

# Fordham Law Review

---

Volume 75 | Issue 5

Article 6

---

2007

## Flying the Mexican Flag in Los Angeles

Anupam Chander

Follow this and additional works at: <https://ir.lawnet.fordham.edu/flr>

 Part of the [Law Commons](#)

---

### Recommended Citation

Anupam Chander, *Flying the Mexican Flag in Los Angeles*, 75 Fordham L. Rev. 2455 (2007).

Available at: <https://ir.lawnet.fordham.edu/flr/vol75/iss5/6>

This Article is brought to you for free and open access by FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Fordham Law Review by an authorized editor of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact [tmelnick@law.fordham.edu](mailto:tmelnick@law.fordham.edu).

---

## Flying the Mexican Flag in Los Angeles

### Cover Page Footnote

Professor of Law, University of California, Davis, King Hall; J.D., Yale Law School; A.B., Harvard College. I am grateful to Jennifer Gordon and Sheila Foster for inviting me to participate in a stimulating conference. And I thank Jennifer Chacón, Kevin Johnson, Steve Legomsky, and students in Steve's immigration class at Washington University, St. Louis for illuminating conversations on the subject. Thanks, as well, to Susan Yoon for very helpful research assistance. © 2007 Anupam Chander.

## FLYING THE MEXICAN FLAG IN LOS ANGELES

*Anupam Chander\**

When Cardinal Roger Mahony took the podium to address a rally supporting immigrants on Olvera Street in Los Angeles in May 2006, he began by asking those waving Mexican flags to please “roll up flags from other countries.”<sup>1</sup> On Spanish language radio, announcers implored their audience to leave the Mexican flag at home, and to wave the Star Spangled Banner instead. Indeed, the hoisting of the Mexican tricolor during the immigration marches of 2006 drew the ire of many. Some perceived it as a demonstration of disloyalty to the United States. Even more insidiously, according to some it offered a daring revelation of the marchers’ true intent: “This is how America is going to be taken over *without a shot being fired*.”<sup>2</sup>

This apprehension about the potential mixed loyalties of immigrants finds grounding (without the nativist animus) in two distinct and well-respected philosophical traditions. Civic republicans worry about the harm to the body politic from people who disperse their political allegiances.<sup>3</sup> Some compare dual nationality to bigamy, and declare it a similarly improbable balancing act.<sup>4</sup> For a civic republican, draping the Mexican flag around one’s shoulders would signal a determination to maintain an allegiance to a foreign land, when one’s political energies should be directed to the community in which one lives. Many cosmopolitans would have the opposite worry—that waving the Mexican flag might demonstrate a commitment to one people, rather than to humanity at large. For them,

---

\* Professor of Law, University of California, Davis, King Hall; J.D., Yale Law School; A.B., Harvard College. I am grateful to Jennifer Gordon and Sheila Foster for inviting me to participate in a stimulating conference. And I thank Jennifer Chacón, Kevin Johnson, Steve Legomsky, and students in Steve’s immigration class at Washington University, St. Louis for illuminating conversations on the subject. Thanks, as well, to Susan Yoon for very helpful research assistance. © 2007 Anupam Chander.

1. *Day to Day* (National Public Radio broadcast Apr. 11, 2006).

2. *Morning Edition* (National Public Radio broadcast May 2, 2006) (transcript quoting Atlanta resident) (emphasis added); see also Michelle Malkin, *Racism Gets a Whitewash*, Wash. Times, Apr. 2, 2006, available at <http://washingtontimes.com/commentary/20060401-090702-3114r.htm> (“Advocates believe the reclamation (or reconquista) of Aztlan will occur through sheer demographic force.”).

3. See generally David A. Martin, *The Civic Republican Ideal for Citizenship, and for Our Common Life*, 35 Va. J. Int’l L. 301 (1994); Stanley A. Renshon, *Dual Citizenship and American Democracy: Patriotism, National Attachment, and National Identity*, 21 Soc. Phil. & Pol’y 100, 105 (2004) (“[A]dvocates of dual citizenship consistently minimize the difficulties of being a fully engaged, knowledgeable, and effective citizen in one political system, much less two.”).

