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## Contributors' Biographies

**Gabriel Gutiérrez** is assistant professor of Chicana/o Studies at California State University, Northridge. His research fields include Chicano/a history, Nineteenth-century Western US history, California history, cultural history, and critical race theory. He has published articles on environmental history, gender relations, and critical race theory, including "Deconstructing Disney: Critical Race Theory and Chicano/a Children" in *Aztlan: A Journal of Chicano Studies* (Spring, 2000).

**Mónica Russel y Rodríguez** is currently Visiting Professor at Northwestern University in the Department of Anthropology. She is working on her forthcoming book *Pura Mestiza: Gender, "Mixed Race," and Nation in Mexican America.* Comments and communication can be sent to **mryr5@hotmail.com**.

**Jonathan Xavier Inda** teaches anthropology and global cultural studies in the Department of Chicano Studies a the University of California, Santa Barbara. He is co-editor of *Race, Identity and Citizenship: A Reader* (Blackwell, 1999) and has published articles on globalization migration, and race in *Educational Policy, Discourse, Cultural Studies: A Research Volume, and Encyclopedia of Cultural Anthropology.* He is currently co-editing a book with Renato Rosaldo on the anthropology of globalization.

**José Prado** is currently a Ph.D. candidate in the Department of Sociology at the University of Southern California. A former high school teacher in the Los Angeles Unified School District, his research focuses on bilingual education policy from Chicano/a Studies and critical studies perspectives.

**Karen Mary Davalos** is assistant professor of Chicana/o Studies at Loyola Marymount University. She is author of the forthcoming book, *Exhibiting Mestizaje: Mexican (American) Museums in the Diaspora* (University of New Mexico Press). She has published articles on Chicano/s popular religion, race, gender, and Chicano/a Anthropology. Her current research explores the cultural codes and values that Latino and African American youth employ in order to resist beliefs that encourage them to fight each other.

# Erasing Boundaries: Chicana/o Studies and Critical Race Theory

**Karen Mary Davalos**
**and**
**Gabriel Gutiérrez**

In this special issue we engage Critical Race Theory from Chicana/o Studies perspectives. Chicana/o Studies and Critical Race Theory are two orientations that were destined to meet, although for some scholars the two were never separate. Diverse origins, histories, and institutional goals have, nevertheless, developed into more than a few shared elements. Critical Race Theory is defined as an approach with six elements that shape its basic perspectives, research methods, and pedagogy. These elements include: 1) the centrality and intersectionality of race and racism; 2) the challenge to dominant ideology; 3) the commitment to social justice; 4) the centrality of experiential knowledge; 5) the interdisciplinary perspective that recognizes that race is experienced in tandem with gender, class, and other representations of subalternity; 6) a skepticism toward claims of neutrality, objectivity, color blindness, and meritocracy while challenging ahistorism and locating current inequalities and social/institutional practices as part of larger historical processes (Delgado, 1995; Gutiérrez, 2000; Matsuda et al, 1993; Solorzano, 1997).

Chicana/o Studies is an interdisciplinary project with five elements that guide methods, perspectives, and pedagogy: 1) the assertion that the study of people of Mexican descent is legitimate research and its findings challenge conventional disciplines; 2) the commitment to social justice, typically articulated in the expression "giving something back to the community" but also applied in research designs that are created out of a dialogic relationship with those affected by the study; 3) the representation of human agency in texts; 4) the centrality of experiential knowledge; and 5) the questioning of neutrality claims that is backed-up by a commitment to declaring one's position as researcher/teacher (Acuña, 2000; Davalos, 1998; Fregoso and Chabram, 1990; Saldívar, 1997).

However, it took a well-founded critique from Chicanas to unpack the assumptions surrounding the normative, gendered notion of "*nuestra cultura*/our culture" (Córdova et al., 1986). Although the interdisciplinary

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project named social inequalities and aimed for social justice, not all inequalities were defined as a legitimate subject for Chicano Studies. Initially, Chicano scholarship did not examine the role of patriarchy in shaping curriculum and research, the centrality of gender and sexuality in Chicana/o experiences, and the effects of heterosexism and patriarchy on constructing intellectual authority and political practice (Pérez, 1993; Trujillo, 1993). Chicana feminists developed a new subject and perspective for the interdisciplinary project, a methodological vision that is represented in the name "Chicana/o Studies." According to Angie Chabram-Dernersesian, the "splitting" of the Chicano subject with "the markers *o/a, a/o* announce the end of the nongendered Mexican American subject of cultural and political identity; they reinscribe the Chicana presence, which had been subsumed under the universal ethnic denomination *Chicano*" (1993:39). The "split" articulates a sixth element that is present in the other five: the application of knowledge to the social relations and systems of inequality that disadvantage women, as *women of color* (Alarcón, 1998). It is the method of re-construction, of re-centering the lens of inquiry that the contributors in this special issue bring to Critical Race Theory.

In fact, the essays in this special issue emerge from the space that Chicanas created in Chicano Studies and that later became known as "U.S. third world feminist criticism" (Sandoval, 1998:353; 1991). They are "generated out of the juxtaposition of anticolonial and antisexist U.S. histories that are often underestimated or misunderstood" (Sandoval, 1998:353-4). Working in that space and finding it necessary to operate on multiple levels, the contributors have employed a method that is "polymodal, composed of differing and mobile structures of consciousness" (Sandoval, 1998:535). The authors work in the matrix in which "no enactment [of politicized and oppositional stances in resistance to domination] is privileged over any other [including race], and the recognition that each site is as potentially effective in opposition as any other makes possible another mode of consciousness which is particularly effective under late capitalist and postmodern cultural conditions in the United States" (Sandoval, 1991:11-12). They use the intersections of race, gender, class, nation, body, empire and more to understand legal practice and policy, national politics, discourse, education, and museum representation. Just as U.S. third world feminists understood that "organizing along the binary" sublimated and denied their experience, the authors here have understood that race as a primary tactic,

analytical strategy, or method has its limits and have opted to expand how Critical Race Theory focuses its lens (Sandoval, 1991:4). By beginning with "race *and*," each contributor has rejected the position that race is experienced *in tandem with* and suggests more strongly that it is inextricably connected to class and gender oppression, specifically in preferential treatment of white men; the reproduction of marginalization through a subtractive curriculum and social and legal policy; the representation of Mexicans and Chicanos/as; the body; and other unforeseeable resignifications within the matrix.

Sandoval anticipated that the method of U.S. third world feminism will seek "alliance with other decolonizing movements for emancipation" (1991:4). It is no surprise, therefore, that the reconfigured Chicana/o Studies and Critical Race Theory have come together. The essays in this special issue join these interests in order to offer new directions, new subjects in the study of people of Mexican descent. Moreover, the various scholars represented in this issue are in conversation with Rodolfo Acuña's (1998) critique of the "American Paradigm," signifying a paradigm shift in part by their interdisciplinary or anti-disciplinary approaches.

The contributors are a group of scholars disciplined in history, anthropology, and sociology, but, as we suggest above, their work circulates in Chicana/o Studies, Feminist Studies, Ethnic Studies, Cultural Studies, and Critical Race Theory, to name just a few areas. Again as we suggest above, the crossing of boundaries is important to their analysis and this special issue. At times, the interdisciplinarity of an essay results in a transgressive stance in which the author asks questions that are outside of her/his disciplinary training or academic department.

The desire to deconstruct social phenomena runs across all of the papers. It guided our organization of the special issue, so that from one view the papers are ordered chronologically (moving from past to present) and from another view they are organized thematically (moving from the deconstruction of the past to the reconfiguration of the present and future). The issue begins with the historical contexts of racialization and the institutionalization of gendered privilege (Gutiérrez and Russel y Rodríguez). It continues with the excavation of the enactment of race (Inda) and then addresses two specific contemporary phenomena (Prado and Davalos).

Gabriel Gutiérrez's paper documents the social and legal constructions of systemic exclusion for subaltern communities in nineteenth-

century California that privileged white men and marginalized non-whites and women. He distinguishes two types of repression operating in this period. "Inclusive repression" characterized Spanish Mexican (1800-1847) social constructions and then legal and institutional policies toward race and gender. By contrast, "exclusive repression" characterized early Euroamerican (1848-1870) social constructions of race and legal institutions that created unequal levels of participation for marginalized groups. In both cases, social constructs of race, culture, and ideology preceded and guided legal and institutional practice. Gutiérrez looks closely at race and gender legal practice and policy that created privileges for white men, and he recodes these policies as "preferential treatment" during the Spanish Mexican and early Euroamerican periods. From the thematic perspective, we found Gutierrez's paper a fitting opening for the issue because it anticipates several discussions developed in the other papers. For example, his work on the Spanish Mexican marginalization of Indians and mestizos and how they are disadvantaged through their low level of participation in society becomes historical evidence for José Prado's argument that Proposition 227/"English for the Children" will disadvantage bicultural/bilingual youth and relegate them to low income, low skill jobs in twenty-first century California. The two papers are an interesting dialogue about the privileges of whiteness and material accumulation in California and how educational institutions create and maintain such privileges. In addition, Gutiérrez's discussion of gender and race precedes Monica Russel y Rodríguez's argument that racialist theories were used to inform U.S. public opinion and foreign policy toward Mexico and Mexicans during the U.S.-Mexican War.

