians and Asians*, in RACE, ETHNICITY AND MINORITY HOUSING IN THE UNITED STATES 111 (Jamshid A. Momeni ed., 1986).

26. Kimberlé W. Crenshaw, *Mapping the Margins; Intersectionality, Identity Politics and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991).

27. This subtitle is a paraphrase of a question asked by Gary Okihiro: “Is Yellow White or Black?” See GARY I. OKIHIRO, *MARGINS AND MAINSTREAMS; ASIAN IN AMERICAN HISTORY AND CULTURE* 31, 33-34 (1994). (“Is yellow black or white? is a question of American identity, or the nature of America’s racial formation. Implicit within the question is a construct of American society that defines race relations as bipolar—between black and white—and that locates Asians (and American Indians and latins) somewhere along the divide between black and white. Asians, thus are “near-whites” or “just like blacks” . . . The construct, importantly, is not mere ideology, but is a social practice that assigns to Asian Americans, and indeed to all minorities, places within the social formulation. Asian Americans have served the master class, whether as “near blacks” in the past or a “near whites” in the present or as “marginal men” in both the past and the present. Yellow is emphatically neither white nor black; but insofar as Asian and Africans share a subordinate position to the master class, yellow is a shade of black, and black, a shade of yellow.”).

28. See *Colloquy: Our Next Race Question: The Uneasiness Between Blacks and Latinos*, HARPER’S MAGAZINE, Apr. 1996, at 55, 50 (discussion between Jorge Klor de Alva, Earl Shorris and Cornell West in which Jorge Klor de Alva says that “Blacks are more Anglo than most Anglos because, unlike most Anglos, they can’t directly identify themselves with a nation-state outside the United States. . . . However unjust and painful, their experiences are wholly made in America.”)

Anglos, in part because they had no currently existing ancestral homeland to which they could point and their language was English. Cornell West, who was part of the colloquy, begged to differ from de Alva's characterization of African Americans as "Anglos," saying, "I want to try and convince these Latino brothers and sisters not to think of black folk as Anglos. That's just wrong. Now, they can say that we're English-speaking moderns in the United States who have yet to be fully treated as Americans. That's fine." To a Latina/o in the Southwest, Asian Americans might be "Anglos."

Last year some Latino-Japanese brought a lawsuit in the district court in San Francisco for redress for internment during WWII.²⁹ These were Japanese-Peruvians who had been deported from Peru during World War II at the request of the U.S. government, which wanted to use them as potential trades for U.S. POWs. These Japanese-Peruvians were interned with over 100,000 Japanese-Americans who were evacuated from the West Coast after 1941. After World War II, some of the Japanese-Peruvians sought to return to their homes in Peru, but were prevented because they had been deported. Some sought to return to Japan, where they had difficulties assimilating because many only spoke Spanish. Others remained in the U.S., unable to become permanent U.S. citizens. All were excluded from the reparations and apology that the U.S. government made to the Japanese-Americans in the 1980s because the reparations were limited to internees who were American citizens.³⁰ Exactly what does the categorical displacement of the Latino-Japanese mean?

II. LOCAL GOVERNMENT LAW AND RESIDENTIAL RACIAL SEGREGATION

A. *What Do Major Demographic Shifts Mean for Radical Democracy: Monterey Park, California in the 1990s?*

Discussion of the meaning of demographic shifts that have been going on in Monterey Park first requires some background in the form of a brief demographic snapshot. From 1960 to 1990, Monterey Park underwent dramatic changes in the racial composition of its residents. Over the course of 30 years, Monterey Park shifted from an over 85% White suburb to 57.5% Asian/Pacific Islander. Additionally, the percentage of Latino

29. See Tim Golden, *Latins of Japanese Descent Seek Reparations*, N.Y. TIMES, Aug. 29, 1996, at A1; Maki Becker, *Japanese Peruvians Launch Campaign for WWII Redress*, L.A. TIMES, Aug. 29, 1996 at A1

30. Manjusha P. Kulkarni, *Application of the Civil Liberties Act to Japanese Peruvians: Seeking Redress for Deportation and Internment Conducted by the United States Government During World War II*, 5 BOST. U. PUB. INT'L L.J. 313 (1996).

residents climbed from 11% in 1960 to almost 30% in 1990. Note further that the percentage of African-Americans remained at or below 1%.³¹

In Monterey Park, Asian immigrants and Asian-Americans of many different ethnic groups and Latinas/os were able to work together politically for their common interest of all against a traditionally Anglo-dominated political system on the issue of redistricting following the 1990 census.³² Nonetheless, many interracial tensions and prejudices among "minority" groups remain, particularly when Blacks are added to the calculation.³³

31. Ethnic Composition of Monterey Park, 1960-1990

PERCENTAGE OF CITY POPULATION

Ethnicity	1960	1970	1980	1990
African-American	0.003	0.2	1.2	0.6
Anglo	85.4	50.5	25.0	11.7
Asian/Pac. Islander	2.9	15.0	35.0	57.5
Latino	11.6	34.0	38.8	29.6

Sources, *Saito & Horton, Asian American Politics* at 234 (Monterey Park Planning Department, 1994).

See also John Horton, *The Chinese Suburban Immigration and Political Diversity in Monterey Park, California*, 23 SOCIAL JUSTICE 100-01 (1996) [hereinafter Horton, *Chinese Suburban Immigration*] ("By 1970 Monterey Park had become a middle-class home for Mexican Americans from nearby working-class East Los Angeles and for Japanese Americans from enclaves in the east and west sides of L.A. and from regions of forced wartime internment and exile. There was also a migration of Chinese from the old Chinatown located just west of Monterey Park . . . [which] was the combined result of postwar economic mobility and the legal and informal erosion of discrimination in housing. . . . In 1980 the city was almost evenly divided among Anglos (25%), Latinos (38%), and Asian Americans (35%). The small population of African Americans made up just one percent. . . . By 1990 Asian residents had become the majority, with about 60% of the population, while Anglos declined sharply to 12% and Latinos declined slightly to 31% of the total. The composition of the Asian population also shifted, with younger Chinese newcomers now decisively replacing older native-born Japanese Americans as the largest Asian group.").