4. See, e.g., Georgie Anne Geyer, *Americans No More: The Death of Citizenship* 68 (1996).

local attachment reflects atavistic loyalties to kinfolk and insufficient sympathy for the rest of the world. Kwame Anthony Appiah associates this form of cosmopolitanism with the Cynics, to whom the *cosmo-politan* formulation is credited, and distinguishes it from his own more “rooted” cosmopolitanism.<sup>5</sup> The rootless cosmopolitan would find fault with strident nationalism of any kind, whether reflecting an attachment to the immediate state or to a distant homeland. Others have critiqued both of these approaches.<sup>6</sup> My own arguments toward that end can be found in my paper entitled *Diaspora Bonds*.<sup>7</sup>

In the present essay I do not wish to question Cardinal Mahony’s intentions<sup>8</sup> or the political wisdom of his strategy.<sup>9</sup> Rather, I hope to show that the strategy bears a price. The strategy relies on one of two underlying logics: *hide* or *change*. The first logic dictates that, for political advantage, one should stash the Mexican flag in a closet in one’s house and appear in public shorn of any partiality towards a foreign nation. The second logic suggests that, in order to be American, one should fly but one flag, and it should be red, white, and blue. Either logic, I will argue, diminishes us—as a country and as human beings. *Hiding* suggests that the United States is not prepared to accept the immigrant as he or she truly is. *Changing* embraces an assimilationist ethic, establishing one proper mode of being American.

Some will say that the price of conforming to a singular national identity is acceptable. My goal here is not to demonstrate that we should not pay this price; others have offered reasons to promote a world integrated through individual political affiliations.<sup>10</sup> I hope here simply to identify the costs of this political strategy and offer suggestions for their amelioration.

This essay proceeds as follows. Part I describes the vitriol heaped on the marchers who dared to fly the Mexican flag. Part II revisits the run-up to the Japanese internment, and its consequences for Japanese Americans in Post-War America; the lessons learned by Japanese Americans might give

---

5. K. Anthony Appiah, *Cosmopolitanism: Ethics in a World of Strangers* (2006).

6. See, e.g., David A. Martin & T. Alexander Aleinikoff, *Double Ties: Why Nations Should Learn to Love Dual Nationality*, *Foreign Pol’y*, Nov.-Dec. 2002, at 80.

7. See generally Anupam Chander, *Diaspora Bonds*, 76 N.Y.U. L. Rev. 1005 (2001).

8. Last spring, Cardinal Roger Mahony courageously announced his intention to lead massive civil disobedience in the event Congress enacted a law barring the provision of aid to undocumented immigrants. See Editorial, *The Gospel vs. H.R. 4437*, *N.Y. Times*, Mar. 3, 2006, at A22.

9. Some claim that the “sea” of “illegal” immigrants waving Mexican flags doomed pro-immigrant legislation. See Teresa Watanabe, *Latino Activists Put Faith in Ballots*, *L.A. Times*, Sept. 10, 2006, at B1 (“The mass sea of illegal aliens bearing foreign flags and hostile placards really produced a pronounced backlash [against pro-immigration activists], from which they’ve never recovered,” said John Keeley, spokesman for the Washington-based Center for Immigration Studies.”).

10. Yossi Shain suggests that diasporas do not undermine the American creed, but help market it in their homelands. See generally Yossi Shain, *Marketing the American Creed Abroad: Diasporas in the U.S. and Their Homelands* (1999); see also Chander, *supra* note 7, at 1005; Anupam Chander, *Homeward Bound*, 81 N.Y.U. L. Rev. 60 (2006).

us pause today. Part III identifies the possible adverse consequences of the request not to fly the Mexican flag. Part IV considers the claim that the Mexican flag makes plain its bearers' hidden agenda: to restore all of California to Mexico.

### I. "GO BACK HOME"

When the immigration marches first erupted across the country in 2006, commentators seized on the display of the Mexican flag in order to brand the marchers disloyal to the United States. Some called for those carrying the Mexican flag to "go back home" to Mexico.<sup>11</sup> Critics saw the Mexican flag as the impudent<sup>12</sup> demonstration of loyalty to a foreign country. "Call it racism, call it whatever you want, but the fact is that the waving of Mexico's flag showed the rest of us, even this die-hard liberal, that a large portion of the illegal immigrant community are not Americans," said one spectator; "[i]f people want to be Americans, then they need to support Americans, and that means waving the American flag."<sup>13</sup> On television, a prominent columnist declared, "The student brandishing the Mexican flag signals divided loyalty or perhaps loyalty to a foreign power."<sup>14</sup> The founder of California-based "Save Our State" complained, "This isn't Mexico . . . . This is America . . . . What (annoys me) most is the arrogance that they are going to fly a foreign flag on my soil."<sup>15</sup> Dan Stein, president of the nativist Federation for American Immigration Reform, complained that "Mexico apparently believes that they send people here, who become U.S. citizens and keep allegiance to Mexico."<sup>16</sup>

Worse, some saw it as a declaration of war: "It reinforces what we keep hearing from the protesters, that this land used to be Mexico and they are going to take it back."<sup>17</sup> A Colorado state representative called it an "in-your-face rebellion."<sup>18</sup> Some found evidence of a "fifth column" and proclaimed the Chicano mayor of Los Angeles to be a general in this column.<sup>19</sup>

11. Dorothy Korber et al., *Protests Sweep U.S.: Unity's Theme at Capitol as More U.S. Flags Flutter*, Sacramento Bee, Apr. 11, 2006, at A1 (quoting a protestor's statement on Fox News on March 29, 2006); Amanda Lee Myers, *Mexican Flag a Lightning Bolt During Protests*, Pitt. Post-Gazette, Apr. 9, 2006, at A6.