Monica Russel y Rodríguez's analysis of hybridity demonstrates how mixed-race people complicate the typical understanding of non-whites because as mestizos they are partly "white." She examines the ways in which hybridity was negatively viewed but also desired, since Mexico was seen as a mestizo nation and as a feminized land that made for easy conquest. The mixed-race people were imagined as inferior, as a problem because they would degrade the so-called pure cultures, but mostly women were blamed and desired. Russel y Rodríguez's essay is in conversation with Jonathan Xavier Inda's as it traces how race and gender are normalized and how this process fulfills and allows for political domination. Her paper also reflects and anticipates Davalos' discussion of how racialization

emerges simultaneously with a fear of miscegenation. Moreover, the anti-disciplinary position referred to above is most evident in the work of Russel y Rodríguez. She challenges the authoritiative boundaries of Chicana/o Studies by examining the discussions that took place in Washington, D.C. among politicians and scientists in the mid-nineteenth-century. By working outside of the southwest, Russel y Rodríguez adds a dimension to our understanding of the way U.S. politics of the period dealt with Mexicans. In addition, she breaks with convention in anthropology and Chicano/a Studies by "studying up" in order to understand the historical constructions of race, culture, and gender.

Jonathan Xavier Inda's essay, the middle piece for the issue, begins with a discussion that takes racial matters outside of the black/white frame and engages the ways that bodies are racialized in a binary opposition between white and non-white. His work builds on and informs that of Gutiérrez and Russel y Rodríguez, providing a model for understanding the social construction of race on the body through a detailed analysis of processes and practices, or discourse, that perform race. The paper argues that the racial body does not exist as a simple biological fact. It is socially constructed. This is, of course, the argument or premise upon which the other contributions to this issue are based. However, Inda calls attention to the ways that "race" is constituted and naturalized in everyday speech acts, utterances, repetitions, and reiterations, thereby procuring what it names. Moreover, Inda lays out why "race" is inherently unstable and open to transformation and reconfiguration. Therefore, the performative of race is important for two reasons: 1) since "race" is not natural, then the social hierarchies and inequalities are not fixed and can be changed and 2) reconfigurations of "race" come from within its previous articulations. Here Inda anticipates the essay by Karen Mary Davalos and her argument that the making of the Mexican Museum and its collection is a reconfiguration of stereotypical images of Mexicans. By calling into question the binary of "us/them," Inda suggests that we can no longer imagine oppression and resistance as if they had different/distinct origins. According to Inda, they are part of the same system of meaning.

The issue continues with two essays that document contemporary cases of racialization and empire building. José Prado's essay on California's passage of Proposition 227/"English for the Children" addresses the conglomeration of race and class domination through his appropriation

of a cultural Marxist analysis. Placing his argument within a socio-historical context, he documents how ideological and linguistic domination have produced and supported the marginalization of bilingual/bicultural Chicanos/as and other Latinos/as into peripheral sub-sector employment since the nineteenth-century. Specifically, Prado argues that schooling simultaneously reproduces and shapes the racial domination of white supremacy and class oppression of capitalism. For Prado, Critical Race Theory is a blending of "consciousness and politics enacted to ensure that ethical commitment to egalitarian social relations enter into the everyday political sphere of culture" (Sandoval, 1998:360). He considers how Chicanos/as and other Latinos/as are racialized and therefore subjugated through schooling. Moreover, Prado addresses how a subtractive curriculum works with capitalism and white supremacy to produce low-income workers, with the intention of creating a docile, subservient, uncritical, uniformed populace. Finally, Prado concludes that Proposition 227/"English for the Children" sentences bilingual/bicultural Chicanos/as and other Latinos/as to low-wage work and denies their funds of knowledge from which resistance and reconfiguration can arise.

Karen Mary Davalos' essay examines the polysemic responses to the Nelson A. Rockefeller Collection of Mexican Folk Art at the Mexican Museum in San Francisco. Her utilization of the palimpsest, "a site where texts have been superimposed onto others in an attempt to displace earlier or competing histories" (Cooper Alarcón, 1997:xiv) suggests that whiteness does not merely displace Chicano/a identity and practice but that it informs the responses of Chicanos/as to nation and empire. The three palimpsests that Davalos discusses are the multiple positions of the museum, the collector, and the collection. She documents how these constructions and representations are multiple and oftentimes contradictory as they emerge from a legacy of racial conflict, white privilege, and the fear of miscegenation. Specifically, Davalos examines how racialization, nationalism, and imperialism inform Chicano/a cultural practices. Finally, Davalos' essay differs in some ways from the others. For instance, whereas Gutiérrez and Prado do not ask whether or not Mexicans in the Spanish Mexican period or Latinos/as that supported Proposition 227/"English for the Children" are sell-outs, Davalos puts the question on the table. She asks if an affinity or shared view with a white male capitalist makes one a sellout. She is willing to raise the question but her answer complicates the picture so

that the original question becomes a strategy of sleight-of-hand. Davalos and the other contributors do not assume that culture was a unifying force. It is not "boiled down into a dialectic of accommodation and resistance" but "placed within the centrifuge of negotiation, subversion, and consciousness" (Ruiz, 2000:2). However, she suggests that masculinity and male privilege and overlapping constructions of race (white and non-white, pure and hybrid) make it impossible for us to separate the two imaginary poles: Chicano and Euroamerican. Furthermore, the capitalist/imperialist and artist/community-based visions for Mexicans resonate so that even the positions cannot be made mutually exclusive.

Lastly, the editors would like to acknowledge Felix Padilla for his guidance throughout this project and Jorge García, Dean, College of Humanities, at California State University, Northridge for his commitment to and co-sponsorship of this special issue. The mentorship of Rodolfo D. Torres, whose idea for this special issue ignited this exciting project was instrumental. In 1997 Karen Mary organized a session titled "(Dis)ordering Chicanos in Nation and Empire: Racing to and from Whiteness," for the 1998 Annual Meeting of the American Studies Association (ASA). She invited Gabriel Gutiérrez, Mónica Russel y Rodríguez, and Jeff Garcilazo to participate. The panelists were to explore the consequences of nation and empire in the racialization of Mexicans and the creation and subsequent invisibility of whiteness and biraciality in nineteenth- and twentieth-century America. Simultaneously, we began to envision a reading group that would explore the boundaries and future of Chicana/o Studies. Gabriel drafted a proposal for a workshop that would bring together junior and senior scholars who could mentor each other through a new terrain that blended Chicano/a Studies and Critical Race Theory. The workshop, comprised of the panelists and a dozen other scholars, would convene periodically to share and reflect. Unfortunately, in the midst of these plans and weeks before the ASA Annual Meeting, Jeff Garcilazo, our good friend and colleague, went into a coma after what was supposed to be a routine operation. Among its many effects, this tragedy put both projects on hold as we stumbled with the reality and delicate nature of life and the preciousness of human relationships. After months, we were filled with adulation when Jeff awoke from the coma and commenced a spirited yet challenging rehabilitation. In the midst of this, Rudy encouraged us to continue on our path, recommending that we propose a special issue for this journal. His concern for our personal and

intellectual development, his attention to our fears, and his willingness to meet and work with us during a particularly busy year motivated us to take this risk. In fact, on occasion, Rudy and Gabriel conferred about this project during visits to Jeff at the hospital. Indeed, Jeff's and Rudy's presence in the development of this project has served as an impetus for its fruition. Through all this, we re-strengthened our commitment to thinking and working collaboratively, and placed a call for papers. In the past year, we have drawn on those lessons as we reviewed, accepted (and rejected), edited, and edited again the papers in this journal. We dedicate this special issue to Jeff and Rudy.

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# Affirmative Action of the First Kind: Social and Legal Constructions of Whiteness and White Male Privilege in Nineteenth-Century California

**Gabriel Gutiérrez**

This essay discusses preferential treatment and the institutionalization of privilege for white males in nineteenth-century California under Mexican and Euroamerican governments. The social constructions of whiteness and male privilege in these two eras are discussed comparatively as they relate to legislation and judicial rulings regarding the entitlement, negotiation, and transfer of property, as well as employment opportunities. This essay locates and examines instances in which the social constructions of whiteness and patriarchy evolved into legal constructs and had consequences on material and economic entitlement. It argues that "white" male elites were enfranchised by legal and institutional means while "non-whites" and women were simultaneously disenfranchised by these very same acts. Still, notions of whiteness and what it meant to be "white" differed during these two eras.

Moreover, this paper examines race and gender based policies in historical context and discusses the comparative infusion of racial and gender privilege in Spanish Mexican and Euroamerican California. The state's role in accounting for the congruency of race and gender relations with the distribution of wealth, accessibility to opportunities in the private sector, and degrees of public participation characterized both of these periods. However, different forms of repression existed in these two epochs. An "inclusive repression" characterized Spanish Mexican (1800-1847) policies toward racially and culturally marginalized groups, while a system of "exclusive repression" embodied the manner in which Euroamericans initially addressed and treated marginal groups from the time of U.S. military conquest of Mexico in 1848 through the turn of the century.

Finally, this paper does not address human agency of the subaltern—the politically, culturally, economically, and ideologically marginalized—because its focus is mainly on the role of the state and power brokers in creating, maintaining and defending privilege for the status quo. This paper does not suggest that subaltern populations passively accepted the imposition of their marginal conditions. Rather, this essay merely seeks

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to point out the institutional constructions of racism, sexism, and classism in nineteenth-century California under two different governments. It is hoped that a discussion of the highly complex roles of legal institutions and social practices which created an unequal level of participation for people in nineteenth-century California will reflect on the present-day debate regarding race and gender based policies. Indeed, this paper will demonstrate that a nineteenth-century version of affirmative action in reverse existed for those who embodied whiteness and male privilege long before the present-day debates on the issue emerged. Prior to discussing actual legal constructions of race and gender privilege in California, a discussion of the social constructions of race and gender are in order.