32. See TIMOTHY FONG, *THE FIRST SUBURBAN CHINATOWN: THE REMAKING OF MONTEREY PARK* (1994).

33. See Larry Gordon, *Prejudice Called Main Cause of Housing Segregation*, L.A. TIMES, Dec. 23, 1996 at A1 ("[W]hites and Asians in the study reported higher median annual incomes, \$44,740 and \$35,973, than Blacks, \$28,732 and Latinos, \$22,352. Yet the range of monthly rents [paid by each group] was not dramatic. Asian renters reported paying an average of \$742 a month, whites \$724; Blacks, \$675; and Latinos, \$583. . . . [T]here is enough income in Black and Latino families to suggest they could afford to live in white neighborhoods. . . . 'We reject the hypothesis that residential segregation is the result of objective differences in socioeconomic status that leave Blacks and Latinos unable to afford desirable housing,' the study stated. . . . Latinos and then Asians expressed the strongest preferences for living in neighborhoods where their own groups were in overwhelming majorities. . . . [which] may reflect the language barrier faced by new immigrants and the initial reliance on churches, grocery stores and community groups that cater to their needs. . . . Native-born Latinos and Asians seem to have less desire for such ethnic neighborhoods than the foreign-born, the study found."); Rachel F. Moran, *Demography and Distrust: The Latino Challenge to Civil Rights and Immigration Policy in the 1990s and Beyond*, LA RAZA L.J. 1, 10 (1995) ("Affluent Latinos typically have been more able than African Americans to escape segregated neighborhoods by moving to the suburbs; as a result, many Latinos believe that the most significant impediment to upward mobility is neither race nor ethnicity, but poverty."); RODOLFO F. ACUÑA, *CHICANOS IN CONTEMPORARY LOS ANGELES* 129 (1996) ("[In Los Angeles] [n]either Chicano nor Black leaders, or for that matter, whites and Asians, designed goals and programs that took the needs of a multiracial city into account. . . . Within this context historical memories are a source of friction. Many Blacks believe that other minorities, including Latinos, benefit from 'their' civil

Eric Yamamoto talks of the "hard acknowledgment of the extent to which nonwhite racial groups situationally have oppressed and continue to oppress one another."³⁴ For example, Paul Ong and Tania Azores found that "given the same economic ability, Asians preferred to live in Asian and Anglo neighborhoods, while avoiding African-American communities."³⁵

This draws attention to one figure in the Monterey Park ethnic demographic statistics that has received little attention: the constancy of the

rights struggles. The historical memory of African Americans is rooted in a national reality and is part of U.S. history, whereas Mexican American history is considered 'foreign.' Few African Americans know much about the Southwest or the history of Chicanos . . . A historical illiteracy shared by most Euro Americans.").

34. Yamamoto, *supra* note 17, at 70; *see also* Edward T. Chang, *Jewish and Korean Merchants in African American Neighborhoods: A Comparative Perspective*, at 5 in *LOS ANGELES—STRUGGLES TOWARD MULTIETHNIC COMMUNITY: ASIAN AMERICAN, AFRICAN, AND LATINO PERSPECTIVES* (Edward T. Chang & Russell C. Leong, eds. 1993) [hereinafter *Multiethnic L.A.*]; Lisa C. Ikemoto, *Traces of the Master Narrative in the Story of African American/Korean American Conflict: How We Constructed "Los Angeles,"* 66 *S. CAL. L. REV.* 1581 (1993); Jeff Chang, *Race, Class, Conflict and Empowerment: On Ice Cube's "Black Korea,"* in *MULTIETHNIC L.A.*, *supra* at 87; Armando Navarro, *The South Central Los Angeles Eruption: A Latino Perspective*, in *MULTIETHNIC L.A.*, *supra* at 69; Arvli Ward, *Which Side are You On? The Rebellion Causes Pride and Pain for One Observer Who is Half Asian, Half Black*, in *MULTIETHNIC L.A.*, *supra* at 109; *see also* Thomas L. Dumm, *The New Enclosures: Racism in the Normalized Community*, at 157, in *READING RODNEY KING: READING URBAN UPRISING* (Robert Gooding Williams ed., 1993) [hereinafter *READING RODNEY KING*]; Sumi K. Cho, *Korean Americans vs. African Americans: Conflict and Construction*, in *READING RODNEY KING* at 178; Elaine H. Kim, *Home is Where the Han Is: A Korean-American Perspective on the Los Angeles Uprising*, in *READING RODNEY KING*, at 215; Neil Gotanda, *Multiculturalism and Racial Stratification*, in *MAPPING MULTICULTURALISM* 238 (Avery F. Brooks & Christopher Newfield eds. 1996); *see also* Paul Ong, Kye Young Park & Yasmin Tong, *The Korean-Black Conflict and the State*, in *THE NEW ASIAN IMMIGRATION IN LOS ANGELES AND GLOBAL RESTRUCTURING* 264 (Edna Bonacich, Paul Ong & Lucie Cheng eds. 1993) [hereinafter *NEW ASIAN IMMIGRATION*].

