

## Texas Mexicans and the Politics of Whiteness

ARIELA J. GROSS

These two fascinating articles seek to fill an important lacuna in the burgeoning literature on the legal construction of whiteness.<sup>1</sup> While LatCrit theorists in the legal academy have urged civil rights scholars and race critics to transcend the “black-white paradigm” of U.S. race studies, the majority of legal histories of whiteness have focused on two sets of cases: trials in the southeastern United States in which local courts tried to draw the line between “white” and “negro”; and cases about immigration and naturalization in which Federal courts determined whether particular foreign immigrants were suitably “white” for citizenship.<sup>2</sup> Likewise, although there have been several important social and cultural histories of Texas Mexicans and whiteness in the last fifteen years, they have not considered the legal realm.<sup>3</sup> The time is ripe for attention to the legal history of Mexican Americans’ civil rights struggles in Texas, especially as they illuminate the shifting racial identity of Mexican Americans in the Southwest.

Steven Wilson’s excellent study of the series of challenges to school segregation brought by Mexican American advocates in the mid-twentieth

1. See Clare Sheridan, “‘Another White Race’: Mexican Americans and the Paradox of Whiteness in Jury Selection,” and Steven H. Wilson, “*Brown* over ‘Other White’: Mexican Americans’ Legal Arguments and Litigation Strategy in School Desegregation Lawsuits,” *Law and History Review* 21 (2003): 109–44 and 145–94.

2. Ariela Gross, “Litigating Whiteness: Trials of Racial Determination in the Nineteenth-Century South,” *Yale Law Journal* 108 (1998): 109; Ian F. Haney López, *White by Law: The Legal Construction of Race* (New York: New York University Press, 1996); John Tehranian, “Note: Performing Whiteness: Naturalization Litigation and the Construction of Racial Identity in America,” *Yale Law Journal* 109 (2000): 817.

3. Neil Foley, *The White Scourge: Mexicans, Blacks, and Poor Whites in Texas Cotton Culture* (Berkeley: University of California Press, 1997); David Montejano, *Anglos and Mexicans in the Making of Texas, 1836–1986* (Austin: University of Texas Press, 1987).

---

Ariela J. Gross is Professor of Law and History at the University of Southern California Law School.

century is most importantly a contribution to civil rights litigation history. But taken together with Clare Sheridan's close reading of the *Hernandez* jury selection case, it offers an opportunity to consider the meaning of Mexican Americans' "other white" status in litigation strategy, in judicial rhetoric, and in the broader culture. The first two of these three arenas are the more straightforward. Wilson's rigorous archival research sheds light on the ways litigators sought to make use of the limited gains they had achieved under the "other white" standard before abandoning it for the *Brown* precedent. Courts, on the other hand, as Wilson and Sheridan both demonstrate, used Mexican Americans' nominal whiteness primarily to deny them relief from Jim Crow practices. Then what did it mean at all that Mexicans were white by law?

One of the most challenging questions for all of these studies of law and race is the relationship of legal and cultural norms of racial meaning. When courts asked juries to decide an individual's racial status, was the law simply reflecting cultural norms of identity? Or, when the judge instructed the jury about the statutory definition of "mulatto" or "mestizo" in fractions of "blood," were legal definitions themselves creating culturally influential conceptions of race? In the Texas Mexican context, when courts used the terms "Mexican race" or "Mexican nationality," were they creating or reflecting the meaning of Mexican identity? And how can we tell? Based on the evidence before us in these two articles, it is hard to do more than speculate, because both draw mainly on legal materials. Wilson's extensive research into the papers of Mexican American lawyers and the briefs and trial records of cases makes it possible to gain insight into litigation strategies. But it does not address directly the broader relationship of law to identity, which requires immersion in other intellectual and cultural discourses before patterns emerge.