## Inclusive Repression and *gente de razón* in Spanish Mexican California

The comparative constructions of whiteness and patriarchy in Spanish Mexican and Euroamerican California were guided by their respective national attempts to construct legal cultures which reflected race and gender relations. During the Spanish Mexican period in California, the construction of whiteness centered on ideological manifestations as actualized through politicized cultural behavior. This emphasis on the intangible cultural and ideological constructs of race and gender during the Spanish Mexican period differed greatly from the tangible, physical, and biological emphasis on race and gender as categories of distinction during the Euroamerican period.

Much attention has been given to race, class, and gender as tangible (physical, material and biological) categories of analysis, yet during the Spanish Mexican period, the appropriation and demonstration of internalized colonialism among the marginalized was seen in a process through which cultural behavior functioned as the currency of ideology. A cultural economy existed where a marketplace of ideals was highly regulated by the status quo in such a way that the principle of *laissez faire* was staunchly contested because a true free market place of ideals would allow counter hegemony to permeate. People from marginal backgrounds who internalized colonial ideals experienced social mobility in a vertical sense when they accumulated property and status and in a horizontal sense when they adopted or adhered to hegemonic cultural and political ideologies which moved them from margin to center.

A common practice in colonial Latin America for racialized persons seeking social prestige and privilege was *limpieza de sangre* [cleansing of blood] (Haas, 1995; Keen and Wasserman, 1988; Weber, 1982). In spite of one's racial background, one could "whiten" oneself by assimilating to

Eurocentric norms, acquiring wealth, buying a certificate verifying their status as "white," or by exercising domination over other "non-whites." While most of this occurred in pre-independence Latin America, one practice utilized to distinguish Californio elites from Indians was the social designations of *gente de razón* and *niños* (Haas, 1995; Monroy, 1990). These classifications arose to distinguish those who internalized and practiced an "old world" view from those Indians who while adult in age constituted what was presumed by elite Californios, Franciscan missionaries, and others to be an infantile state.

This hegemonic practice sought to reinforce an ethnic, race, gender, and class hierarchy in a vertical sense and a mainstream and marginal ideological and cultural position in a horizontal sense. It was created in order to distinguish those who understood and practiced domination over those who did not. By its relative nature, the designation of *gente de razón* served Spanish Mexican colonists to racially construct the "other" at the same time the former constructed their own collective identity. Such a collective identity included a hierarchical gendered paradigm. As male colonists distinguish themselves from their non-*de razón* male counterparts by posing as chivalrous *caballeros*, so did colonial women "instruct" notions of proper and expected behavior to non-*de razón* women (Griswold del Castillo, 1995; Haas 1995).

Assessing pueblo demographics in the 1820s, Californio liberal José Bandini asserted that "The inhabitants of the pueblos are white people, and in order to distinguish themselves from the Indians they are commonly called *gente de razón*" (Bandini, 1951:9). The fact that Californios felt a need to distinguish themselves from Indians by the designation "*gente de razón*" suggests that Indians and those Californios claiming to be non-Indian existed in an ambiguous racial state, were quite similar in skin color, and thus required the need for social and ideological distinctions. While racial and cultural identifications were made, Californios attempted to distinguish themselves from "Indios" by their presumed economic capacities, their ability to understand the complexities of surplus market-induced productivity within a globalizing capitalist market, and the degree of their assimilation into Eurocentric cultural norms.

Individuals were gauged by their perceived entrepreneurial spirit, the value systems they embraced, and the degree of their economic wealth and productivity. These class perceptions of individuals were often racialized and generalized into Indian and Spanish categories. Thus, the world views of the respective populations of southern Alta California helped to establish their social position. During the Mexican period non-assimilating Indians and mestizos were marginalized from access to power while those who

assimilated were more readily accepted, albeit patronized, for productive participatory roles in society.

Two early nineteenth-century Spanish Mexican Constitutions addressed the legal and political participation of non-white racial groups. The Constitution of 1812 did not grant political citizenship to blacks and castas and "suspended the voting rights of debtors, domestic servants, the unemployed, and those under criminal indictment" (Guedea, 1997:45). Thus, racial and economic considerations were taken into account when assigning participatory roles. Non-white racial groups and the economically marginalized were prohibited from full legal participation according to this constitution. However, enforcement of such laws was abandoned at times. Although the constitution did not permit large sectors of the population to vote, reports indicate that in some cases junta presidents permitted indiscriminate voting without accounting for appearance or skin color (Guedea, 1997:45-46).

The Constitution of 1824, a liberal constitution, sought to upgrade the Indian social position, make Indians citizens, and make them equal to elites. However, *de facto* practices on the part of Euromexicans sought to maintain Indians in a subordinate social position. Owing to perceived lack of assimibility of Indians to European ways, the Indians were often infantalized by Californios and missionaries. Also, in an effort to offset Indian resistance to colonization—and more importantly to incorporate Indians into the mainstream—cultural, racial, and ideological forms of *mestizaje* proved to be strategies of Spanish Mexican conquest. For some Indians different forms of *mestizaje* later became strategies of survival. Yet, *mestizaje* was based on the notion of forced acculturation through the conglomeration of presumably superior Eurocentric values and the appropriation, subjugation, and suppression of presumably inferior indigenous world views. Thus, while some Indians resisted they often did so within parameters set by Spanish Mexicans.

The implied meaning that *gente de razón* embodied rationality and whose reason manifested itself in their abilities to understand and act on particular economic, cultural and political ideals meant that people presumed to be without reason, namely California Indians were, as Father Juan Calzada, Guardian of the College of San Fernando in Mexico argued "always [to] be rough, coarse, indolent, dirty, uneducated, with no manners and no civilization at all" (Hutchinson, 1965:341). Indeed, as one Latin American historian asserts, the stigmas associated with being Indian led some Indians to identify as *mestizo* or non-pure Indian (Gould, 1993:394-395).

The issue of California Mission Indian emancipation after

secularization and the accompanying debate among conservative and liberal Californios had at its center competing arguments for the incorporation of the newly freed Indians. In an attempt to distinguish themselves from Mexicans in the interior and to establish a territorial identity and social order, elite conservative Californios sought to protect their material interests by arguing against colonization attempts by the Mexican federal government. For example, Californio ranchero Ignacio Sepúlveda accentuated the perceived differences between Californios (especially conservative Californios) and potential Mexican immigrants (mostly consisting of liberal elites) when he stated that Californios "differ in many essential particulars from the other people of Mexico....There are a great many families in whose veins circulates much of the *sangre azul* [blue blood] of Spain" (Haas, 1995:37).

In this spirit conservatives attempted to derail colonization efforts which they feared would encourage the influx of anti-clerical, free market liberals and other "non-blue bloods" by artificially upgrading the social, political, and economic status of recently emancipated Indians. They changed the legal status of mission Indians "to conform to republican ideals, without changing their actual status. Instead of remaining neophytes under the padres, Indians would become *peones* under a *mayordomo*" (Weber, 1982:66). The issue was not whether Indians were capable of subsisting. That was evident. Rather, conservative and liberal elites alike were concerned with the degree to which Indians were able to mimic Spanish behavior and values by demonstrating surplus production and profit motivation on their land and resources to assist in the further settlement and future prosperity of California and its incorporation into the developing global economy.

For instance, in 1824 a special commission was convened under Mexican official Lucas Alemán who was part of the triumvirate to examine this question. Based on its conclusion that the mission system was "anti-republican," this commission reported that "the first and most important step that must be taken to lead the Indian to civilization was to teach him the value of his right to own land" (Hutchinson, 1965:346). Upon completing this task, the commission determined that land should only be given to those Indians "who have the necessary disposition and faculties for agricultural work" (346). California Indians thus had to demonstrate their adaptability to Spanish Mexican notions of economic productivity in order to be elevated from workers to land owners. The fact that this edict became legal doctrine further demonstrates the willingness on the part of Spanish Mexican elites to tolerate perceived racialized differences in exchange for the assimilation of cultural, ideological, and economic values. Moreover, it confirms the

institutionalization of one group's values over those of another, subordinate one.

As part of their adaptability toward merchant capitalist economic productivity, Indians were expected to engage in nuclear family enterprises. Alta California Governor Echeandia issued a proclamation in July 1826 permitting married Indians who had been Christianized for at least fifteen years to leave their missions to be emancipated, provided they were capable of sustaining themselves through agriculture or artisanry (Bancroft, 1886). The fifteen-year stipulation further advanced the goal of California acculturation by combining the goals of economic productivity with desires to control sexuality. By emphasizing monogamous two parent households the friars and civilian officials sought to curb what they considered to be sexual promiscuity. Moreover, Karl Marx has argued that such an arrangement of a two parent household within a delineated and socially constructed space was intended to foster accumulation of property, and perhaps more important, the transfer of such property to heirs (Tucker, 1972).

More evidence of attempts at economic conversions is found in the writing of former Spanish naval officer Francisco de Paula Tamaríz who saw another potential manner to incorporate Indians as a consumer-work force. He cited an earlier Spanish Mexican official who noted the potential for a new labor-based consumer class, "There is no savage who will not yield to industry and a plentiful supply of the things he likes" (Hutchinson, 1965:345). The shift from a largely subsistence economy to a market based one proved more complicated than Tamaríz's expectation.