12. One commentator branded it "brazen and entitled." *Mexican Flag, a Sign of Unity, May Also Divide*, Wichita Eagle, Apr. 11, 2006, at 1B [hereinafter *Mexican Flag*].

13. Yvonne Wingett & Daniel Gonzalez, *Mexican Flags at Immigrant Rallies Cause Flap*, Chi. Sun Times, Apr. 6, 2006, at 10 (internal quotation marks omitted).

14. Korber et al., *supra* note 11 (quoting columnist Robert Novak's statement on Fox News on March 29, 2006).

15. *Tempers Flare over Mexican Flags*, Cincinnati Post, Mar. 29, 2006, at A8 (internal quotation marks omitted and second omission in original) [hereinafter *Tempers Flare*].

16. Myung Oak Kim, *Foreign Flags Create Flap Mexican Banners at Recent Rallies Prompt Backlash*, Rocky Mtn. News (Denver), Mar. 30, 2006, at A6.

17. *Tempers Flare*, *supra* note 15 (internal quotation marks omitted).

18. Kim, *supra* note 16 (quoting Corporal State Representative Dave Schultheis).

19. This is an accusation leveled by some bloggers against Los Angeles Mayor Antonio Villaraigosa. See Posting of Van Helsing to Fifth Column Takes Los Angeles,

Perhaps heeding the call of a national radio talk show host,<sup>20</sup> a few even burned the Mexican flag. In Arizona, a vigilante border patrol group recited the Pledge of Allegiance before setting alight the Mexican flag.<sup>21</sup> While it burned they chanted, "Long live George Washington! God bless America!"<sup>22</sup> In Arizona, "when students raised a Mexican flag over Apache Junction High School . . . other students yanked it down and burned it."<sup>23</sup>

The organizers of the march had anticipated this backlash.<sup>24</sup> They warned pro-immigration rights supporters to put aside the Mexican flag and hoist the American flag instead: "Wary of confrontations, organizers of a giant pro-immigration rally this weekend have issued a directive: Keep your Mexican flags at home."<sup>25</sup> Organizers even handed out American flags to marchers.<sup>26</sup> The Mexican government cautioned against waving its flag: "The Mexican consul in San Diego, Luis Cabrera, appeared on Spanish-language television . . . to discourage students from waving Mexican flags."<sup>27</sup> The organizers of the Dallas march posted the following "rules" for the April 2006 march: "No Mexican flags. Only U.S. flags will be displayed. Wear white to signify peace. No negative messages. All banners must be positive."<sup>28</sup>

This strategy was not uncontested, even at the time. For some, "the Mexican flag is too meaningful a symbol to be set aside, particularly by recent immigrants."<sup>29</sup> And, of course, despite the organizer's imploring, many marchers still flew the Mexican flag, sometimes in conjunction with the American flag, and sometimes alone. Before we consider their own explanations in Part III below, I want to recall earlier episodes in American history that remind us that these battles have been fought before, just with different ethnic casts.

---

[http://www.moonbattery.com/archives/2005/05/fifth\\_column\\_ta.html](http://www.moonbattery.com/archives/2005/05/fifth_column_ta.html) (May 19, 2005, 06:14 AM).

20. See Joyce Howard Price, *Protesters' Foreign Flags Alienate Conservatives*, Wash. Times, Apr. 1, 2006, at A01 ("Syndicated radio talk-show host Michael Savage . . . urged listeners to burn the Mexican flag.").

21. Levi J. Long, *Mexican-Flag Burners Plan More Protests*, Ariz. Daily Star, Apr. 10, 2006, at B1.

22. *Id.*

23. Blake Herzog, *Immigration Tensions Spark Flag-Burning in A. J.*, E. Valley Trib. (Ariz.), Mar. 31, 2006, available at <http://www.eastvalleytribune.com/index.php?sty=62231>.

24. Elliot Spagat, *50,000 Rally in Support of Illegal Immigrants*, Contra Costa Times (Walnut Creek, Cal.), Apr. 10, 2006, at F4 ("The more American flags, the better this is going to be," said Ben Monterroso, an organizer with Service Employees International Union Local 1877.').

25. Dianne Solis, *Banner Moment Stirs Up Passions: Planners Want Old Glory Only at Local Immigrant Rally*, Dallas Morning News, Apr. 4, 2006, at A1.