35. *NEW ASIAN IMMIGRATION*, *supra* note 34, at 43; *see also* DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* (1993); Walter G. Stephan & Cookie White Stephan, *The Role of Ignorance in Intergroup Relations*, at 229 in *GROUPS IN CONTACT: THE PSYCHOLOGY OF DESEGREGATION* (M. Brewer & N. Miller eds. 1984); Lawrence Bobo, *The Color Line, the Dilemma, and the Dream: Racial Attitudes and Relations at the Close of the 20th Century* (paper on file with author, 1995); Janai S. Nelson, *Residential Zoning Regulations and the Perpetuation of Apartheid*, 43 *U.C.L.A. L. REV.* 1689, 1706 (1996) [hereinafter Nelson, *Residential Zoning and Apartheid*] ("[P]olitical disempowerment ensues from the spatial segregation of African Americans from other racial groups. The result is that no common interests are shared, and, thus, none of the alliances that lead to the political, and consequently, economic advancement of other racial groups are formed. Thus, these other groups have no vested interest in forming political alliances with the segregated African-American community. As a result, all issues 'cleave along racial lines'"); *see also* MASSEY & DENTON, *supra* at 153-60; Susan J. Smith, *Residential Segregation and the Politics of Racialization*, in *RACISM, THE CITY AND THE STATE* (Malcolm Cross & Michael Keith eds., 1993); William A.V. Clark, *Residential Preferences and Residential Choices in a Multi-Ethnic Context*, 29 *DEMOGRAPHY* 451 (1992); YALE RABIN, *THE ROOTS OF SEGREGATION IN THE EIGHTIES: THE ROLE OF LOCAL GOVERNMENT ACTIONS IN DIVIDED NEIGHBORHOODS: CHANGING PATTERNS OF RACIAL SEGREGATION* 208 (Gary A. Tobin ed., 1987); Douglas S. Massey, *Getting Away With Murder: Segregation and Violent Crime in Urban America*, 143 *U. PA. L. REV.* 1203 (1995).

African-American population, hovering at or below one percent.³⁶ Although the majority population of Monterey Park has shifted from overwhelmingly Anglo in 1960 to Asian with a strong Latina/o contingent in 1990, the area has remained middle class. Called a "suburban Chinatown," it was advertised as a "Chinese Beverly Hills" and in the early 1960s as a "Mexican Beverly Hills."³⁷

36. JOHN HORTON, *THE POLITICS OF DIVERSITY: IMMIGRATION, RESISTANCE AND CHANGE IN MONTEREY PARK, CALIFORNIA* 11 (1995). ("There was one racial confrontation in 1962 [in Monterey Park] when the Congress of Racial Equality picketed a developer for refusing to sell a house to an African American graduate student and his wife. CORE and its local supporters won out, but few African Americans have made their homes in Monterey Park and adjacent cities in the western San Gabriel Valley. Their relative absence compared with Latin and Asian Americans probably reflects higher levels of discrimination against African Americans and their later and different pattern of middle-class migration out of the central city."); see also Roy L. Brooks, *The Ecology of Inequality: The Rise of the African-American Underclass*, 8 HARV. BLACKLETTER J. 1, 9 (1991); WILLIAM JULIUS WILSON, *THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS AND PUBLIC POLICY* (1987) (arguing that the exodus of the Black upper- and middle-class from the inner cities exacerbated the socio-economic plight of lower-class blacks left behind); but compare Richard D. Alba & John R. Logan, *Variations on Two Themes: Racial and Ethnic Patterns in the Attainment of Suburban Residence*, 28 DEMOGRAPHY 431 (1991); Douglas S. Massey & Mitchell L. Eggers, *The Equality of Inequality: Minorities and the Concentration of Poverty, 1970-1980*, 5 AM. J. SOC. 1153 (1990); Nancy A. Denton & Douglas S. Massey, *Patterns of Neighborhood Transition in a multiethnic World: U.S. Metropolitan Areas, 1970-1980*, 23 DEMOGRAPHY 41 (1991) (arguing that the causal connection between black middle-class exodus and the deterioration of the inner city may be overdetermined).

37. FONG, *THE FIRST SUBURBAN CHINATOWN*, *supra* note 32, at 31 ("[Monterey Park developer Sam] Hsieh knew that the crowded and unattractive Los Angeles Chinatown would not suit these affluent newcomers: There's no place to live. By word of mouth they came to Monterey Park. We did some promotion, such as advertisement in the magazines [and] in the newspapers over there in Hong Kong and Taiwan to encourage people to come and invest and patronize our company."); Nancy A. Denton & Douglas S. Massey, *Patterns of Neighborhood Transition in a Multi-Ethnic World: U.S. Metropolitan Areas, 1970-1980*, 28 DEMOGRAPHY 41 (1991); William H. Frey & William P. O'Hare, *Vivan los Suburbios*, AM. DEMOGRAPHICS, Apr. 1993, at 30; Douglas S. Massey & Nancy A. Denton, *Racial Identity and the Spatial Assimilation of Mexicans in the United States*, 21 SOC. SCI. RES. 235 (1992); Michael J. White et al., *Immigration, Naturalization and Residential Assimilation Among Asian Americans, in 1980*, 72 SOC. FORCES 93 (1993); Note the fluidity of issues of slow-growth and development. For example, in February 1993, the Monterey Park city council held controversial public hearings over whether to permit the proposed development of a \$30 million gambling/card club funded by a Taiwanese-based development corporation. See Horton, *Chinese Suburban Immigration*, *supra* note 31, at 102-106.