Indeed, some scholars have taken the value-ridden assessments of Euroamerican contemporaries verbatim and thus have prematurely designated this period in California as non-industrious. Moreover, such scholars have uncritically accepted the presumptuous and racist argument that inhabitants of the Southwest and California particularly were indolent (see two critical review essays of this scholarship by Castañeda, 1992 and 1990). Other scholars however, have documented the degrees to which Spanish Mexicans were economically productive and industrious. (Gónzalez, 1993; Veyna, 1993). In accounting for the presumably insufficient exploitation of resources in California, scholars have largely missed the opportunity to study the extent to which California Indian resistance to the imposition of alien world views played a role. Numerous legal documents demonstrate that Indians consciously manipulated the Spanish Mexican courts and found other ways to sabotage the advancement of capitalism (Gutiérrez, 1997).

Before assessing these complexities and exploring how the social construction of whiteness and patriarchy further transformed themselves into

policy formation and legal culture during the Spanish Mexican period, a brief discussion of whiteness and "exclusive repression" in Euroamerican California is addressed for comparative purposes.

## Exclusive Repression and Whiteness in Euroamerican California

The social construction of whiteness in Euroamerican California differed from that of Spanish Mexican California in its initial phase (1850-1870). The Euroamericans who stampeded into California in 1849 and thereafter knew that public lands were subject to preemption; they assumed that unoccupied land was public land regardless of Mexican grants (Bakken, 1993). Likewise, other social, political, cultural, economic, and ideological privileges were, according to the new arrivals, subject to preemption. Such preemption became a rallying cry for white men across class backgrounds. In some instance, elite white men appropriated privilege in whiteness and advocated on behalf of their working-class brethren. This was especially evident in Congressional hearings and debates regarding the United States' conquest and colonization of Mexico's northern *frontera.*

Invoking white male privilege and addressing the inseparable construction of institutional racism, sexism, and accessibility to material accumulation and participation in public life, Pennsylvania Congressman David Wilmont, author of the 1846 Wilmont Proviso which prohibited the expansion of slavery into the territories occupied by U.S. forces that belonged to Mexico, declared on the floor of Congress, "I plead the cause and rights of white freemen. I would preserve to free white labor a fair country, a rich inheritance, where the sons of toil, of my own race and own color, can live without the disgrace which association with negro slavery brings upon free labor" (Takaki, 1990:112; see also Morrison, 1997). Wilmont's proposal and Congressional enactment of legislation that provided "a rich inheritance" for men of their "own race and own color" stands as one of countless policies which reflect the reconciliation among feuding white propertied males in the history of major reform movements in the United States for the purpose of reclaiming, reaffirming, and re-instituting their privileges of race, gender, and property accumulation. Moreover, such compromises which reassert the privileges of whiteness, maleness, and a propertied class embody U.S. imperialism, secure for white males and their kin access to opportunity, material accumulation, and participation in public, social, political, and cultural life. Yet, as Wilmont's assertion demonstrated, whiteness became a unifying consideration between propertied and laboring classes of white men. The social construction and institutionalization of

whiteness and non-whiteness, as well as male privilege, became in the nineteenth-century a defining characteristic of "American" imperialism (Acuña, 2000; Barrera, 1979; Chan, et. al. 1994; Haas, 1995; Horsman, 1981; Limerick, 1987).

Initially, the use of pseudo-science in accounting for the "superiority" of whiteness was limited to Nordic whites (Stefancic and Delgado, 1996). Such a use of pseudo science carried over to attempts to distinguish men as biologically "superior" beings to women. Further, "low facial angles attributed by scientists starting in the 1840s and 1850s to women, criminals, idiots, and the degenerate, and the corresponding low brain weights, protruding jaws, and incompletely developed frontal centres where the higher intellectual faculties were presumed to be located, were all taken from racial science" (Stepan, 1996:125). The criteria utilized included such characteristics as physical and racial "distinctions" between white nordic men and non-white men and women that were based on flawed presumptions which became part of the basis and rationale for legislation that followed.

As they proceeded with Manifest Destiny, Anglo Americans sought to incorporate race as a principle of cohesion among Nordic white elites and working-class ethnic whites, thus constructing a common ground in whiteness and ultimately in "Americanism" (Ignatiev, 1995; Roediger, 1991; Saxton, 1990). For Irish Americans, the concept of whiteness became a vehicle of transgression in spite of various obstacles. Noel Ignatiev writes, "To Irish laborers, to become white meant at first that they could sell themselves piecemeal instead of being sold for life, and later that they could compete for jobs in all spheres instead of being confined to certain work; to Irish entrepreneurs, it meant that they could function outside of a segregated market. To both these groups it meant that they were citizens of a democratic republic..." (Ignatiev, 1995:2-3).

The construction of whiteness for Euroamerican men sought at some levels to permit the transgression of class and economic differences. The economic and material privileging of whiteness was evident in what David Roediger (1991) calls the "wages of whiteness" among the working-class and what George Lipsitz (1998) calls the "possessive investment in whiteness" among the propertied class. Roediger accounts for the manner in which working-class white folk distinguished themselves from non-white workers by attributing a particular psychological "wage" to skin color, placing more value on whiteness and less on darker skin. Such a psychological wage was usually accompanied by disparity in income and other forms of resource accumulation as well as disparity in job placement. Lipsitz on the other hand accounts for the historical process through which whites were given unfair

advantages to accumulate, multiply, and pass on wealth to future generations precisely because non-whites were legally, or otherwise in *de facto* manner, forbidden the same opportunities. While Lipsitz addresses the twentieth-century, his argument certainly has its roots in the eighteenth and nineteenth-centuries.

The manners in which nineteenth-century white Euroamerican men socially constructed their privileges differed in some ways from their Spanish Mexican predecessors. One major point of contrast between these two groups regarded competing concepts of whiteness. While Spanish Mexican elites constructed whiteness as an intangible category marked by cultural behavior and ideological manifestations, early Euroamericans regarded whiteness strictly on the simple bases of pigmentation, assumed biological functions, presumed levels of intelligence, and physical appearance. Moreover, Euroamericans sought to distinguish themselves from Spanish Mexican elite *caballeros* whom they viewed as racially, culturally, and economically inferior (Acuña, 2000; Barrera, 1979; Castañeda, 1992) as well as from the racial hybrid underclasses.

Tangible aspects of race became for many Euroamericans the basis for human variation. Such constructions date to the first voyages that resulted in initial contact between Europeans and communities in what were to become subaltern continents (D'Souza, 1997; Jordan, 1974). Reflection of such racialization is found in the writing of Richard Henry Dana, author of the immensely popular book *Two Years Before the Mast.* Dana lamented what he perceived to be Californio indolence in the 1830s writing, "In the hands of an enterprising people, what a country this might be!" (González, 1993:86) Part of the masculinity of whiteness professed by the likes of Dana had much to do with the desire of Euroamerican men to distinguish themselves from their "racially mixed" Spanish Mexican male contemporaries by appealing to economic ideals and their presumed superior industriousness. This, along with "divine intervention" in the form of Manifest Destiny, permitted Anglo American men to pursue by whatever means necessary what they perceived to be their rightful inheritance from God. It was journalist John O'Sullivan who coined the phrase "Manifest Destiny." O'Sullivan argued "democracy was in fact nothing 'but Christianity in its earthly aspect—Christianity made effective among the political relations of men' by eliminating 'the obstacles reared by artificial life...'" (quoted in Stephanson, 1995:40). While Christianity was utilized by Spanish Mexicans as a tool of conquest, incorporation and subordination, it became a tool of exclusion for Euroamericans. The rhetoric used in the mid nineteenth-century which included phrases such as "God given inalienable rights" helped to propel white men who came to see other

government forms as "undemocratic" and thus justifiable targets of conquest.

Horace Bell was, like Richard Henry Dana, another early Euroamerican alien who immigrated to California who expressed the racist thinking of the times. Bell, addressing the issue of Indian removal, expressed a deeper underpinning of racism which was to characterize the new order when he proclaimed, "We will let those rascally redskins know that they have no longer to deal with the Spaniard or the Mexican, but with the invincible race of American backwoodsmen, which has driven the savage from Plymouth Rock to the Rocky Mountains, and has headed him off here back to meet his kindred fleeing westward, all to be drowned in the great Salt Lake" (quoted in Wilson, 1995:xxxi). Bell's perception that Spaniards and Mexicans "failed" to completely eradicate California Indians indicated his lack of understanding of Spanish Mexican policies toward Indians, an assumption that racial domination necessarily embodied genocide, and the presumption that the Spanish Mexican application of domination was blundered accordingly.

Comparatively, Spanish Mexican and Euroamerican males of privilege sought to enfranchize themselves by creating policies of entitlement. In doing so they constructed their own sense of collective identities by simultaneously constructing and marginalizing others. Yet, while the extent and nature of such marginalization were similar at times, they differed greatly due to the overall difference in rationales for conquest and colonization, as well as the different approaches to addressing the racial, cultural, and ethnic diversity of those who "settled" the region. What follows is an assessment of the comparative Eurocentric frontiers in California that attempted to superimpose white male privilege and entitlement on the region.

## Comparative Frontiers: Racialized and Gendered Policies in Spanish Mexican and Euroamerican California

Some scholars have documented how subalternity resulted from distribution of property and was institutionalized by law (Pulido, 1998). In California, racial and gendered sentiments by elite men in both periods transformed themselves into public policy and state formation that was underscored by the entitlement of "white" men in both periods. This section provides analysis of policies that legally enfranchised white men and simultaneously marginalized and at times disenfranchised members of subaltern populations. Specific attention is given to land ownership and employment opportunities.