26. *Id.*

27. Spagat, *supra* note 24.

28. Solis, *supra* note 25.

29. Hiram Soto, *Mexican Flag Kindles Passions Pro and Con*, San Diego Union-Trib., Apr. 8, 2006, at B1.

## II. AMERICANS, BONA FIDE

A 1925 photograph shows 50,000 members of the Ku Klux Klan, marching down Pennsylvania Avenue in Washington D.C.; their hoods off, they carry American flags.<sup>30</sup> A year earlier another group had trodden that same path, but these were 100,000 men from the National Catholic Holy Name Society, “carrying papal banners and United States flags.”<sup>31</sup>

Throughout American history, those who declared themselves bona fide Americans questioned the loyalty of various groups seeking full membership in the American polity. American Catholics, for example, found themselves the target of such attacks in the early twentieth century. For Catholics in the period between world wars, the hostility they faced led them ironically “to exert a greater degree of organized political power.”<sup>32</sup> By carrying both flags at the 1924 march, the organizers sought “to show forth visibly among men the truth that loyalty to country and loyalty to Catholicity were not incompatible.”<sup>33</sup>

The accusation of dual loyalty has been leveled against many groups through American history (and the history of many other nations as well). It has been leveled, for example, against Jewish Americans.<sup>34</sup> In the last century, it has been leveled with perhaps the most devastating effect against Japanese Americans.

American actions at home during World War II saw such distrust turned into tragedy. One hundred and twenty thousand people of Japanese descent in the United States were deported from their west coast homes to prison camps scattered through inland deserts and swamps.

The military report by General John L. DeWitt justifying their incarceration sought to demonstrate the threat that people of Japanese descent posed to the United States. General DeWitt cited their lack of assimilation, their tightly knit family and social networks, their ties to Japan by race, culture, and custom as evidence of their danger. The fact that some had remained steadfast Buddhists was also cited. In upholding a curfew against a Japanese American citizen, the U.S. Supreme Court in *Gordon Hirabayashi*'s case pointed to similar factors—a failure to assimilate and the fact that children attended Japanese language schools in the United States or in Japan, which, the Court reasoned, might cultivate allegiance to Japan.<sup>35</sup>

The popular press meanwhile denounced the menace of this “fifth column.” *Time* magazine, like the other leading periodicals and newspapers of the day, alerted Americans to the dangers of the Japanese Americans living among them. In an article titled “No. 1 Fifth Column” in January

---

30. See Lynn Dumenil, *The Tribal Twenties: 'Assimilated' Catholics' Response to Anti-Catholicism in the 1920s*, 11 J. Am. Ethnic Hist. 21, 21 (1991).

31. *Id.*

32. *Id.* at 40.

33. *Id.* at 36 (internal quotation marks omitted).

34. See Abraham Foxman, *We Are One, But Not the Same*, Jerusalem Post, Aug. 31, 2006, at 14.

35. See *Hirabayashi v. United States*, 320 U.S. 81, 96-97 (1943).

1942, *Time* warned, “In the 157,905 Japanese in the Hawaiian Islands (more than one-third of the population), Tokyo had plenty of talent . . . .”<sup>36</sup> The irony of this claim, of course, is that Japanese Americans were *not* interned wholesale in Hawaii—they were too important to the military and economic operations in those islands. A further irony: After Pearl Harbor, many Japanese Americans wore “American-flag pins saying ‘I am an American’ on coat lapels.”<sup>37</sup> Flying the American flag proved futile against an enraged public unwilling to accept the veracity of public displays of allegiance.

Mexican consulates today offer an extensive array of services for Mexican citizens in the United States, hoping thereby to strengthen the bonds with their diaspora. But in 1942, the “association of influential Japanese residents with Japanese Consulates” was held to be a marker of disloyalty.<sup>38</sup> Of course, the nativist ire against the Mexican flag bearers is a far cry from the rampant public racism that was prelude to internment. Yet, there are similarities today, and lessons we might do well to remember.

### III. EMBRACING AMERICA BY ERASING ONE’S PAST

Challenged by the Klan and others as un-American, Catholic leaders in the 1920s sought to demonstrate their patriotism by promoting “Americanization.”<sup>39</sup> They “encouraged immigrants to learn English and embrace ‘American’ principles.”<sup>40</sup> Some Catholics dissented, fearing that such an approach might “homogenize American culture in the image of Anglo-Saxon Protestantism”<sup>41</sup> at the expense of their heritage:

Reverend John O’Grady, who had represented the National Catholic War Council at an Interior Department Americanization conference, denounced the effort to deprive immigrants of all of their European ideas and culture. “The democratic ideals of the immigrant have helped to make America, in the beginning,” he insisted, “and they can aid in its further development today.” O’Grady called for substituting the homogenizing “Americanization” program for one that promoted citizenship.<sup>42</sup>

Perhaps if the dissenters had prevailed, it might have been less possible for a prominent academic today to proclaim America’s core national

---

36. *No. 1 Fifth Column*, *Time*, Jan. 5, 1942, at 23-24, available at <http://www.time.com/time/magazine/article/0,9171,795667,00.html>.