In her study of the jury cases, Sheridan, like legal scholar George Martinez, suggests that Mexicans were legally white but socially non-white. Thus the law made little difference because it only established empty formal categories, filled in by discriminatory practice.<sup>4</sup> According to this reading, there was a gap or a lag between legal and social meanings. This characterization has merit, yet it seems to fall a little short of the full picture. If law was so irrelevant, why study it at all? And why did rights-seekers make any claims on it at all? Perhaps many Anglos continued to see Mexican Americans as an inferior race, but what about Mexican Americans' self-identification? What was the interaction between self-identification and

4. George A. Martinez, "The Legal Construction of Race: Mexican-Americans and Whiteness," *Harvard Latino Law Review* 2 (1997): 321, 334-38 (discussing "the marginality of law").

litigation strategy? How should we understand, for example, League of United Latin American Citizens (LULAC) lawyers arguing *racial* discrimination against Mexican Americans in jury selection cases in the 1930s, at the same time that they were trying to have Mexican Americans' census classification changed to "white" and striving in other ways to distance themselves from "people of color" and Jim Crow practices?

To put the question in its most basic form: Were Mexican Americans white in mid-twentieth century Texas? Were they white in some realms and not others, to some observers and not others, or in some regions and not others? David Montejano has argued that "the identification of Mexicans as a distinct 'race' became, like the question of political representation and civil rights, an important issue to be settled locally."<sup>5</sup>

Montejano's and Neil Foley's social histories of Texas suggest that Mexican Americans' relationship to whiteness has always been ambivalent. During the years of the Texas Republic, some Texas Mexicans were able to purchase and hold onto their land by claiming whiteness through pure "Spanish blood." Already, in the debates over the annexation of Texas in the 1840s, Anglo politicians referred often to the inferiority of the "Mexican race," using metaphors of dirt, including the "greaser" epithet. Yet Anglo-Texans who married Mexican women "whitened" their spouses by calling them Spanish. And many of the flood of new immigrants from Mexico in the years between 1890 and 1910 had "learned whiteness and 'whitening' before coming to the United States."<sup>6</sup> In those instances and many others, racial distinctions to some extent tracked class and landholding. Montejano has convincingly shown that patterns of Mexican-white segregation map onto the divisions between "ranch counties," where Mexicans continued to be landholders, and "farm counties" in which commercial farming took over in the first decades of the twentieth century, and Mexicans were sharecroppers for white landholders. Simply put, where Mexicans held land, they were far less likely to be excluded from schools and other public accommodations, and "Mexican" was less likely to be a racialized identity.<sup>7</sup>

By the 1930s and 1940s, when Mexican American lawyers began litigating in earnest to break down the barriers of Jim Crow that had been erected in the previous several decades, "Texas Mexicans increasingly began to call themselves white."<sup>8</sup> The claim of whiteness seemed to be Mexican Americans' best way to "overcome the worst features of Jim Crow

5. Montejano, *Anglos and Mexicans*, 252.

6. Foley, *The White Scourge*, 19, 24, 42, 61.

7. Montejano, *Anglos and Mexicans*, 235–52.

8. Foley, *The White Scourge*, 209.

segregation,” despite the fact that most Anglos saw “Mexican” as a designation of race rather than nationality. Yet, as Ian Haney López points out, even LULAC, which stressed assimilation and “often emphasized that Mexican Americans were White,” also “stressed . . . cultural pride,” and this emphasis on ethnic pride “often led LULAC to identify Mexican Americans as a distinct race.” According to Haney López, LULAC “resolved the tension between seeking both difference and sameness by pursuing these on distinct planes: difference in terms of culture and heritage, but sameness regarding civil rights and civic participation.”<sup>9</sup> While both Wilson and Sheridan characterize LULAC and other Mexican American activists as unequivocal promoters of assimilation and white identity, the picture that emerges from their research suggests that ambivalence ran deep.