Much of the ideological posturing by Californio elites and its relation

to the social and political subordination of Indians and women revolved around the issue of settlement campaigns. Historians, Antonia Castañeda (1992) and Deena J. González (1999 and 1993), have both been instrumental in re-examining the Spanish Mexican settlement campaigns in light of gender, racial, ethnic, class, and cultural contestation, negotiation, and mediation of power. This collective work is significant to understanding how and why Eurocentric patriarchal value-ridden ideologies were institutionalized in the form of inclusive repression in the structures and relations of conquest. This work centralizes the lived experiences of the subaltern, but women in particular, in a colonial setting and documents how they responded to their subjugation. Castañeda, González, and Emma Pérez (1999) challenge conventional interpretations of history and question the roles of subjectivity in reconstructing historical relations of power.

Ideologies of race and gender played important roles in both periods under study when it came to the distribution, ownership, negotiation, and transfer of land and other property. The different land entitlement projects undertaken by Spanish Mexican bureaucrats made inherent specifications regarding the roles that race and gender were to play. For instance, elite *de razón* women faired much better than California Indians regarding their degree of participation in public life. That this was so serves to indicate that matters were worse for *mestiza* and *india* women who were subjected to multiple forms of subalternity. Suggestive of a "hierarchy of oppression," some elite Californianas were granted, managed, and worked rancho lands. Historian Gloria Ricci Lothrop writes that "The right of women to be property holders was underscored in a Royal Cedula regarding the governance of the province of California issued March 21, 1775" (Lothrop, 1994:65). The Royal Cedula noted that buildings, lots, and fields should be granted to settlers, retiring soldiers or their widows, adding that these properties should be "entailed in perpetuity on their sons and their descendants or on their daughters who marry useful others" (65).

Thus, the Royal Cedula called for the granting of property to women under the conditions of the absence of men (widowhood), with the condition that such property would eventually be inherited by their sons, or in the absence of this the condition, that such property would be inherited by daughters who married men that were considered "useful" in economic, political, and cultural comportment. These three conditions underscored the enfranchisement of some women at a level that was subservient to that of propertied men. Thus, while it was inclusive of women, this policy was also repressive in the manner it incorporated elite women as marginal subjects.

J.N. Bowman (1957) writes that at least sixty-six women were granted large estates in Alta California. However, acreage for these grants was not on equal terms with grants given to men. For instance, of the more than half million acres controlled by the De la Guerras of Santa Barbara in this period, 469,000 were controlled by male members of the family while 88,800 acres belonged to the women of the family (Thomspon, 1961). The number of male and female siblings who were granted large estates notwithstanding, the unequal allotment of land along gender lines was evident in Maria Antonia De la Guerra Lataillade's experience. The two ranchos she was granted in her own name were of substantially less acreage than the ones she acquired upon her husband's death. Under her own name De la Guerra Lataillide was granted Corral de Quati (13,322 acres), and Zaca (4,458) acres. Upon her husband's death she inherited Cuyama no. 1 and Cuyama no. 2 which were 22,193 and 48,827 acres respectively (Thompson, 1961:226-230).

Subaltern women also affected the manner in which land and other property was granted, negotiated, and transferred. According to Castañeda (1993), dowries were offered to men who married Amerindian women. The dowry included land, livestock and other provisions which were granted in an attempt to address the rampant sexual violence that plagued the California region. Table A reveals the various government acts and historical events and processes which submerged Indians and women to male *de razón* Californios. These experiences highlight the complex social positioning that reflected the general pattern of inclusive repression. Moreover, they demonstrate how historical processes and acts of colonization encoded the ideals of gender and race and accounted for a distribution of privilege that was based on economic and material allocation and entitlement. These policies and historical experiences, like those of the Euroamerican period, demonstrated that colonization was the subsequent "next step" of conquest and was indicative of how conquest became an enduring relationship rather than a historically finite watershed event. During the U.S. period in California, different policies and experiences resulted from a similar need to establish order. Still, while some similarities existed between the Spanish Mexican and U.S. approaches to the conquest and colonization of California, the types of repression served as a contrast.

Among the similarities, Euroamericans, like their Euromexican predecessors, turned to population campaigns in their efforts to colonize California and made women central to this exercise. A passage from the January 18, 1849 issue of the *Daily Alta California* suggests that the superexploitation of Euroamerican women wage earners in the east by industrialists might serve as a catalyst for Euroamerican California

**ALTA CALIFORNIA**
**Spanish Mexican Period**

| Act | Definition | Consequence(s) |
|---|---|---|
| **Missionization** | Designated large land tracts to Franciscan missionaries, an attempt to convert Indians into Catholics, introduced surplus productivity mode, sought to culturally assimilate Indians into Spanish Mexican ways | Spiritual repression, turned California Indians into virtual slaves, floggings by Franciscan missionaries of Indians, disruption of traditional means of economic survival, repression of by gender through the introduction of *monjerios* |
| **Encomienda** | Grant of land, labor and tribute rights from the Spanish Crown to an encomendero; control over a specified groups of Indians. | Established a system in which encomenderos became responsible for the economic, political, and cultural assimilation of Indians. |
| **Bounties offered to male colonists who married Indian noble women** | Three types of bounties offered in successive stages: 1) an animal for the colonist's own use immediately upon marriage, 2) two cows and a mule after working on mission farms for a minimum of a year, 3) allotment of a parcel of land. | Re-established land order, usurping Indian land and communal villages, advancing Franciscan missionaries' economic development, and inserting nuclear family households as institutions for surplus productivity as well as for inheritance, thus emphasizing a switch to private property |
| **Colonization act of 1824** | Encouraged Spanish Mexican territorial settlement of California by granting large tracts of land not yet occupied by Spanish Mexicans | Provided legal basis for settlement by *gente de razón* and the increased privatization of property |
| **Convict Colony (1829)** | Secretary of Justice in Mexico issues circular urging justices in Mexico to sentence criminals to Alta California in an attempt to help "settle" the region | Many of these convicts were political prisoners and most, reflective of the *cholos* and *leperos* that denote an underclass, eventually assimilated themselves into Californio society. |
| **Hijar-Padres Colony (1834)** | families, formally educated, and professionally trained colonizers who were privately financed and received mission and Pious subsidies as well | Liberal economic ideals and aspirations conflict with established conservative elite. Demonstrated emerging power struggles between competing elite factions who sought to control land, resources, and Indian labor. |
| **Secularization decree of 1833** | Privatized Mission landholding and attempted to emancipate Indians from mission control; more than 700 grants of 49,000 acres were granted from 1833-1846 | Resulted in the establishment of a secular elite landholding class and further repression and persecution of California Indians who went from serving as slaves to serving as "free labor" and consumers. |

transplants to lure these women for two reasons. It was reported that seamstresses from New York City were "holding a general meeting for the purpose of expressing their indignation for the treatment they now receive from many of their employers, and also, if possible to obtain remuneration commensurate with the amount of labor they are compelled to perform" (*Daily Alta California*, January 18, 1849).

While acknowledging the oppressive labor conditions of these women, the paper further suggested that conditions in California would be more favorable and more rewarding for these women than in New York City. The newspaper continued, "We would advise a colony of these same working girls to come to California as soon as possible. They can earn from $5 to $35 per day in the manufacture of clothing; and if they be anxious to do still better than that, they will find hundreds of young, good looking and enterprising men ready to embrace an opportunity which promises a good wife" (1849). Thus, the paper was inclined to encourage young wage earning women to California with the promise of higher wages but ultimately with the chance of meeting the illusionary self-made successful white male.

The gendered and racial constructions of women resulted in their objectification by the newspaper in spite of the women's own agency and assertions against their labor bosses in New York which in essence was a reclamation of their subjectivity as workers and as women. The underlying concern however was the desire to procreate a white society in California. By appealing to white working class women, nativists sought to combine their efforts for racial and cultural whiteness with the efforts of working women to improve their conditions. According to this logic marriage and submission to a male dominant economic order offered a greater reward for these women than did their economic independence as expressed through their own concerns regarding working conditions and wages.

Like their Californiana counterparts, working-class white women were encouraged to come to California for the purpose of creating and maintaining families. On the other hand, unlike Euroamerican women Californianas had rights to "independently inherit, own, mortgage, convey, [and] even pawn property they acquired before or during marriage" (Lothrop, 1994:59). In spite of the fact that this "right" of entitlement resulted in unequal distribution of land, historian Richard Griswold del Castillo, writes that, "Mexican women prior to 1848 were probably freer than women elsewhere in the world" (Griswold del Castillo, 1984:129). In contrast to Spanish and Mexican law, English and American law designated husbands as the "legal representatives" of their wives (Lothrop, 1994:75). According to Lothrop, lawyers on both sides of the Atlantic consistently cited Blackstone's

*Commentaries on the Laws of England* which stated:

> By marriage, the husband and the wife are one person in law...that is, the very being as legal existence of the woman, is suspended during the marriage, or, at least, is incorporated and consolidated into that of the husband... (Lothrop, 1994:76).

Such legal values were reflected in the first California constitutional convention which, borrowing from the Texas constitution addressed the issue of women's subjugation and marginalization expressing "the common sentiment, that woman was neither the physical nor mental equal to man, and hence she could not be man's social, business, or legal peer" (Lothrop, 1994:77).