37. Amy Iwasaki Mass, *Psychological Effects of the Camps on Japanese Americans, in Japanese Americans: From Relocation to Redress* 159, 159 (Roger Daniels et al. eds., rev. ed. 1991).

38. *Hirabayashi*, 320 U.S. at 98.

39. Dumenil, *supra* note 30, at 30.

40. *Id.*

41. *See id.*

42. *Id.*



identity as “Anglo-Protestant.”<sup>43</sup> These dissenters raised a principal difficulty with the response to the accusation of being un-American: the risk that the challenge will be met by denying central parts of one’s own history.

The lesson learned by Japanese Americans from internment was to assimilate, to insist on their singular loyalty to the United States, even at the expense of their ties to their homeland. The children of internees reported on a national survey that they felt pressure within their families to “Americanize” and assimilate into mainstream society, and they attributed “the loss of Japanese language and culture to the internment’s effect.”<sup>44</sup> Even the internment itself was to be forgotten, a stigma not to be revealed to the next generation,<sup>45</sup> which could grow up hoping to be embraced as American. Discussions of the internment itself were “taboo,” “a skeleton in the family closet.”<sup>46</sup> Karen Korematsu, Fred Korematsu’s daughter, learned of her father’s challenge to internment from a high school presentation.

Consider one characterization of the immigrant march strategy. According to Jennifer Allen, executive director of the immigrant rights group Border Action Network, “[I]mmigrant families in southern Arizona are telling one another to carry the American flag in their hands, but *hold the Mexican flag in their hearts*.”<sup>47</sup> Such a public-private bifurcation between hand and heart is all too common for many groups seeking acceptance within mainstream society. One scholar describes “women who straighten their noses or hair to achieve a ‘Queen Elizabeth exterior’ while

43. Samuel P. Huntington, *Who Are We: The Challenges to America’s National Identity* 30 (2004) (“The principal theme of this book is the continuing centrality of Anglo-Protestant culture to American national identity.”).

44. Donna K. Nagata & Yuzuru J. Takeshita, *Coping and Resilience Across Generations: Japanese Americans and the World War II Internment*, 85 *Psychoanalytic Rev.* 587, 604 (1998). The post-war decades saw dramatic shifts in religious identification and rates of intermarriage, both indicators of assimilation. See David J. O’Brien & Stephen S. Fugita, *The Japanese American Experience* 98 (Warren F. Kimball & David Edwin Harrell, Jr., eds., 1991) (“By the 1970s, intermarriage among the third generation Sansei had jumped to approximately 60 percent of all new marriages.”); Eric Woodrum, *An Assessment of Japanese American Assimilation, Pluralism, and Subordination*, 87 *Am. J. Soc.* 157, 158-160 (1981) (“Upon arrival in the United States, 81% of Issei were affiliated with traditional Japanese religions,” but by the time of interviews conducted in early 1960s, Western religious affiliation increased to include one-third of the Issei and slightly over one-half of the Nisei (52.6%) and Sansei (55.2%).).

45. See Nagata & Takeshita, *supra* note 44, at 604 (“While virtually all Sansei wanted to know more about the internment, explicit family communication about the topic was rare.”); see also Chalsa M. Loo, *An Integrative-Sequential Treatment Model for Posttraumatic Stress Disorder: A Case Study of the Japanese American Internment and Redress*, 13 *Clinical Psychol. Rev.* 89, 102 (1993) (“For four decades, many Issei and Nisei did not discuss their camp experiences with anyone, even members of their own family.”).

46. Nagata & Takeshita, *supra* note 44, at 604.

47. Myers, *supra* note 11 (emphasis added).

retaining a 'Jewish heart.'"<sup>48</sup> Another classic formulation is, "Dress British, think Yiddish."<sup>49</sup>

Holding an American flag but keeping the Mexican flag in one's heart might consist in either "passing" or "covering," to borrow Kenji Yoshino's helpful distinction.<sup>50</sup> Passing involves deception: trying to convince the mainstream world that you too belong to them. Covering, on the other hand, involves a mutual understanding: downplaying your difference to please a mainstream audience that understands your difference but is uncomfortable with it.<sup>51</sup> Both are strategies of assimilation.

The Mexican American who heeds the call not to wave the Mexican flag, though she might wish to do so, might be passing: hoping that viewers will not recognize the Mexican affiliation hidden in her heart, and take her for an American of Mexican origin. Mexico would then represent a past to forget, not a future to be embraced.