Mexicans’ racial identity according to government classification has been almost equally ambiguous. The 1848 Treaty of Guadalupe Hidalgo guaranteed U.S. citizenship to all Mexican citizens in the Mexican Cession without reference to racial identity. In 1897, the *Rodriguez* case held that although Mexicans were probably not white according to anthropology, the proper reading of the 1848 treaty gave Mexicans broad citizenship rights, hence eligibility for naturalization. Yet the first efforts to count Mexicans, in the 1930 U.S. Census, counted them among “people of other races,” with “Mexican” being one of the other races. Whereas the 1930 Census counted 686,260 “people of other races” in Texas, it counted only 3,692 “white people born in Mexico.” Because of the vigorous opposition to this racialization of “Mexican” by LULAC as well as by the Mexican government, the 1940 Census categorized Mexicans as white unless “definitely Indian or of other non-white race.”<sup>10</sup>

How can we make sense of what was happening in Texas courts during the 1930s and 1940s at the very time Mexicans were in the midst of these changing cultural and census classifications? Beginning with the *Del Rio ISD v. Salvatierra* case in 1930, M. C. Gonzales, attorney for LULAC, inaugurated efforts to integrate racially segregated school systems, arguing racial discrimination against Texas Mexicans. The court in that case explained that the plaintiffs were “designated, for convenience of expression in the opinion, as the Mexican race, as distinguished from . . . all other white races.”<sup>11</sup> As Wilson explains, the decision appeared on its face to be

9. Ian F. Haney López, “Race, Ethnicity, Erasure: The Salience of Race to LatCrit Theory,” *California Law Review* 85 (1997): 1143, 1165.

10. During the 1950s, 1960s, and 1970s, the census used a variety of methods to count people of Mexican origin in the five southwestern states, including lists of Spanish surnames and the categories “Spanish Mother Tongue,” “Spanish Language,” “Spanish Heritage,” and “Spanish Origin.” Beginning in 1980, the general term “Hispanic” was introduced as an ethnicity category following the “race” question on the census form.

11. *ISD v. Salvatierra*, 33 S.W. 2d 790, 792–93.

a victory for LULAC, because the court ruled that school districts could not segregate indiscriminately against Mexican children.

Yet in fact the case was a setback. The court dissolved the temporary injunction against the school district and approved segregation based on language and migrant worker status. This “cultural discrimination” became the template for future state-sanctioned racial inequities. In that sense, *Salvatierra* was a harbinger of modern racial discrimination cases, in which courts recognize only facial race-based classifications, or individual intentional bias, as true discrimination, whereas classifications based on supposed cultural or linguistic differences, even those highly correlated with race, are given little scrutiny. In that case, the court accepted the testimony of the school superintendent that “people of Spanish or Mexican extraction” or “descent” had different talents from those of “Anglo Saxon parentage,” including abilities in math, music, and handicrafts, yet denied any “motive of segregation by reason of race or color.” The ascription of different characteristics based on Mexican ancestry did not count as “race”-based differentiation.

It is instructive to compare *Salvatierra* to *Ramirez v. State*, the Texas jury discrimination case of the following year. In *Ramirez*, the appellant (represented by an Anglo attorney) “charged that there had been an unjust discrimination against the Mexican race” because the jury that convicted him contained no one “of the Mexican race and Mexican descent known as Mexican.” County officials testified that they did not consider that “Mexicans of Menard County were intelligent enough,” educated enough, or spoke English well enough to sit on juries, and that Mexicans’ “customs and ways are different,” but that there was “no discrimination on the basis of race or color” in jury selection. The court simply reported this testimony in its opinion and accepted it without discussion, apparently finding it self-evidently sound.<sup>12</sup> Thus, efforts by Texas Mexican plaintiffs in the 1930s to raise claims of race discrimination, whether in the jury context or the school context, fell victim to courts’ willingness to accept almost any justification for exclusion or differentiation that did not explicitly refer to “race or color.” In other words, for the purposes of antidiscrimination law, “race” meant “skin color,” and only discrimination based explicitly and intentionally on color counted as racial discrimination.

The question of whether or not Mexicans *were* a “race” did not arise before 1946 because there was not yet any credible basis for a civil rights claim in Texas in either case—as a “race” or as a “nationality.” Again, in *Carrasco v. State* (1936), the court found “no evidence of discrimination solely because of race” in jury selection, using “Mexican race” and “Mexican nationality” interchangeably in the opinion.<sup>13</sup> In *Lugo v. State* (1939),

12. *Ramirez v. State*, 40 S.W. 2d 138, 139 (1931).