In spite of this the California State Constitution of 1849 continued to recognize community property. Article XI Section 14 stipulated that "All property, both real and personal, of the wife, owned or claimed by marriage, and that acquired afterwards by gift, devise, or descent, shall be her separate property; and laws shall be passed more clearly defining the rights of the wife, in relation as well as to her separate property as to that held in common with her husband. Laws shall also be passed providing for the registration of the wife's separate property" (California State Constitution 1849 Article XI, Section 14).

The intention to follow Spanish Mexican legal precedents as they pertained to community property in marriages notwithstanding, the first legislature of California in 1851 never fulfilled the promises stated in the Constitution of 1849. Instead, the legislature, in "An Act Defining the Rights of Husband and Wife: Section 13 stipulated that any sale of the wife's property for the benefit of the husband would be deemed a gift....[While] other acts passed by this same legislature prohibited a married woman from altering her will without the written consent of her husband annexed to the will" (Lothrop, 1994:78).

Subsequent statutes and court decisions continued to undermine Spanish Mexican precedents to community property law. For instance, in 1861 Civil Code 172 gave husbands absolute power to sell, mortgage, or exchange community property. Civil Code Section 1401 stipulated that the estate of a deceased wife be granted to her husband rather than to her children, thus undermining her power to transfer her property to whom she chose (Lothrop, 1994:78-79). Both of these codes demonstrated a regression of property rights for women and ultimately relegated women to second class citizenship.

Land policies in general during the U.S. period were based on a longer tradition of white male entitlement and had precedents in earlier campaigns of conquest and dislocation of non-whites. Prior to the U.S. conquest of Mexico, U.S. land policies accommodated Euroamerican imperialism. Indeed, from 1789-1834, "Congress passed a total of 375 land laws—laws adjusting the size of lots for sale, shifting the price per acre, altering the requirement of cash payment or adding the option of credit, and granting rights of preemption in specific regions" (Limerick, 1994:61). These land laws helped to facilitate western "expansion." Table B demonstrates various selected judicial rulings and pieces of legislation that provided a sort of blue print for the displacement and eradication of subaltern communities.

During and after the Euroamerican conquest of Mexico, various ideals regarding land redistribution emerged. Euroamerican males debated amongst themselves the validity and moral grounds for the war with Mexico (Acuña, 2000). Among those who opposed some aspects of the war, was Nicolas Trist who was sent to Mexico as a peace negotiator. Trist defied President Polk's order to return to the United States and thus hindered the objectives of the "All of Mexico" proponents to press for further conflict and thus legitimate the acquisition of more land from Mexico. Subsequent actions almost insured displacement after the war. The Land Act of 1851 established a board of three land commissioners. However, claimants often had insufficient documentation of their grants. The board initially allowed claimants to provide evidence through testimony from witnesses who had personal knowledge of the grant or of the occupation and use of the land. The board also found that a governor's *concedo*, a document issued after an alcalde's favorable report setting out the conditions for the occupation and use of the land, was sufficient and that legislative action was usually not the final step in the grant process. In addition, the board allowed testimony to prove possession and the improvement of land (Bakken, 1993).

The 1852 presidential election changed the composition of the board. President Franklin Pierce replaced Whigs with Democrats. The second Board of land commissioners as well as the supreme court began to require documentation for proof of grants. By the 1860s, claims relying primarily on oral testimony were presumed to be invalid if not fraudulent (Bakken, 1993). Another manner in which Californianas and Californios lost land was through the exorbitant legal fees they were charged by white lawyers who represented them. Still, a series of droughts and floods in the early 1860s resulted in insurmountable debts. Also, the importation of beef from Texas all but ended the California cattle industry leaving less cash flow and requiring legal fees to be paid in land (Camarillo, 1979).

**Table B:**
**LAND OWNERSHIP**
**IN CALIFORNIA**
**US Period**

| Act | Definition | Consequence(s) |
|---|---|---|
| Indian Removal Act (1830) | Advocated by Andrew Jackson, sought to remove Native Americans from land east of the Mississippi River | Some Native Americans accepted, and those who did not were subjected to military attack by US forces. Land cleared was made accessible for white families. |
| California Land Act (1851) | Established Land Commission to verify Spanish-Mexican land claims | Required Spanish Mexican and grantees to hire Anglo attorneys who charged exorbitant rates, causing grantees to lose land |
| Homestead Laws (1860s) | Federal land distribution program that encouraged westward settlement | Gave the false impression that western land was virtually unused and unclaimed. |
| *Thompson vs. Doaksum* (1886) | California State Supreme Court ruling, preempted legal claims by Indians to land they held by right or occupancy | Land held by Indians during the Mexican period but not claimed under the Land Act of 1851 constituted part of the public domain, thus resulting in loss of land |
| The General Allotment Act (Dawes Act), 1887 | Reorganized landholding in reservations from traditional communal holdings to individualized holdings | Native Americans lost two out of every three acres that they had held prior to enactment of this act |
| *Botiller vs. Dominguez* (1889) | US Supreme Court ruling that all Indian land claims, whether by title or occupancy, were invalid if they had not to that time been submitted for legal confirmation | Perpetuated dislocation of non-whites and created more access to land for white colonizers |
| *Josefa Moreno De la Guerra vs. City of Santa Barbara (1890)* | California State Supreme Court decision that validated the City of Santa Barbara's usurpation of Josefa Moreno de la Guerra's land, without compensation, in order to construct that city's civic center atop said land | Lack of clarity between "public" and "communal" land leads De la Guerra's Anglo attorneys to not challenge difference in interpretation between Spanish Mexican law and Anglo American law as it pertains to "municipal" property versus "community" property. |

As monopolies and trusts began to take a stronghold of land and other resources, public pressure to reform land use policies was short lived. Decrying the "evils of land monopolies" small agrarian farmers and members of the Workingmen's party sought measures to diminish the political influence of large estate holders who by that time were emerging as agricultural-industrial businessmen (Daniel, 1981). One major issue that passed in favor of the reform minded agrianists was the taxation of real property (Bakken, 1993). Still, the monopolies and trusts won out as they received state and federal welfare. Thus, the role of the state and federal governments secured entitlement not only for individuals but for larger corporations as well. Public resources were utilized to create and maintain immense private wealth. As Table C demonstrates, federal legislation provided a land base for California to establish an infrastructure that accommodated the individual needs of agro-businessmen and industrialists. Specifically, the granting of land for the purpose of establishing education facilities at various levels indicated that the state was intent on devoting real property or liquidated assets therefrom for this endeavor. Article IX, Section 2 of the Constitution of 1849 stated that the legislature was to encourage "by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement" (California State Constitution 1849, Article IX, Section 2). Thus, according to the constitution, proper citizenship was to be instilled in children and young adults in such a manner that their moral character be developed to coincide with intellectual growth and scientific training for the purpose of agricultural advancement. This was to be financed by the "common perpetual fund, the interests of which, together with all the rents of the unsold lands" were to be utilized for this purpose.

This same section provided the basis for funding of education institutions at the college and university levels which were to serve the growing agricultural capitalist class. The section continued that "the proceeds of all land that may be granted by the United States to this State for the support of schools, which may be sold or disposed of....and all estates of deceased persons who may have died without leaving a will, or heir...shall be and remain inviolably appropriated to the support of common schools throughout the State." Section 4 of Article IX referred specifically to the allocation of funds for institutions of higher learning. This section gave the legislature control over land granted by the federal government "or any person or persons to the State for the use of a University." While this section inscribed the need for "the promotion of literature, the arts and sciences" it ultimately left final resolution to the intent of the grantor, whether the federal government or private parties, by stipulating that such developments were

**Table C:**
**Four Major Acts that Allowed California to Gain title to Public Domain**

| Act | Definition | Consequences |
|---|---|---|
| Act of September 1841 | Enacted to allow federal government to grant 500,000 acres each to certain states for the purpose of frontier improvement. | California received the allotted amount upon statehood. |
| Act of September 28, 1850 (Arkansas Act) | Granted California over 2,200,000 acres of swamp and overflow lands. | Pproceeds from the sale of thes were to be applied exclusively, as necessary, to the purpose of reclaiming such lands by mean levees and drains. Provided stat subsidy for infrastructures that benefitted growing agribusines interests. |
| Act of March 3, 1853 | Granted California 5,500,000 acres for the establishment of public educational institutions | This land was to be utilized for establishing schools as factorie knowledge and ideas. |
| Act of July 2, 1862 (Morrill Act) | Granted California 150,000 acres for "setting up colleges for the cultivation of agriculture and mechanical sciences and arts." | A form of state subsidy for risi agribusiness. This time it was specifically intended to overtly the burgeoning relationship be higher education and corporate capitalism. |
| Other Federal actions combined | State received 8,500,000 acres. Rail road companies received 11,500,000 acres. | The federal government and st intervened and were active in s land rights for the sake of buil US based infrastructure and fo serving large corporate interes |

conditional "as may be authorized by the terms of such (federal or private) grant" (California State Constitution 1849 Article IX, Section 4).

Four federal acts were consolidated and utilized to benefit large corporate and state interests. These acts, and particularly the Morrill Act of 1862, delineated the establishment of an intricate relationship between state and capitalist interests whereby scientific developments on public state run campuses worked to benefit an emerging private agriculturalist capitalist class. This form of welfare for the rich as some critics have called it resulted in the use of public funds to help establish an emerging hegemonic order. Land policies were not the only sources of entitlement. Other forms of legislation also served to simultaneously entitle white men and marginalize non-whites. While the examples of this are extensive, the following discussion is limited to several examples of white enfranchisement in the areas of employment and political participation.