Yoshino describes four axes along which covering can occur: appearance ("how an individual physically presents herself to the world"); affiliation (an individual's "cultural identifications"); activism ("how much she politicizes her identity"); and association ("her choice of fellow travelers").<sup>52</sup> The decision to wave (or not wave) the Mexican flag concerns all four axes: the physicality of the Mexican flag flying on an American street (appearance); the flag's representation of one's association with Mexico and Mexican Americans (affiliation); the confident message that a foreign flag sends (activism); and the flag's embrace of Mexican Americans (association).

The strategy of changing our public behavior for social comfort is a common one. We might change our accent, cut our hair, wear a suit—that is, *perform*—to accommodate the preferences of our observers. Indeed, this is a part of membership in society; we would not want everyone to behave exactly as they might wish. As Yoshino writes, "[A]ssimilation is often a precondition of civilization—to speak a language, to curb violent urges, and to obey the law are all acts of assimilation."<sup>53</sup> Yoshino rejects only "coerced assimilation not supported by reasons."<sup>54</sup> As Yoshino immediately notes, whether a reason for a preferred behavior is good enough to justify social or legal coercion will prove controversial. But as Yoshino writes, there is a "dark side of assimilation."<sup>55</sup> This dark side can be found in the challenge assimilation poses to autonomy and "authenticity"—an individual's capacity to script her own life.

---

48. Kenji Yoshino, *Covering: The Hidden Assault on Our Civil Rights* 169 (2006).

49. Brendan Vaughan, *Esquire: The Meaning of Life: Wit, Wisdom, and Wonder from 65 Extraordinary People* 99 (2004) (attributing the remark, somewhat surprisingly, to Gene Simmons, lead singer of the rock band KISS).

50. Yoshino, *supra* note 48, at 18 (adopting the term "covering" from Erving Goffman).

51. *Id.*

52. *Id.* at 79.

53. *Id.* at 26.

54. *Id.*

55. *Id.* at xi.

Even a seemingly benign strategy designed for immediate political advantage for a worthy cause should give us pause. This strategy exacts a price not only from Mexican Americans but also from other Americans. It suggests that, as a nation, we are hostile to foreigners who seek to maintain their ties to their homeland.<sup>56</sup> For some—but not by any means all—Mexican Americans, it poses a challenge to their desire to maintain an important link to their homeland.

Consider the marchers' own words. Antonio Rodriguez, "a construction worker born and raised in Fresno, said he participated in the protest to support . . . a co-worker from Mexico."<sup>57</sup> Rodriguez, an American citizen by birth, said, "We don't stop being Americans. We don't stop being Mexicans. We are both."<sup>58</sup> The many Mexican American high school students who were interviewed by reporters often expressed similar views. Griselda Sapien, an immigrant high school senior from Mexico, declared, "I am proud of both countries."<sup>59</sup> Davis, California high school student Alex Cervantes carried both flags over the Yolo Causeway to join a rally at California's capitol.<sup>60</sup> The son of Mexican immigrants, he saw the Mexican flag as "a symbol of their success as well as their struggle,"<sup>61</sup> and both flags together as "a symbol of unification."<sup>62</sup> Even some of those who carried only an American flag expressed their preference to have carried both: "I had an American flag," said high school junior Carolina Arredondo; "I wanted to take both flags, but I could only carry one."<sup>63</sup> As the columnist Clarence Page described, the marchers often displayed what W. E. B. Du Bois called "double consciousness."<sup>64</sup>

Some saw the foreign flag as a declaration of cultural solidarity rather than national identity. Some sought to embrace a Chicano identity and thereby demonstrate solidarity with other Mexican *Americans*. (This is the multiculturalist account, distinct from the diaspora account, of contemporary citizenship.)<sup>65</sup> Alvaro Huerta, director of community education and advocacy for the Coalition for Humane Immigrant Rights of Los Angeles, argued, "Carrying the flag of one's native land 'represents

---

56. One newspaper made this assimilationist demand quite clear: "[I]n a larger sense, it also is an indicator of the kind of cultural awareness that immigrants may have to develop before American citizens will feel they can embrace the petitioners." *Mexican Flag*, *supra* note 12.

57. Bill McEwen, *Immigrants Are Raising Their Flags—and Ours*, Fresno Bee (Cal.), Apr. 11, 2006, at B1.

58. *Id.*

59. Ernesto Portillo, Jr., *Mexican Flags Draw Defense by Marchers Waving Them*, Ariz. Daily Star, Apr. 7, 2006, at B1.

60. Korber et. al, *supra* note 11.

61. *Id.*

62. *Id.*

63. Portillo, *supra* note 59.

64. Clarence Page, *The Foreign Flag Rule*, Balt. Sun, Apr. 14, 2006, at 11A; *see also* Chander, *supra* note 7, at 1023-27 (discussing the double consciousness of diasporas).