[An important factor in 1990s Monterey Park] was the continuing development of Latino, Asian American, and Chinese immigrant politics, the tendency to organize for ethnic representation and against nativist politics and candidates. A second factor was the increased ability of residents to separate slow-growth from nativist struggles, class from ethnic issues. . . . [A] third factor . . . [was] the development of interethnic alliances on candidates and issues in a multiethnic city where no single group could determine political outcomes. . . . In 1993] Anglos who had initially led the slow-growth struggle against development with a Chinese face [supported] the development of a Chinese-owned gambling facility. On the other side, a coalition of Chinese immigrants, Asian Americans, and Latinos came together to stop the development. . . . By the 1990s, Southern California cities, their budgets drained by recession, overspending, tax revolts, and the withdrawal of state and federal bailouts . . . [weighed] the benefits and social costs of card clubs. . . . [I]n an atmosphere of recession rather than growth, no-tax rebels and quick-profit developers united to sell gambling as a new source of city revenues to residents fearful of crime and big developers. . . . Asians were good customers of existing [gambling] clubs, but they had no facilities conveniently located in Monterey Park . . . [BCTC Development,

Prior to the Latina/o and Asian influxes in the 1960s and 70s, suburban "Whiteness" had been maintained in cities like Monterey Park through a variety of public and private mechanisms that included (1) the Alien Land Laws³⁸ that prevented "aliens incapable of becoming citizens," (primarily Japanese) from owning real property in California, Oregon, Washington and other western states; (2) "private" racially restrictive real covenants "running with the land" that forbade the sale of residential property in White neighborhoods to "negroes," "mongolians" and "non-Christians"³⁹; (3) facially neutral "public" exclusionary zoning regulations that effectively kept lower and working-class Blacks and Latinas/os from White neighborhoods *via* minimum lot size requirements, minimum home cost requirements, and segregation or outright prohibition of multifamily rental units;⁴⁰ and (4)

a Taiwanese-based company, kept its] young Chinese owner . . . out of sight [and BCTC's] affable Anglo vice president . . . busily charm[ed] old-timers. . . . Defending the [proposed] card club were [two] fiscally conservative founders of RAMP. . . . The speakers opposed to gambling were more numerous and multiethnic . . . and equally divided between primarily working-class and middle-class Latinos and . . . middle-class Asian Americans, Chinese immigrants and [some] left-leaning Anglos. . . . The Chinese and Anglos tended to speak out against gambling as individual citizens. . . . The Latinos, in particular, spoke up as members of organized groups— churches, neighborhood associations, small businesses and the elderly. . . . The words of supporters and opponents reflected different perspectives on development and land use based on ethnic divisions between old-timers, minorities, and immigrants, as well as class divisions between a sheltered middle-class zone and the working-class zone where the [proposed] card club would be located.

38. See THOMAS E. STUEN, *ASIAN AMERICANS AND THEIR RIGHTS FOR LAND OWNERSHIP* 603 in *ASIAN AMERICANS AND THE SUPREME COURT: A DOCUMENTARY HISTORY* (Hyung-Chan Kim ed. 1992); see, e.g., Washington Constitution § 33, Article II and Chapter 64.16, R.C.W., Laws 1921, Ch. 50, §§ 1-10, as amended, Laws, 1923, ch. 70, §§ 1-2, Laws of 1933, ch. 111, § 1 and Laws of 1937, ch. 220, §§ 2-4; California Initiative, Nov. 2, 1920, Statutes 1921, §§ 1-14, as amended; 45 Cal. Stats, 1923, codified at Cal. Gen Laws Act 261 (1945 Supp.); see also *Terrace v. Thompson*, 263 U.S. 197 (1923); *Porterfield v. Webb*, 263 U.S. 326 (1923); *Webb v. O'Brien*, 263 U.S. 313 (1923); *Cockrill v. California*, 268 U.S. 258 (1925); *Morrison v. People of the State of California*, 291 U.S. 82 (1934); *Oyama v. State of California*, 332 U.S. 633 (1948); also note Raymond L. Buell, *Some Legal Aspects of the Japanese Question*, 17 AM. J. INT'L L. 29 (1923); Theodore S. Woolsey, *The California-Japanese Question*, 15 AM. J. INT'L L. 55 (1921); Earl H. Pritchard, *The Japanese Exclusion Bill of 1924*, 2 RES. STUDS. OF STATE COL. WASH. 65 (1930); Thomas A. Bailey, *California, Japan, and the Alien Land Legislation of 1913*, 1 PAC. HIST. REV. 36 (1932); Browning M. Carrott, *Prejudice Goes to Court: The Japanese and the Supreme Court in the 1920s*, 62 CAL. HIST. 122 (1983); Thomas R. Powell, *Alien Land Case in United States Supreme Court*, 12 CAL. L. REV. 259 (1924); Note, *The Japanese Problem in Oregon*, 24 OR. L. REV. 208 (1945); Edwin E. Ferguson, *The California Alien Land Law and the Fourteenth Amendment*, 35 CAL. L. REV. 61 (1947); Dudley O. McGovney, *The Anti-Japanese Land Laws of California and Ten Other States*, 35 CAL. L. REV. 7 (1947); Richard A. Goater, *Civil Rights and Anti-Japanese Discrimination*, 18 U. CIN. L. REV. 81 (1949).

39. These types of covenants were finally struck down in *Shelley v. Kraemer*, 334 U.S. 1 (1948); see also *Barrows v. Jackson*, 346 U.S. 249 (1953).

40. KENNETH T. JACKSON, *CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES* 135 (1985) ("[R]eal estate specialists were more active in the city building process than anyone else. The theory that early suburbs just grew with owners "turning cowpaths and natural avenues of traffic into streets," is erroneous. Subdividers lobbied with municipal governments to extend city services, they pressured streetcar companies to send tracks into developing sections, and they set the property lines for individual homes."); Nelson, *Residential Zoning and Apartheid*, *supra* note 35, at 1707 ("[S]patial concentration of poverty is the most ostensible and fatal consequence of racial segregation. Concentrated poverty develops according to a simple

“private” Homeowners’ Associations that enforced various subdivision restrictions with similar effect to exclusionary zoning ordinances.⁴¹ Additionally, the Federal Housing Administration said in underwriting guidelines to loan officers that “[i]f a neighborhood is to retain stability, it is necessary that properties shall continue to be occupied by the same social and racial classes. A change in social or racial occupancy contributes to instability and a declines in values.”⁴²