13. *Carrasco v. State*, 95 S.W. 2d 433 (1936).

the court again found that jury commissioners had excluded members of the "Mexican race" on the basis of language qualifications, without intentional discrimination.<sup>14</sup>

What changed in the 1940s? Why did the racial identity of Mexicans become an issue in court? A few explanations are possible. First, the 1940 Census reclassified Mexicans as white unless clearly a member of an Indian nation or other non-white group. This made available to the courts the argument that Mexicans were in fact white, rather than one of the "other races," as they had been classified in the 1930 Census. Second, courts now had an instrumental reason to hold that Mexicans were white, for if Mexicans were a non-white race, the new precedent of *Norris v. Alabama* might apply to them in jury selection cases. Thus, in the 1944 *Sanchez* jury selection case, the appellant once again argued discrimination against the Mexican race, but this time the Texas Court of Criminal Appeals held that "Mexican" was a nationality, not a race; hence, Mexicans were not discriminated against because whites were on the jury. *Norris* did not apply. The same thing happened in the 1946 *Salazar*, 1948 *Bustillos*, and 1951 *Rogers* jury selection cases. In the 1951 jury selection case of *Sanchez v. State*, attorneys Herrera and DeAnda complained of "discrimination against Mexican-Americans as a race and people of Mexican extraction and ancestry as a class." The court berated them for their "exhaustive brief . . . citing cases which, either intentionally or loosely, refer to Mexican people as a different race. They are not a separate race, but are white people of Spanish descent."<sup>15</sup>

Meanwhile, in the school desegregation cases, the courts were confirming their condemnation of "arbitrary and discriminatory" language discrimination, in the unreported *Delgado v. Bastrop ISD* case. Yet despite the high-minded pronouncements of courts and the Texas State Superintendent of Public Instruction, most school districts continued their traditional practices of segregation. Thus, in both the jury selection and school desegregation contexts, Mexicans' status as "white" won them no particular gains in Texas courts in the 1940s and early 1950s.

The first case in which Mexican Americans won a clear victory using the "other white" strategy was the *In re Hernandez* jury selection case, decided two weeks before *Brown v. Board of Education*. Thus, *Hernandez* should be seen as the beginning and not the culmination of Mexican American litigators' strategic use of whiteness claims to fight Jim Crow. Read-

14. *Lugo v. State*, 124 S.W. 2d 344 (1939).

15. *Sanchez v. State*, 181 S.W. 2d 87 (1944); *Salazar v. State*, 193 S.W. 2d 211 (1946); *Bustillos v. State*, 213 S.W. 2d 837 (1948); *Rogers v. State*, 236 S.W. 2d 141 (1951); *Sanchez v. State*, 243 S.W. 2d 700, 701 (1951).

ing the two articles together, it becomes clear that the “other white” argument was very new in 1954, although it came to seem surprisingly old. Before that date, Mexican whiteness was a cynical trump used by courts to dismiss discrimination claims. The breakthrough in *Hernandez* was the court’s acceptance of Cadena’s argument that Mexicans were *treated as* non-white by Anglos despite the fact that they were actually white. From there, the litigation team of DeAnda, Herrera, and Cadena went on to successfully invoke Mexican whiteness in a series of school desegregation cases, building on the *Hernandez* precedent. Only in the aftermath of the 1964 Civil Rights Act, when schools began to use Mexicans’ “other white” status cynically to “desegregate” black schools using Mexicans—much as courts in the 1940s had relied on Mexican whiteness to deny their civil rights claims—did the litigators shift their focus, abandoning the “other white” strategy in the Corpus Christi school litigation.