65. *See* Chander, *supra* note 7, at 1046-48 (discussing the inadequacies of multicultural account of citizenship).

culture and heritage, not national identity.”<sup>66</sup> One Phoenix high school senior offered a similar explanation, stating that the Mexican flag represents “our culture, our heritage, where we are from.”<sup>67</sup> University of California Irvine professor Frank Bean saw the flag as a symbol of solidarity in the face of anti-immigrant action: “They are saying, ‘We are together in fighting against these people who are trying to make felons out of us,’” he said.<sup>68</sup> Isidro D. Ortiz, a political scientist and professor of Chicano and Chicana studies at San Diego State University, sees the flag as “primarily a symbol of Mexican pride,” but “in the current climate of the United States, Latinos also wave it to express dissatisfaction with how they are treated.”<sup>69</sup> Ortiz argued that Mexican immigrants “have been trying for some time to imagine themselves as a part of the United States . . . . What they’ve experienced is refusal.”<sup>70</sup> Given the construction of modern identity, requiring someone to yield connection with a homeland imposes for many an important loss.

A political strategy of hiding the Mexican flag is of course not the same as a legal requirement to yield foreign ties. Yet, my concern is that the practical effect of embracing such a strategy might well go beyond the superficial. Covering or passing might transform over time into *conversion*, as one adapts and internalizes the demands of society. Yoshino identifies *conversion*—“a spiritual transformation of our core”—as a third form of assimilation in addition to passing and covering.<sup>71</sup> Told that it is improper to hold two allegiances even in the depths of one’s heart, one might find one’s core commitments themselves shifting over time.

For homeland nations, this strategy might bear yet another price. It might lead to reluctance to maintain the diaspora bonds which link homeland to expatriate. This rupture comes precisely at the time that developing countries such as Mexico are making concerted efforts to nurture such diaspora ties.<sup>72</sup> Homeland governments have found that diaspora bonds must be nurtured, lest they wither over time and distance. The assimilationist strategy may lead people to contribute less to their homeland. It may help cement the brain drain aspect of migration.

We already see some evidence of the larger implications of the demand to demonstrate one’s status as a bona fide American. One prominent columnist suggested this summer that the failure of Mexican citizens in the

---

66. Price, *supra* note 20.

67. Wingett & Gonzalez, *supra* note 13.

68. Anna Gorman, *Flag’s Meaning Is in the Eye of the Beholder*, L.A. Times, Mar. 29, 2006, at A11.

69. Myers, *supra* note 11.

70. *Id.* Kevin Johnson chronicles the “ring of fire” that the United States seems to offer Mexican Americans seeking to become part of American life. See Kevin R. Johnson, “Melting Pot” or “Ring of Fire”?: *Assimilation and the Mexican-American Experience*, 85 Cal. L. Rev. 1259 (1997).

71. Yoshino, *supra* note 48, at 48.

72. Chander, *supra* note 10, at 1040-41.

United States to exercise their right to vote absentee in Mexican elections demonstrated their singular loyalty to the United States.<sup>73</sup>

#### IV. FEAR OF A BROWN CALIFORNIA

The flags of many other nations have long been flown proudly in the United States without attracting the same furor as that drawn by the hoisting of the Mexican tricolor in 2006. On St. Patrick's Day, Republic of India Day, or Israel Day, the flags of various nations have flown in the United States largely without protest. Yet, perhaps there is something different about flying the *Mexican* flag in *Los Angeles*. After all, Los Angeles was once part of Mexico. Anna Deavere Smith's *Twilight Los Angeles* begins by narrating the words of a Mexican American Angeleno who recalls an ancestor who fought with Pancho Villa against the United States. Does his long memory reflect a hidden ambition? Are we seeing that war's bloodless reprise?

The geographic, demographic, and perhaps economic circumstances are also distinct. Mexico is a nation of 100 million, many of whom live within a day's drive of Los Angeles. The economic disparity between America and Mexico is stark. Average per capita income in Mexico is \$7,310, while in the United States it is \$43,740.<sup>74</sup>

What if households from East L.A. to Westwood freely flew the Mexican flag? Are we witnessing the reconquest of California as one prominent scholar, Samuel Huntington, labels it? Huntington writes, "Mexican immigration is leading toward the demographic *reconquista* of areas Americans took from Mexico by force in the 1830s and 1840s."<sup>75</sup> In his new book *State of Emergency*, Pat Buchanan sounds an even more alarmist note.<sup>76</sup> Buchanan claims to uncover an "Aztlán plot" aimed "at reannexation of the Southwest, not militarily, but ethnically, linguistically, and culturally, through transfer of millions of Mexicans in[to] the United States and a migration of 'Anglos' out of the lands Mexico lost in 1848."<sup>77</sup> Buchanan sees the Mexican diaspora as an invasion force:

The presence in the United States of a vast diaspora that retains its emotional and blood ties to Mexico provides Mexico City with immense leverage to advance an agenda that entails the steady diminution of U.S. sovereignty and economic and political merger of the United States with Mexico. The marches against Proposition 187 under a "sea of Mexican flags," the "Grand March" of half a million Hispanics in Los Angeles for amnesty on May Day 2006, that shocked U.S. politicians with its display

---

73. Sergio Muñoz, *Putting the Dual-Loyalty Myth to Rest*, L.A. Times, July 16, 2006, at M2 (describing the op-ed's author as "a former editorial writer for The Times . . . [whose] weekly syndicated column in Spanish appears in 20 newspapers in 12 countries").