Most official tools for maintaining residential racial segregation were taken away by the Civil Rights struggles of the 1960s; passage of Title VIII, the Fair Housing Act of 1968;⁴³ the repeal of the various Alien Land Laws in the 1950s;⁴⁴ and *Shelley v. Kraemer* in 1948, several but not all of the official tools were taken away. Unofficial social phenomena, however, combined to maintain residential racial segregation. Those social phenomena include (1) White flight from core cities and transitional neighborhoods;⁴⁵

rationale: If overall poverty increases among members of an excluded group, the geographic concentration of poverty in the area in which they live increases directly. Spatial segregation provides a buffer for whites when poverty rates increase in general because a large portion of poverty’s effects is concentrated in African-American neighborhoods to which whites have no ties or economic dependency. As a result, African-Americans bear the brunt of this intensified poverty, while whites are spared from the full impact of the economic decline.”); Joel Kosman, *Toward an Inclusionary Jurisprudence: A Reconceptualization of Zoning*, 43 CATH. U. L. REV. 59, 60 (1993) (“[Z]oning also seemed to prevent people from moving into various suburban municipalities by establishing certain economic and racial barriers to keep such suburbs homogenous and affluent.”); J. Gregory Richards, *Zoning for Direct Social Control*, 1982 DUKE L.J. 761, 763 (“By manipulating restrictions on matters such as lot size, lot width, building size, or the number of bedrooms in multiple-family units . . . a municipality can make housing within its borders too expensive for low- and moderate-income groups.”).

41. Gerald E. Frug, *The City as a Legal Concept*, 93 HARV. L. REV. 1057 (1980); Robert C. Ellickson, *Cities and Homeowners Associations*, 130 U. PA. L. REV. 1519 (1982); Gerald E. Frug, *Cities and Homeowners Associations: A Reply*, 130 U. PA. L. REV. 1589 (1982); Note, *The Rule of Law in Residential Associations*, 99 HARV. L. REV. 472 (1985); Gregory S. Alexander, *Dilemmas of Group Autonomy: Residential Associations and Community*, 75 CORNELL L. REV. 1 (1989); see also EVAN MCKENZIE, *PRIVATOPIA: HOMEOWNER ASSOCIATIONS AND THE RISE OF RESIDENTIAL PRIVATE GOVERNMENT* (1994).

42. See DENNIS JUDD & TODD SWANSTROM, *CITY POLITICS* 204 (1994) (The FHA in a 1933 report ranked mortgage candidates from “most to least favorable.” The “most favorable” (ranked # 1) were “English, Germans, Scotch, Irish, Scandinavians” and the “least favorable” were “Negroes” (at # 9) and “Mexicans” (at # 10). Thus, by mid-century, suburban racial segregation patterns had produced a spatial residential apartheid. See also DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* (1993).

43. See Fair Housing Act of 1968, 42 U.S.C. §§ 3601-3619 (1995); see also The Home Mortgage Disclosure Act of 1975, 12 U.S.C. §§ 2801-2810 (1995); The Community Reinvestment Act, 12 U.S.C. §§ 2901-2907 (1995).

44. *Oyama v. State of California*, 332 U.S. 633 (1948) (invalidating an escheat provision of the California Alien Land Law as applied to a U.S. citizen); see also *Kenji Namba v. McCourt*, 185 Ore. 579 (1949) (striking down Oregon’s Alien Land Law); *Sei Fujii v. State of California*, 38 Cal. 2d 718 (1952) (striking down California’s Alien Land Law); note *Washington Law of 1967*, ch. 163 § 7 (repealing Washington’s Alien Land Law).

45. *Milliken v. Bradley*, 418 U.S. 717 (1974) (Interdistrict school busing as a remedy for de jure racial segregation in urban schools impermissible beyond municipal and district boundaries.); see also *Missouri v. Jenkins*, 115 S. Ct. 2038 (1995); *Bradley Joondeph, Missouri v. Jenkins and the De Facto Abandonment of Court Enforced Desegregation*, 71 WASH. L. REV. 597 (1996); see also KENNETH T. JACKSON, *CRABGRASS FRONTIER: THE SUBURBANIZATION OF*

(2) demographic inertia arising from more than a century of strict racial residential segregation that produced firmly “White” areas of cities; (3) suburban sprawl in the 1950s and 60s which gave rise to a patchwork of politically independent suburban municipal sovereignties with broad and relatively autonomous zoning powers;⁴⁶ and (4) widespread adoption of the “Lakewood Plan” in Southern California, which allowed new suburban communities to “contract out” with L.A. County for fire, police and other services at the cheap county rate, and *also* gave these communities land use/zoning powers to protect “property values,” without the burden of heavy public services expenditures thus keeping suburban tax rates down.⁴⁷ The

THE UNITED STATES 150 (1985) (arguing that race and class aversion were the most important factors driving suburbanization in mid-century America); *see also* Keith Aoki, *Race, Space and Place: The Relation Between Architectural Modernism, Post-Modernism, Urban Planning, and Gentrification*, 20 *FORDHAM URB. L.J.* 699, 788 (1993); *but compare* Southern Burlington County NAACP v. Township of Mt. Laurel, 336 A.2d 713 (N.J. 1975) (contemplating that cities within a region may have duty to accept their “fair share” of low income housing); CHARLES M. HAAR, *SUBURBS UNDER SEIGE: RACE, SPACE AND AUDACIOUS JUDGES* (1996).