Why did Mexican Americans hold on to whiteness for as long as they did? Wilson suggests that the “other white” strategy can be explained by legal pragmatism. Sheridan argues that whiteness was both useful to gain legal advantage and material benefits, as well as psychologically important to distance Mexican Americans from African Americans. Neither presents evidence of whether Mexican Americans thought of themselves as white outside the courtroom, although Wilson does suggest that Anglos viewed them as white, but socially inferior. Sheridan gives some anecdotal evidence that some Mexican American leaders understood their identity as that of an ethnic group striving for assimilation, and certainly that was LULAC’s political strategy. It is difficult to disentangle legal strategy from cultural trend, yet the fact that the “other white” strategy was itself relatively new in 1954 does suggest a more instrumental interpretation, rather than a deep psychological need to identify as white.

Can legal pragmatism explain the second shift, however, from “other white” to “brown”? Was that transformation a product of the cultural revolution in ethnic pride? Was it *Brown* that made such a difference, or was it The Movement? When Wilson arrives at the late 1960s shift in legal strategy from “other white” to “brown,” he suggests that the shift reflects both sound strategy and larger cultural discourse. Again, it would be interesting to investigate further the interplay between the new identification of Mexican Americans with other “minority groups” in litigation agendas and the Chicano movement’s evocation of “La Raza”—Chicanos as a non-white mestizo race.

To get a firmer grip on Mexican Americans’ shifting racial identity, we need to learn more about the way Mexican Americans in Texas perceived themselves, presented themselves, and were viewed by others. Wilson mentions changing census categories and a burst of ethnic pride in “La

Raza.” But these are incidental to Wilson’s main focus, an untold constitutional history similar to Mark Tushnet’s excellent work on NAACP strategies. What about outside the courtroom? Did this legal definition have any influence outside the courtroom? For example, how were the children of Mexicans and Anglos defined? If there were legal cases involving such children, they might allow one to get at the question of Mexican racial definition better. Attention to local trials might yield evidence of the interaction between legal definitions of Mexican whiteness and popular understandings of the “Mexican race.”

For example, *Kirby v. Kirby* was a 1921 Arizona case, in which Joe Kirby sued his wife Mayellen for an annulment rather than a divorce, on the ground that their marriage had violated the state’s antimiscegenation law because he was “a person of Caucasian blood” whereas she was “a person of negro blood.” As historian Peggy Pascoe chronicles, the trial immediately ran into complications regarding Joe Kirby’s white status when his mother, Tula Kirby, took the witness stand, testifying in Spanish with an interpreter:

Joe’s lawyer: To what race do you belong?

Tula Kirby: Mexican.

Joe’s lawyer: Are you white or have you Indian blood?

Tula Kirby: I have no Indian blood.

On cross-examination:

Mayellen’s lawyer: Who was your father?

Kirby: Jose Romero.

Mayellen’s lawyer: Was he a Spaniard?

Kirby: Yes, a Mexican.

Mayellen’s lawyer: Was he born in Spain?

Kirby: No, he was born in Sonora.

Mayellen’s lawyer: And who was your mother?

Kirby: Also in Sonora.

Mayellen’s lawyer: Was she a Spaniard?

Kirby: She was on her father’s side.

Mayellen’s lawyer: And what on her mother’s side?

Kirby: Mexican.

Mayellen’s lawyer: What do you mean by Mexican, Indian a native [?]

Kirby: I don’t know what is meant by Mexican.

Mayellen’s lawyer: A native of Mexico?

Kirby: Yes, Sonora, all of us.<sup>16</sup>

16. Quoted in Peggy Pascoe, “Miscegenation Law, Court Cases, and Ideologies of ‘Race’ in Twentieth-Century America,” in *Sex, Love, Race: Crossing Boundaries in North American History*, ed. Martha Hodes (New York: New York University Press), 464–65.