74. World Bank, *World Development Report 2007*, at 289 (2006).

75. Huntington, *supra* note 43, at 221.

76. Patrick Buchanan, *State of Emergency: The Third World Invasion and Conquest of America* (2006).

77. *Id.* at 125.

of Hispanic power, show how potent is the machine Mexico is building inside the United States.<sup>78</sup>

Is this war by other means?

This appears quite unlikely. Mexican Americans do not wish to overthrow the U.S. government or to secede from the Union, but rather to become a part of it. Those who purport to identify a sinister intent rely on a handful of isolated statements from fringe groups to string together an alleged conspiracy among millions. The claim smacks of the disloyalty grossly assumed of Japanese Americans in World War II.

In addition, while their presence may pressure U.S. foreign policy in favor of Mexico, Mexican Americans are far from capturing Mexican issues on the national stage. The immigration marches, for example, succeeded in routing the proposed punitive antiimmigrant legislation,<sup>79</sup> but did not liberalize immigration. Mexican Americans even lack political power proportionate to their numbers in the state of California.

Furthermore, rather than a third-world invasion, the opposite is more likely true. First, Americans are establishing beachheads in Mexico. Colonies of American retirees now dot the Mexican coastline from Baja to the Gulf of Mexico.<sup>80</sup> I suspect that few of these Americans have given up their allegiance to the United States, though many might have taken up a new loyalty to Mexico. Second, the Mexican diaspora in the United States exerts political power in Mexico.<sup>81</sup> Ernesto Zedillo, who served as President of Mexico from 1994 to 2000, received a Ph.D. at Yale, while his successor, Vicente Fox, had had a prior career as an executive at American multinational Coca-Cola.

On the legal side, the North American Free Trade Agreement, along with its side agreements, saw the export of U.S. laws, not the import of Mexican laws.

In sum, California will not be reclaimed by Mexico, but many Mexican Americans will likely demonstrate a commitment to their homeland. This

---

78. *Id.*

79. Bill Ong Hing & Kevin R. Johnson, *The Immigrant Rights Marches of 2006 and the Prospects for a New Civil Rights Movement*, 42 Harv. C.R.-C.L. L. Rev. (forthcoming 2007) (manuscript at 14), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=951268](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=951268) (observing that the marches “influenced the national debate over immigration,” such that “the most controversial parts of the Sensenbrenner bill appeared to have lost support”).

80. According to one real estate promoter of American retirement in Mexico:

The US Department of State estimates that out of the approximately four million Americans living overseas, between 600,000 and one million are in Baja and elsewhere in México—up from about 200,000 a decade ago. The population in Rosarito is estimated at 95,000 with perhaps as many as 35,000 North Americans. Many of the residential areas are gated communities much like the communities north of the border. Most of the American residential areas are beachfront properties at prices much lower than state side.

BajaRelocation.com, Retirement in Mexico, <http://baja-relocation.com/retirement.htm> (last visited Feb. 12, 2007).

81. See generally Kim Barry, *Home and Away: The Construction of Citizenship in an Emigration Context*, 81 N.Y.U. L. Rev. 11 (2006).

will evince itself in a variety of ways, some cultural (for example, in music, dance, language, and art) and some political (for example, involvement in hometown associations, voting, and diaspora bonds).<sup>82</sup> But a commitment to Mexico is not inconsistent with a commitment to the United States.

#### CONCLUSION

We do not simply integrate immigrants into an existing American landscape, but we also expect that landscape to change upon their immigration.<sup>83</sup> But it will not undermine a national commitment to the U.S. Constitution. Those Mexican Americans who continue to hold passionate attachment to their homeland are likely to only increase our national commitment to the cause of justice around the world. They will not undermine our values, but rather extend them further.

---

82. *See generally* Chander, *supra* note 10.

83. T. Alexander Aleinikoff, Speech at the Fordham Law Review Symposium: New Dimensions of Citizenship 21 (Sept. 30, 2006) (transcript on file with the Fordham Law Review) (“The world that immigrants integrate into is one that through their actions they help to make and to change.”).

*Notes & Observations*