46. *See e.g.*, GARY J. MILLER, *CITIES BY CONTRACT: THE POLITICS OF MUNICIPAL INCORPORATION* (1981) (taking issue with the model of local government as a marketed commodity as articulated by economist Charles Tiebout, in *A Pure Theory of Local Expenditures*, 64 *J. POL. ECON.* 416 (1956)); *see also* JON C. TEAFORD, *CITY AND SUBURB, THE POLITICAL FRAGMENTATION OF METROPOLITAN AMERICA, 1850-1970* (1979); JOEL GARREAU, *EDGE CITY: LIFE ON THE NEW FRONTIER* (1991); JON C. TEAFORD, *POST-SUBURBIA: GOVERNMENT AND POLITICS IN THE EDGE CITIES* (1997); JONATHAN BARNETT, *THE FRACTURED METROPOLIS: IMPROVING THE NEW CITY, RESTORING THE OLD CITY, RESHAPING THE REGION* (1995).

47. *See* Nelson, *Residential Zoning and Apartheid*, *supra* note 35, at 1693-94 (“[T]he end result of [municipalities] exercising . . . zoning power is to promote racial residential segregation. . . . First, zoning historically impeded racial residential integration. . . . Second, zoning regulations increase housing costs thereby fostering economic, and ultimately, racial exclusion. . . . [This fosters] the perpetuation of poverty among the excluded groups. Thus, zoning is both an indirect cause of, and an inextricable link to, the perpetuation of poverty, inequality, and in the extreme, apartheid.”); *see also* DANIEL R. FUSFELD & TIMOTHY BATES, *THE POLITICAL ECONOMY OF THE URBAN GHETTO* 136 (1984) (“One of the most striking characteristics of the urban poverty area is a continual drain of resources out of the area and into other sectors of the economy. The drain includes savings, physical capital, human resources and incomes. As a result, urban poverty areas are left without the most important resources needed for development and improvement, and the economic infrastructure of supporting institutions is seriously deficient.”); Aoki, *Race, Space and Place*, *supra* note 45, at 762:

“[Exclusionary zoning] acts as a subsidy through which the suburban middle- and upper-classes benefit at the expense of the urban poor. By limiting the density of residential units per acre, exclusionary zoning forecloses apartment developers from bidding up the price of a parcel of land. Such developers are able to pay much more for the parcel than could a single family because the developers represent the combined bidding power of multiple families who would be living in the complex. By keeping the bidding process for such parcels between single families, exclusionary zoning maintains an artificially low per lot land price for single-family homebuyers, and simultaneously keeps groups of low-income people from entering the market. . . . [becoming] a subsidy to upper-income suburbanites, sheltering them from market competition represented by high density developers. . . . Exclusionary zoning also acts as a regressive “tax” on urban low-income families. It forces greater housing densities and increased service burdens per tax dollar onto low-income areas. [Because][h]igh density housing does not generate sufficient revenues to meet increased city service needs . . . the quality and provision of services [is further reduced].

"Lakewood Plan" in Southern California fueled suburban growth and massive White flight. Such growth was essentially a subsidy from the county and state to the predominately White postwar suburbs at the expense of a seriously weakened tax base of Los Angeles, with an increasingly concentrated poor/working-class Black and Latina/o residential population.⁴⁸

It suited the majority Anglo population to exclude African-Americans and to keep their property values high, as personal prejudice coincided with seemingly rational economic behavior. Asians and Latinas/os have been engaging in the same behavior.⁴⁹ To the extent that elimination of racially restrictive covenants and explicit racial discrimination in housing markets was prohibited, middle-class Asian Americans, newly-arrived Asian immigrants, and middle-class Latinas/os were able to buy into the swiftly appreciating housing market in cities like Monterey Park.⁵⁰ Thus, Asian immigrants, Asian Americans and Latinos to varying extents have "chosen" to benefit from real estate appreciation underwritten in large part by the suburban residential exclusion of Blacks through much of the twentieth century in Southern California. For the purposes of suburban migration "out and up" from L.A., in certain complex ways Asian Americans and Latinos have been treated as "non-Black" in contradistinction to being treated as "non-White." Much of the continuing residential exclusion of Blacks can be attributed to personal prejudice, as documented by a recent study on housing segregation

48. See MIKE DAVIS, CITY OF QUARTZ: EXCAVATING THE FUTURE IN LOS ANGELES 165-166 (1990); GARY MILLER, CITIES BY CONTRACT: THE POLITICS OF MUNICIPAL INCORPORATION (1981); MARC WEISS, THE RISE OF THE COMMUNITY BUILDERS: THE AMERICAN REAL ESTATE INDUSTRY AND URBAN LAND USE PLANNING (1987); JON C. TEAFORD, POST-SUBURBIA: GOVERNMENT AND POLITICS IN EDGE CITIES (1997); Jerry Frug, *The Geography of Community*, 48 STAN. L. REV. 1047 (1996); JONATHAN BARNETT, THE FRACTURED METROPOLIS: IMPROVING THE NEW CITY, RESTORING THE OLD CITY, RESHAPING THE REGION (1995); PAUL G. LEWIS, SHAPING SUBURBIA: HOW POLITICAL INSTITUTIONS ORGANIZE URBAN DEVELOPMENT (1996); KENNETH T. JACKSON, CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES (1985).

49. DAVIS, *supra* note 48, at 181 ("In the fall of 1973 home prices in Southern California were \$1000 below the national average. six years later they were \$42,000 higher (fifteen years later \$143,000 higher). . . . Averaged over all of Southern California, homeowners were reported to be earning 30-40 percent on their equity per annum, in adjusted terms on the late 1980s, and home values increased almost three times faster than income. . . . [T]his Southern California land inflation of 1975-9 . . . enriched many tens of thousands of middle-class families beyond their wildest expectations . . . [but] . . . Homeowners experienced property inflation as a roller-coaster ride that unsettled traditional household accounting, rais[ed] unreasonable hopes and fears . . . [as] [w]indfalls of wealth appeared precarious, while bloated [property] tax bills seemed all too real. . . . Proposition 13's explicit promise to roll back [property tax] assessments and let homeowners pocket their capital gains was accompanied . . . by an implicit promise to halt the threatening encroachment of inner-city populations on [white, or at least, non-Black] suburbia.") see also Cheryl A. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1709 (1993) (discussing how "Whiteness (aka the absence of Blacks) has been an important element in defining "property rights" in the U.S.); DOUGLAS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS (1993).