In Tula Kirby's testimony, we see evidence of a popular counter-narrative of Mexican identity that defies racial categorization. While Kirby appears to draw some distinction between "Spaniard" and "Mexican," it is elusive. When Mayellen's lawyer tries to pin her down to a non-white identity for "Mexican," such as "Indian" or "native," she resists. Yet neither does she identify herself as white or Caucasian. She apparently considers "Mexican" to be her racial identity, or at least identifies strongly as Mexican and considers that to be her primary source of identification, with "race" perhaps less important. At the end of the testimony, Joe's lawyer claimed to have established Joe's "Caucasian" identity. Mayellen's lawyer "scoffed, claiming that Joe had 'failed utterly to prove his case' and arguing that '[Joe's] mother has admitted that. She has [testified] that she only claims a quarter Spanish blood; the rest of it is native blood.' At this point the court intervened. 'I know,' said the judge, 'but that does not signify anything.'"<sup>17</sup> In ruling for Joe, the judge's opinion explained that "Mexicans are classed as of the Caucasian Race. They are descendants, supposed to be, at least of the Spanish conquerors of that country, and unless it can be shown that they are mixed up with some other races, why the presumption is that they are descendants of the Caucasian race."<sup>18</sup>

Here was a case where a popular narrative of Mexican racial identity clashed with the legal presumption of Mexican whiteness, in this case to the disadvantage of Joe Kirby's "negro" wife, whose racial identity was seen as literally facially self-evident. Looking at trials involving the racial identity of Texas Mexicans might help us to answer the vexed question, Were Mexican Americans white? Local trials might also yield surprising results. Laura Gomez's recent research on Mexican Americans and outcomes in criminal courts in New Mexico suggests that the native Mexican population participated substantially in the criminal justice system in New Mexico, even sitting in judgment on European-American males.<sup>19</sup>

There is a considerable sociological literature on changing racial and ethnic identification, and in particular self-identification, among Mexican Americans and Latinos in the U.S. more generally. In New Mexico, where Spanish identification has been higher among Latinos than elsewhere in the United States, identification as "Spanish American" or "Hispano" in the first decades of the twentieth century gave way to "Chicano" in the 1960s as part of a radical political mobilization. "Hispanic" became popular in the late 1970s and 1980s. In part this was a way for ethnic political lead-

17. Pascoe, "Miscegenation Law," 465.

18. *Ibid.*, 468.

19. Laura E. Gomez, "Race, Colonialism, and Criminal Law: Mexicans and the American Criminal Justice System in Territorial New Mexico," *Law and Society Review* 34 (2000): 1129.

ers to draw diverse groups together around a liberal political agenda while avoiding divisive questions of cultural heritage, as well as distancing themselves from “more confrontational, Chicano politics.”<sup>20</sup> “Mexican American” never took hold because its connotations of foreign-ness were resisted by “New Mexican citizens” whose families’ residence predated statehood.<sup>21</sup> In the 1980 U.S. Census, when “Hispanic” became an ethnic category separate from the question of racial identity, 40 percent of Latino respondents checked “other” in response to the “race” question. Clara Rodriguez suggests that they did so because they considered themselves to be non-white, based on a definition of whiteness that encompassed both “race” and “culture.”<sup>22</sup> If Texas Mexicans followed a similar path, did they do so in reaction to changes in legal classification, or did their changing political sensibilities influence legal transformations?

Sociologists and legal scholars have also debated at length whether “Latinos” are, in fact, a race or an ethnicity in the contemporary context. Most sociologists have treated Latino identity as an ethnicity rather than a race. Following that pattern, legal scholar Juan Perea argues that a racial paradigm has failed Latinos and that an ethnic paradigm better captures the Latino experience. By contrast, Ian Haney López argues that scholars should understand Latino identity in terms of both race and ethnicity and that it would be a mistake to ignore the ways in which Latino identity has been racialized. The legal history chronicled here seems to support Haney López’s caution that “Mexican” identity in the U.S. has been racialized.