The irony of Euroamerican nativism in the nineteenth-century Southwest was the fact that these nativists were recent immigrants themselves, some in fact being "illegal aliens." By contrast, in the aftermath of the Mexican-American War of 1846-48, Mexicans and acculturated southwestern Indians found themselves in the predicament of having to adjust to the new Euroamerican systems and world views. Starting in the 1850s this situation was magnified by the phenomenal influx of North Americans and others due mainly to the discovery of gold in 1848 and the tourist boom in the years that followed. With this migration came different attitudes, morals, laws and perhaps most important, a new language.

Most notable in the years immediately following the war was a series of laws which demonstrated Euroamerican nativism and racism. Among these laws was the *Foreign Miners' Law* of April 13, 1850. This law restricted access to mines by requiring a license for all "non-citizens" in order to work mines in any part of the state. The classification of "non-citizens" came to include Mexicans who became American citizens through the Treaty of Guadalupe Hidalgo. In addition, a $20 monthly fee was collected from miners who were suspected of being foreign. In order to enforce such a law, a license collector was appointed and commissioned by the governor who also authorized the sheriff of each locale to gather a party of American citizens to assure that miners who were affected observed the law. If expelled foreigners or suspected foreigners continued on another site, they were subject to incarceration for three months and a $1,000 fine (*California Foreign Miners' Law*, April 30, 1850). Because of a deficient police force, vigilantes were encouraged to help maintain order. In fact, daily reports in the *Daily Alta California* demonstrate how such vigilantism resulted in racial

violence that carried over to the exaggerated reports of "social banditry" and particulary the alleged "gangs" of Mexicans led by Joaquin Murrieta and Tiburcio Vasquez (Castillo and Camarillo, 1973). Section 15 of the law stipulated that two thousand copies in English and two thousand in Spanish were to be circulated among miners. Such a practice helped to make people aware of who was suspect in the mines. For the most part, Indians, Mexicans and Chinese fell victim to such laws (*California Foreign Miners' Law*, April 30, 1850).

Economic conditions during the Euroamerican period were strained by the increased demand for food which coincided with immigration from the East. Initially this resulted in the increased demand for labor and increased profits for the Californio ranchero class. However, as stated earlier, the Land Act of 1851 displaced many Californio rancheros. With the switch in land ownership came a shift from an agropastoral economy to one based on industrial agriculture. As a result the Indian work force was increasingly subjected to forms of slavery (Almaguer, 1994). A reduction of their already minimal rights resulted in their being auctioned off as laborers. In the early 1850s, auctions were usually held on Mondays at prisons where Indians, following a weekend on the town, were incarcerated (Pitt, 1966). An indenture law encouraged Indian parents to consent to long term labor contracts for their children. In one case at Maryville, California children three to four years of age were sold at "$50 to $80 apiece" (Cook, 1976:303). In May 1855 the *Humboldt Times* reported that "Indian slave traders in the area were selling Indian Children at $50 to $250 each. By the early 1860s Indian children were still being sold at $37.50 to $100 each" (Almaguer, 1994:138). Many Indian workers became seasonal and migrant. Some became involved in the construction industry which among other things was spurred by a boom in tourism. Domestic jobs also provided an income for some. Many artisans lost their shops and were forced to turn to wage labor. *Barrioization*, a process coined by historian Albert Camarillo (1979), developed.

Women were likewise relegated to service sector jobs as laundresses, domestic servants, and borders. However, a racial and class based hierarchy helped to determine the social positions in which women of different backgrounds entered this particular relationship. For example, the London native turned Californio ranchero Henry Dalton owned Rancho Azusa prior to and after the Mexican-American War. His treatment of women workers on this ranch is indicative of this hierarchical order. According to Dalton's records, several women were employed on his ranch and performed different tasks. Among them the following figured prominently in his employment ledgers: "Andrea la lavandera (washwoman), Rosario la

costurera (seamstress), Rosa la planchadora (woman in charge of ironing), and Mrs. Lebriskie the cook" (Henry Dalton, *Indian Books*, 1857-1863, vol. 1).

In addition to these, Dalton complained about the insubordination of the woman in charge of dairy products on his ranch. In his diary he wrote that he told the "milk woman" that he was concerned about what he perceived to be the poor quality of butter and other dairy products that she was producing. According to Dalton, the unnamed woman responded that "it did not matter to her (if the butter) went out good or bad." As she "continued talking too much" Dalton wrote, "I am not in the business of allowing a woman to mistreat me." Dalton fired her three days later and hired a man to replace her. (Dalton, *Daily Occurrences at Rancho Azusa,* Vol. 1, April 20, 1845:7).

Dalton's treatment of Mrs. Lebriskie revealed a contrast to his treatment of Indian Mexican women. Mrs. Lebriskie was paid a monthly salary in contrast to the daily wages earned by the other women. In effect, Mrs. Lebriskie earned between sixty-five to seventy cents per day—over sixty cents more per day than the average Indian Mexican woman on the same ranch (Dalton, *Indian Books,* vol. 1:66). While they all performed daily tasks at Rancho Azusa the white woman, Mrs. Lebriskie was paid an enormously larger amount when compared to the payment to Indian Mexican women.

Such racial and ethnic inequities were further reinforced by legislation which facilitated and secured not only economic but political opportunities for whites and white men, particularly. Article II, Section 1 of the California State Constitution of 1849 states that "Every white male citizen of the United States, and every white male citizen of Mexico, who shall have elected to become a citizen of the United States (under the Treaty of Guadalupe Hidalgo)...shall be entitled to vote...." Still, noting the ambiguity of race, drafters of the Constitution, who included eight Californios, in this same section wrote "Provided, nothing herein contained, shall be construed to prevent the Legislature, by a two-thirds concurrent vote, from admitting to the right of suffrage, Indians or the descendants of Indians, in such special cases as such proportion of the legislative body may deem just and proper" (California State Constitution 1849, Article II, Section 1). The possibilities of such "special cases" coming to fruition were slim considering an entire legislative body would be required to take up the matter of the voting rights of individuals in the first place. Further, the implications of such language were that Indians or their descendants needed to demonstrate that they were worthy of voting and thus functioning within an alien society.

The state legislature also passed laws that excluded non-whites from participating in the labor market in order to reserve those opportunities for

westward bound white men (See Table D). These economic policies were accompanied by similar legislation that curtailed equal and fair participation in the legal arena. For instance, the Civil Practice Act of 1850 prohibited persons of non-white or mixed race backgrounds from testifying against a white man (Acuña, 2000). This legislation prohibited equal participation and appropriation of rights between whites and non-whites. More important, this legislation proved to be a regression of human rights for California Indians and mulattos who were encouraged and at times required to testify in court as witnesses during the Spanish Mexican period (Gutiérrez, 1997). It further established a racialized definition of whiteness by delineating and legally constructing the status of "non-white."

## Ahistorism and Post-Affirmative Action: A Retrospective

Some pressing questions regarding race and gender based policies such as affirmative action include: Do only whites and males oppress others? Are all white males therefore oppressors? The answer to both of these questions is no. However, does being born white or male or middle class or heterosexual or all four result in the birth rite of privilege? The answer, simply stated, is yes. How we choose to address such privilege determines the extent to which fairness and equality will become, or fail to become, realities. Therefore, in order for equality and fairness to truly exist, those of us born with privilege or those who acquired privilege through accommodationist means need to give up some of that power.

Precisely because of this, I view with caution the gains that have come as a result of affirmative action policies. Such policies have assisted in the democraticization of this society by mass incorporation of marginal segments of society. Still, we need to ask at what cost? Simply identifying race and gender as categories for inclusion in their tangible sense does not preclude that such individuals are free of the capacity to oppress others. Simply replacing white men with non-whites or women in positions of power does not guarantee that inequality will cease to exist. Rather, oppression and inequality become camouflaged in what some cynics claim to be a "colorblind" or gender neutral society.

I originally considered subtitling this paper "White Aliens, White Privilege, and Preferential Treatment in Nineteenth-Century California" in order to play on the resonance of the title "Affirmative Action of the First Kind" with the 1970s sci-fi flick *Close Encounters of the Third Kind*. Indeed, the idea that whites are native to the Americas and are threatened by a presumed invasion of "their" world by "aliens" of the extra-terrestrial and

**Table D:**
**ECONOMIC/EMPLOYMENT OPPORTUNITY IN CALIFORNIA (US Period)**

| Act | Definition | Consequence |
|---|---|---|
| Foreign Miner's Tax (April 13, 1850) | Placed a $20 per month tariff on "foreigners." | Affirmed the right of whites to exclude Mexicans, Chinese, and others from the public land mines and thus deny them access to capital necessary for upward mobility. |
| Vagrancy Law (1850) | Legalized the temporary use of Native Americans as bonded. servants. | Native Americans arrested for vagrancy were sold to those who paid their legal fees. |
| Indenture Act (1850) | Legalized the practice in which citizens in the state could take legal custody of Native American minors. | Subjected Native American minors to forms of slavery while disrupting their families. |
| California's Constitutional Convention of 1878-1879 | Included prohibition against the employment of Chinese by corporations and municipal, county, and state governments. | Created greater latitude for employment opportunities among white workers as a result of the exclusion of Chinese workers. |
| Chinese Exclusion Act (1882) | Prohibit further immigration by Chinese. | Represented a momentous victory for white workers over Chinese workers. It secured higher skilled, desirable jobs for whites, but resulted in a shortage of labor in less skilled, less desirable jobs in some industries. This void was to be filled by non-white non-Chinese workers. |

human varieties has been a recurrent, albeit inaccurate, theme in U.S. history. More precisely, such assumptions demonstrate the ahistoricism which guides present-day reactionary reconciliations between liberals and conservatives who seek to reclaim what they perceive they lost as a result of Civil Rights era legislation. My purpose for the original subtitle was to bring light to the fact that whites were the "aliens" who invaded, conquered, and colonized the "Western" world and California in particular. This was so especially because whites were cast as the heroes in this film and others like it. However, in recent years, the appropriation of whiteness by Black American Will Smith and the defense of white male privilege in his "alien" films *Men in Black* and *Independence Day* forced me to rethink the subtitle. Both of Smith's films are end-of-the-millennium sci-fi thrillers in which he saves the world, and the United States particularly, from alien invaders.