50. Moran, *Demography & Distrust*, *supra* note 33, at 10 ("Affluent Latinos typically have been more able than African Americans to escape segregated neighborhoods by moving to the suburbs; as a result, many Latinos believe that the most significant impediment to upward mobility is neither race nor ethnicity, but poverty.").

in the Los Angeles area.⁵¹ According to the study, “The comfort level [with a racially mixed neighborhood] dropped sharply for Asians and Latinos if hypothetically more than a third of their neighbors were to be black.”⁵² White respondents to the survey shared this sentiment, although to a lesser degree.

Interestingly, residential property values did not drop with the influx of immigrant Chinese and middle- and working class Latino/as to Monterey Park in the 1970s and 1980s; these immigrants were often middle-class themselves with money to buy houses, and there were enough of them to keep property values appreciating. By joining Anglos, perhaps implicitly, in keeping African-Americans out of Monterey Park (or by continuing to benefit from steadily rising real estate values that in Southern California have been and are underwritten by spatial/racial segregation), perhaps Asians and Latinas/os simply stepped into their shoes in race relations, becoming performatively White or “non-Black.”⁵³ Thus behavior that could be described as having troubling racial segregationist effects could also be described in non-pejorative terms as simply rational self-interested economic behavior that is aggregated by real estate markets without racial “taint.”⁵⁴ This raises very deep questions about the true role of race in the political economy of immigration.

51. Larry Gordon, *Prejudice Called Main Cause of Housing Segregation*, L.A. TIMES, Dec. 23, 1996 at A1 (“Racial prejudice, particularly against blacks, remains the greatest cause of housing segregation in Los Angeles County—more powerful than costs or the desire to live among similar people, a newly published academic study declares.”); *but compare* Nelson, *Residential Zoning and Apartheid*, *supra* note 35, at 1706 (“[R]esidential segregation and its resulting poverty have historically confined African Americans to urban areas in which rental housing prevades. Upon acquiring wealth, most people seek to improve their living conditions because better living conditions afford increased opportunities for socioeconomic success. People usually better their living conditions by moving into a community that is more economically prosperous than the one from which they departed. However, once shut out from ownership opportunities, African Americans, who are statistically renters of real estate, rather than owners, cannot accumulate the capital necessary for upward residential mobility.”).

52. Larry Gordon, *Prejudice Called Main Cause of Housing Segregation*, L.A. TIMES, Dec. 23, 1996, at B1.

53. DAVIS, *supra* note 35, at 181; *see also* Cheryl A. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1709 (1993) (discussing how “whiteness (aka the absence of Blacks) has been an important element in defining “property rights” in the U.S.); DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* (1993); *See* DAVIS, *supra* note 35, at 166 (“The reasons for creating or moving to a minimal [suburban] city was not to signal something unique about one’s demand for public goods but to insulate one’s property from the burdens of supporting public services.”); Cities such as Monterey Park could zone out service-intensive low-income renter populations; eliminated (by contracting out to L.A. county) public worker’s labor union pressure for expanded city services thereby safeguarding one’s rapidly appreciating property from use by government as a ‘resource’ for fiscal redistribution. The problem with this scenario is that it depended in important ways on perpetuating and increasing the isolation and immiseration of inner city Black and Latina/o populations in the core city.

54. Thomas Pettigrew, *New Patterns of Racism: The Different Worlds of 1984 and 1964*, 37 RUTGERS L. REV. 673, 676 (1985) (Pointing that in 1980, White home ownership was at 68% and Black home ownership by comparison, was at 44%. Pettigrew also points out in 1980, the median value of single-family, owner-occupied housing belonging to Whites was \$48,600, whereas the median value of similar residences owned by Blacks was \$27,000).

Eric Yamamoto has written about the internal and external unraveling of Asian-American politics in Hawaii, in the context of the Hawaiian Sovereignty Movement.⁵⁵ Internally, the Asian-American community split. Persons in the Japanese-American community wanted to provide apologies, redress and reparations in terms of land and money to native Hawaiians. However, Yamamoto has described how the many members of the Hawaiian-Chinese-American community chose to opt out and wanted nothing to do with contributing to reparations or apologies to Native Hawaiians.⁵⁶ Externally, wedges were driven between the Chinese-American and Native Hawaiian community. Group complicity, responsibility, and agency in oppressive institutional arrangements are difficult but important aspects to consider when thinking about remediation from entrenched patterns of residential segregation.

Another theme Yamamoto brings up is the idea of redress. What does it mean to receive an apology and (perhaps symbolic) payment of reparations for past wrongs that have been inflicted?⁵⁷ For a poignant example, look at the South African Truth & Reconciliation Commission, which has been charged with bringing to light the crimes and wrongs committed under apartheid. The Commission has the power to grant amnesty to those who come forth and place a complete and thorough detailing of their crimes on the public record. Imagine what difficult decisions the Commission must be facing. Although the U.S. is very far from convening anything remotely resembling the Truth & Reconciliation Commission,⁵⁸ one wonders what

55. Yamamoto, *Rethinking Alliances*, *supra* note 17, at 39-43.

56. Yamamoto, *Rethinking Alliances*, *supra* note 17, at 43 (quoting Rev. Richard Wong in a letter opposing a resolution by the Hawaii Conference of the United Church of Christ which called for multimillion dollar reparations and an apology by Asian-Americans to Native Hawaiians: "As an Asian/Chinese, we Chinese look back at our [relations] with Native Hawaiians we feel we have not exploited nor dehumanized them. . . . Please do not clump Chinese with other Asian-Americans who may have taken advantage of [Native Hawaiians].").