If, in fact, Mexicans’ legal whiteness was used instrumentally by both advocates and judges (for different ends), did the legal regime of whiteness have any larger cultural significance? Steven Wilson avoids this judgment entirely. While he seems to suggest that legal strategies were influenced somewhat by larger cultural trends, like ethnic pride, his main conclusion about the impact of the strategies has to do with their success in winning new rights and representation for Mexican Americans in Texas. Clare Sheridan, however, wants to make broader claims about the impact of legal ideology. She puts forward two arguments on this point: First, she claims that the jury selection cases, and the composition of Texas ju-

20. Margarita Melville, “Hispanics: Race, Class, or Ethnicity?” *Journal of Ethnic Studies* 16.1 (1988): 67–83; Laura Gomez, “The Birth of the ‘Hispanic’ Generation: Attitudes of Mexican-American Political Elites toward the Hispanic Label,” *Latin American Perspectives* 19.4 (1992): 55.

21. Phillip B. Gonzales, “The Political Construction of Latino Nomenclatures in Twentieth-Century New Mexico,” *Journal of the Southwest* 35 (1993): 158–85; Gomez, “Birth of the ‘Hispanic’ Generation.”

22. Clara E. Rodriguez, “Race, Culture, and Latino ‘Otherness’ in the 1980 Census,” *Social Science Quarterly* 73.4 (1992): 930–37. See also Clara E. Rodriguez et al., “Latino Racial Identity: In the Eye of the Beholder?” *Latino Studies Journal* 2.3 (1991): 33–48.

ries itself, reveal the “congruence of whiteness with American identity”; second, she argues that the “other white” strategy pursued by the Mexican American lawyers in *Hernandez* “upheld the power of whiteness, while partially challenging America’s racialized self-understanding.”

The first of these claims is an argument about race as a practice of the production of hierarchy: by effectively reserving jury service, an essential component of citizenship, for whites, Texans made whiteness congruent with American-ness. The reasoning is slightly circular, however; if what was at work was primarily nativism rather than racism, one might say that American-ness was congruent with American-ness. What was it about the *de facto* exclusion of Mexican Americans from juries that made the denial of citizenship *racial*? It would be interesting to broaden Sheridan’s discussion of race and citizenship by thinking more deeply about the relationship between “race” and “nationality.” As several theorists have argued, the very idea of the nation, historically, has depended upon the discourse of race; “race” and “nation” are both artifacts of the Enlightenment.<sup>23</sup> Can we distinguish nationalism from racialism and is the distinction a useful one?

Sheridan’s second claim, about the Mexican American litigants both challenging and upholding the power of whiteness, echoes scholars’ readings of many different subjects’ acts of “passing”—“kinda subversive, kinda hegemonic,” as Eve Kosofsky Sedgwick once memorably wrote.<sup>24</sup> Outsiders’ claims for inclusion in regulatory state regimes, from racial hierarchy to marriage, always risk that double-edged sword. By focusing on the inspirational stories of individuals, Wilson avoids reaching this more bitter-sweet conclusion about the lawyers he has studied.

In conclusion, what struck me most about the depressing series of pronouncements from Texas courts justifying the second-class treatment of Mexican American schoolchildren and criminal defendants based on a litany of unsubstantiated stereotypes was the continuing respectability of what Etienne Balibar has called “cultural racism.”<sup>25</sup> For as long as we equate race with biology and racism with the crudest forms of racial scientism, as American courts have done, discrimination on the basis of cultural and linguistic difference will appear neutral and respectable, and racial hierarchy will continue to flourish.

23. See, e.g., Nicholas Hudson, “From ‘Nation’ to ‘Race’: The Origin of Racial Classification in Eighteenth-Century Thought,” *Eighteenth-Century Studies* 29.3 (1996): 247–64. See also Immanuel Wallerstein, “The Construction of Peoplehood: Racism, Nationalism, Ethnicity,” and Etienne Balibar, “Racism and Nationalism,” in *Race, Nation, Class: Ambiguous Identities*, ed. Etienne Balibar and Immanuel Wallerstein (New York: Verso, 1991), 37–85.

24. Eve Kosofsky Sedgwick, “Queer Performativity: Henry James’s *The Art of the Novel*,” *GLQ* 1 (1993): 35.

25. Etienne Balibar, “Is There a ‘Neo-Racism’?” in *Race, Nation, Class*, 26.

2