The general spin that popular culture has produced regarding encroachments by "alien" forces or entities has been part of an alarmist sense of nativism and xenophobia and other insecurities among a majority of mainstream Americans. Indeed, the themes of invasion by "alien beings" resonated with a reconciliation among status quo liberals and conservatives that resulted in a reactionary policy agenda including the Bakke and Hopwood decisions and Propositions 187, 209, and 227 in California in the post-Civil Rights era. Particularly, Bakke, Hopwood, and Proposition 209, the anti-affirmative action initiative, signaled a call to arms that inverted and victimized whiteness with ahistorical terminology such as "meritocracy" and "reverse discrimination." Proposition 187 outlawed access to basic human necessities for undocumented immigrants and Proposition 227 outlawed Latino/a and other cultures by prohibiting bilingualism in public schools. This type of public policy is reminiscent of the initial attempts to create privilege and access for white males when California was first a territory under Spain and Mexico and then when it became a state shortly after the U.S. invasion and colonization of the region.

The ambiguity of race and racial definitions and of patriarchy and gender oppression as we understand them at the turn of the twenty-first century presented another pressing concern that led me to drop the original subtitle. Indeed, while Will Smith appropriated whiteness and male privilege in fictional films, Ward Connerly, a wealthy black man, and Cheryl Hopwood, a white woman did the same as they were driving forces behind Proposition 209 and Hopwood. Regarding such transgressions, Stephanie Wildman and Adrienne Davis discuss hierarchies of oppression and the existence of various "-isms." They state that existence of multiple -isms "itself gives the illusion that all patterns of domination and subordination are the same and

interchangeable....(That) someone subordinated under one form may feel no need to view himself/herself as a possible oppressor, or beneficiary of oppression, within a different form. For example, white women, having an -ism that defines their condition—sexism—may not look at the way they are privileged by racism" (Wildman and Davis, 1995:574).

When we scrutinize the historical processes that reflect society's dealings with race and gender based policies we see that the underlying principle is creation and maintenance of the status quo. The current debate on affirmative action is ahistorical for several reasons. It is placed in the present moment through a selected use of terminology such as "meritocracy," "color blindness," and "reverse discrimination" which isolate the question of race and gender privileges from larger historically institutionalized processes. This is done by individualizing the issues of discrimination and domination while simultaneously disregarding the tightly woven social, cultural, and legal matrix that forms American positivist cultural hegemony. Moreover, this terminology attempts to neutralize the factors and categories of discrimination and subjugation to the present moment by making these free of reference to past forms of institutional racism and sexism. In the positivist fashion of Western thought, this terminology through the guise and political constructions of "objectivity", "neutrality", and "rationality" undermines the experiences and thus the voices of the subaltern—the socially, politically, economically, culturally, and ideologically marginalized—by virtue of the fact that such notions are believed to be free of ideological contamination.

The selected terminology pays no mind to the fact that the very concepts of "objectivity," "neutrality," and "rationality" are themselves political, privilege the status quo, and exclude marginalized segments of the population from participating equally in mainstream discourses. In short, to claim neutrality *is* to take a political position because it reaffirms the status quo. It reaffirms inequality by attempting to ignore or suppress it. It maintains power structures as they exist by wrongly claiming a presumably apolitical space. "Objectivity" likewise functions as an anti-intellectual force which limits the line of inquiry to ideologically constructed and accepted parameters. This results in self-censorship for those who choose not to ask questions that might "rock the boat" or detect some "bias" on their part. Regardless of attempts to detach oneself from subject matter, the nature of how we ask questions is shaped by our lived experiences and thus impacts our conclusions.

In this spirit, the present day debates regarding race and gender based legislation unwittingly assume that a "level playing field" exists.

Moreover, the demonization of discussions of inequality that accompanies "political correctness" serves to neutralize resistance to domination. The argument by opponents of affirmative action that "meritocracy" and not "preferential treatment" needs to govern access to opportunities is a misguided one. As this paper demonstrates, preferential treatment for white males was the law of the land in both periods under study. The beneficiaries of such practices were granted privilege based on birth and ideological principles not so much on talent and competitive abilities. A free market did not exist. In fact, nineteenth-century California witnessed what business historian Alfred Chandler calls the "visible hand" of market forces that included the manipulation of markets by middle managers and others (Chandler, 1977). The creation of access to employment opportunities and the accumulation of wealth through the gift of land established a social order that not only defined whiteness and male privilege but the subordination and marginalization of others as well. Thus, the "playing field" was never "level" to begin with.

In light of this, the self-righteousness and arrogance of opponents of affirmative action who claim to be the bearers of "merit" in a free market of competition fail to see how they unwittingly construct themselves as lacking the very merit they claim to possess. How does one justify being unfairly excluded from a system that was built to tailor one's lived experiences? How does one explain failure in a system that was constructed and tailored specifically for them? Quite simply, they deflect their own shortcomings and lack of "merit" and place the blame for their own inadequacies on others. In this case, the blame is placed on government "interference" and on "undeserving others." Ironically, blaming government for regulating power in the late twentieth-century is not consistent with absolving government for playing the same role in the nineteenth-century. The re-emergence of the century old notion of social Darwinism and the use of pseudo-science that utilizes "human variation" as a tool for gauging inequality (Herrnstein and Murray, 1994) demonstrates selective historical memory where subjective ideals are resurrected in order to prove a hypothesis while information that refutes such a hypothesis is suppressed or otherwise ignored.

What can be asserted is that non-white racial groups and women entered the Euroamerican mainstream in subordinate social positions in the nineteenth-century as a result of violent military-capitalist market expansion. When we visualize the historical moment in which the current debate exists and contextualize it within a larger time line reflective of the American historical experience, we see that affirmative action in the last thirty years has been an attempt, in a long line of attempts, to redress historically

institutionalized patterns that illustrate the subjugation of non-whites, women, and poor whites and resulted in enfranchisement of the status quo. When placed in historical context then, the existence of affirmative action calls to question the points of entry for marginalized segments of society (See Table E). Policies followed that helped to sustain such structured relationships.

Also, while white ethnic immigrants from southern and eastern Europe entered the mainstream as marginal groups many eventually appropriated "whiteness" as a racial identity during this process as they became "Americanized" (Brodkin, 1998; Ignatiev, 1995; Lipsitz, 1998; Roediger, 1991).

Moreover, in "Hiring Quotas for White Males Only" Eric Foner reflects on his experience at Columbia College which was "all male and virtually all white." Regarding the presumed deficiencies of beneficiaries of affirmative action policies, he writes, "None of us, to my knowledge, suffered debilitating self-doubt because we were the beneficiaries of affirmative action–that is,

**Table E:**
**19th Century Points of Entry for**
**US Non-Whites into Mainstream Society**

| Racial/Ethnic Group | Points of Entry into US |
|---|---|
| American Indians | Extermination/Reservation |
| African Americans | Slavery |
| Asian Americans | Cheap-Expendable Labor |
| Chicanos/as | War of Conquest/ Cheap-Expendable Labor |

favored treatment on the basis of our race and gender" (Foner, 1997:24). Indeed, critical race theorists discuss the ahistoricism of such debates. They write that "Current inequalities and social/institutional practices are linked to earlier periods in which the intent and cultural meaning of such practices were clear" (Mastuda, et.al., 1993:6).

Rather than focusing on the current debate regarding affirmative action that attempts to portray people of color and women as "undeserving" and lacking in "merit" as seen in the passage of Proposition 209 in California and the Hopwood Case in Texas, I examined race and gender based policies, the construction of whiteness and white male privilege, and preferential treatment in nineteenth-century California during the Spanish

Mexican and Euroamerican periods. In doing so, it was demonstrated that long before contemporary affirmative action policies, white men from privileged and laboring classes as well as their kin and beneficiaries enjoyed institutional enfranchisement and protection and in some cases exclusive access to material resources and participation in public and private social, political, and economic activities. Moreover, the institutionalization of whiteness and male privilege came at the cost of disenfranchising and marginalizing people of color, women, and some poor whites with whom they competed for resources. As this paper demonstrates, the social and legal constructions of whiteness and male privilege in nineteenth-century California resulted in an affirmative action of the first kind. Indeed, as a result of this, descendants of those who benefitted from entitlement stood to inherit property and privilege. On the other hand, descendants of the culturally, politically, socially, and ideologically marginalized and economically and politically disenfranchised stood to inherit poverty and subordination.

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**Gabriel Gutiérrez** is Assistant Professor of Chicana/o Studies at California State University, Northridge. His research fields include Chicano/a history and critical theory. He has published on the themes of environmental racism, gender relations, and critical race theory, including "Deconstructing Disney: Critical Race Theory and Chicano/a Children" in *Aztlán: A Journal of Chicano Studies* (Spring, 2000).