57. Yamamoto, *Rethinking Alliances*, *supra* note 17, at 65-69; JOHN DAWSON, *HEALING AMERICA'S WOUNDS* (1995); Eric K. Yamamoto, *Friend, Foe or Something Else: Social Meanings of Redress and Reparations*, 20 DENV. J. INT'L L. & POL'Y 223 (1992); Eric K. Yamamoto, *Korematsu Revisited: Correcting the Injustice of Extraordinary Government Excess and Lax Judicial Review—Time for a Better Accommodation of National Security Concerns and Civil Liberties*, 26 SANTA CLARA L. REV. 1 (1986); Hiroshi Wagatsuma & Arthur Rosett, *The Implications of Apology: Law and Culture in Japan and the United States*, 20 LAW & SOC'Y REV. 461 (1986).

58. Anthony Lewis, *At Home Abroad: Painful Truth*, N.Y. TIMES, Feb. 7, 1997, at A33 ("In the last few days unimagined horrors have emerged from the Truth and Reconciliation Commission established as part of the country's transition to democracy. Among other things, the commission is looking into the possibility that Steven Biko was killed in 1977 not by policemen's blows, as previously thought, but by poison. . . . The new Biko inquiry and other developments have made clear that the commission is producing what many doubted it could or would: the truth. More and more former policemen, military officers and higher-ups are coming forward to confess what they did. But the very effectiveness of the commission in bringing out the worst is putting strains on the other half of the bargain it offers: In exchange for telling the whole truth about what they did, perpetrators of political crimes are to be given amnesty. . . . If amnesty is given to Steve Biko's killers, and others like them, it will be extremely painful for many. But without the carrot of amnesty, the truth would almost surely have remained hidden—corrupting the country's future."); *see also* Suzanne Daley, *Divisions Deepen on*

shape the remedy for more than a century of residential racial segregation might take.⁵⁹

CONCLUSION

In closing, Monterey Park is a very interesting place—it seems to exemplify phenomenon that we will be seeing more and more frequently. For example, Monterey Park can be seen as illustrating how the world is indeed getting more homogenous: a high rise is a high rise, whether it's built in Jakarta or California, and diaspora capital is increasingly flowing across borders globally. However, in another equally important sense, the world is increasingly full of difference. For example, the U.S. history of racially-based residential segregation presents unique problems whose solutions may vary significantly from locale to locale. The paradoxical thing is that differences and homogeneity are often produced by the same forces. Moreover, the same forces produce modernization.

What do the foregoing three points have to do with radical democracy? First, by being aware of the degree to which “we have met the oppressors and they are us,” that is, recognizing the extent to which we all have internalized certain hegemonic structures of oppression, is a step towards transforming those structures. This is an important step in creating the coalitional possibilities Chantal Mouffe has described. Second, by asking questions like “Are Asian Americans Anglo?” we may begin to see the

Apartheid Crimes Inquiry, N.Y. TIMES, June 8, 1997, sec. 1, at 6 (reporting that former South African President F.W. DeKlerk threatened to take legal action unless the Chairman of the Truth and Reconciliation Commission, Archbishop Desmond Tutu apologizes and the deputy chairman, Alex Boraine resigns. DeKlerk claims he was defamed when Tutu and Boraine said they found DeKlerk's testimony before the Commission “unbelievable.”).

59. The newspaper columnist William Raspberry writes that Georgetown Professor Richard America has calculated “using census data, the work of economists like Lester Thurow and certain mathematical models to estimate broadly how much whites have benefited from their whiteness since, say, 1930 and then to pluck in some assumptions about slavery going back to 1619. . . . [Professor America] estimate[s] [that reparations for slavery and other racially-related harms] would amount to between 5 and 10 trillion dollars in present value.”); William Raspberry, *Our Debt for Discrimination*, WASH. POST, June 2, 1997, at A19; see also BORIS I. BITTKER, *THE CASE FOR BLACK REPARATIONS* (1973) (urging national debate on the subject of black reparations); Rhonda V. Magee, Note, *The Master's Tools, From the Bottom Up: Responses to African-American Reparations Theory in Mainstream and Outsider Remedies Discourse*, 79 VA. L. REV. 863 (1993); Vincene Verdun, *If the Shoe Fits, Wear It: An Analysis of Reparations to African Americans*, 67 TUL. L. REV. 597 (1993); Robert Westley, *Many Billions Gone: Is It Time to Reconsider the Case for Black Reparations?* (copy on file with the author); See also HARLON L. DALTON, *RACIAL HEALING: CONFRONTING THE FEAR BETWEEN BLACKS & WHITES* (1995); see also Martha Minow, *Not Only for Myself: Identity, Politics and Law*, 75 OR. L. REV. 647, 682 (1996) (“At a deep level, slavery stamped Black people as inferior, as lacking virtue, as lacking the capacity to order their own lives and therefore headed inexorably for prison. Creating public settings in which interracial groups could examine such claims would instruct all involved and trigger a probing exploration of the processes producing group identity and prejudices against groups. . . . inviting comparisons with other ways to build and sustain community responsibility and vibrant institutions. To learn from the still new model of South Africa's Truth and Reconciliation Commission, a parallel activity here would need to consider criticisms of the oppressed group as well.”).

degree to which our categories, racial and otherwise, are dynamic over time and that we as individuals and groups may have a greater degree of agency with regard to inhabiting and transforming those categories, as well as an awareness that such categories are not "either/or", but "both/and" groupings and identifications. Third, looking at the dynamics of change in sites like Monterey Park can show us how simple dichotomies between "global" and "local," "international" and "domestic," and "public" and "private" obscure new possibilities for building and extending what Chantal Mouffe has called "chains of equivalence" into areas that had previously been insulated from a radical democratic critique, such as housing markets, boardrooms of transnational corporations, and workplaces both here and abroad.