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# The Accidental Crit II: Culture and the Looking Glass of Exile

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# THE ACCIDENTAL CRIT II:<sup>1</sup> CULTURE AND THE LOOKING GLASS OF EXILE<sup>2</sup>

PEDRO A. MALAVET\*

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1. See Pedro A. Malavet, *Literature and Arts as Antisubordination Praxis, LatCrit Theory and Cultural Production: The Confessions of an Accidental Crit*, 33 U.C. DAVIS L. REV. 1293 (2000) [hereinafter Malavet, *Accidental Crit I*].

2. See LEWIS CARROLL, THROUGH THE LOOKING GLASS & WHAT ALICE FOUND THERE (1946); see also Phyliss Craig-Taylor, *Through a Colored Looking Glass: A View of Judicial Partition, Family Land and Rule Setting*, 78 WASH. L. QUARTERLY 737, 738 n.1 (2000) (“Sometimes the law works very much like Alice’s ‘looking glass’ – making things which are real appear fiction and things that are fiction appear real.”).

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*Una tarde partí hacia extraña nación  
pues lo quiso el destino,  
pero mi corazón se quedó frente al mar  
en mi Viejo San Juan . . .*

— Noel Estrada<sup>3</sup>

## I. INTRODUCTION

My continuing LatCritical travels take me once again to the cultural borderlands. On this occasion, I look at the competing narratives of Latinas/os in the United States. Music, particularly popular music, has always been a marker for culture. Even in exile, *mi música popular* (my popular music) keeps me intellectually and emotionally connected to Puerto Rican culture while I am not living within it. But, at the same time, exile becomes the new looking glass through which I re/view *mi cultura puertorriqueña* (my Puerto Rican culture).

The current “Latin Music Craze”<sup>4</sup> in United States mass media demands critical analysis from the LatCrit community. LatCrit<sup>5</sup> scholars have engaged in the serious discussion of cultural production – of culture generally and popular culture in particular. LatCrit theory has analyzed cultural production mostly by “Others,”<sup>6</sup> that is, cultural production in-

3. NOEL ESTRADA, *En Mi Viejo San Juan*. Author’s translation: One afternoon I departed towards a strange/foreign nation/ because destiny so wanted,/ but my heart remained in front of the sea/ in my Old San Juan. Asociación Puertorriqueña de Coleccionistas de Música Popular (ACOMPO), *Cancionero*, 2 LA CANCIÓN POPULAR 69 (1987). Having been born and raised in Puerto Rico, speaking and singing in Spanish, I identify with the description of the United States as a foreign nation, despite my statutory U.S. citizenship.

4. The term “Latin Music Craze” is used here to refer to the current popularity of Latina/o artists in the United States, as exemplified by the success of musicians and performers like Carlos Santana, Ricky Martin, Enrique Iglesias, Christina Aguilera, Marc Anthony, and Jennifer López.

5. The written product of the theorizing is the result of annual conferences, the proceedings of which are regularly published. See Symposium, *Class in LatCrit: Theory and Praxis in a World of Economic Inequality*, 78 DENV. U.L.REV. 467 (2001); Colloquium, *Representing Latina/o Communities: Critical Race Theory and Practice*, 9 LA RAZA L.J. 1 (1996); Colloquium, *International Law, Human Rights and LatCrit Theory*, 28 U. MIAMI INTER-AM. L. REV. 177 (1997); Symposium, *LatCrit Theory: Naming and Launching a New Discourse of Critical Legal Scholarship*, 2 HARV. LATINO L. REV. 1 (1997); Symposium, *Difference, Solidarity and Law: Building Latina/o Communities Through LatCrit Theory*, 19 CHICANO-LATINO L. REV. 1 (1998); Symposium, *Comparative Latinas/os: Identity, Law and Policy in LatCrit Theory*, 53 U. MIAMI L. REV. 575 (1999); Symposium, *Rotating Centers, Expanding Frontiers: LatCrit Theory and Marginal Intersections*, 33 U.C. DAVIS L. REV. 751 (2000); see also Symposium, *LatCrit: Latinas/os and the Law*, 85 CAL. L. REV. 1087 (1997), 10 LA RAZA L.J. 1 (1998).

6. In general, as used here, “Other” and being “othered” mean to be socially constructed as “not normative.” See, e.g., Cathy J. Cohen, *Straight Gay Politics: The Limits of an Ethnic Model of Inclusion*, in ETHNICITY AND GROUP RIGHTS 580 (Will Kymlicka & Ian Shapiro eds., 1997) (“Much of the material exclusion experienced by marginal groups is based on, or justified by, ideological processes that define these groups as ‘other.’ Thus, marginalization occurs, in part, when some observable characteristic or distinguishing behavior shared by a group of individuals is systematically used within the larger society to signal the inferior and subordinate status of the group.”). However, I will also use the term “Other” as a relative term. See *infra* note 14 and accompanying text.

ternal to outsider communities.<sup>7</sup> LatCritters also have studied how United States mass media portrays Latinas/os, African-Americans and Filipinas/os.<sup>8</sup> This article will examine the competing narratives of Puerto Rican cultures in Puerto Rico and in the United States that are illuminated by the current Latin Music Craze. It will then explore how LatCritical praxis<sup>9</sup> can counter the problems of discrimination against and internalized oppressions<sup>10</sup> within the colonized Puerto Rican peoples.<sup>11</sup>

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7. See Fourth Annual LatCrit Conference, Substantive Program Outline, Plenary Panel Three: Literature and Arts as Antisubordination Praxis LatCrit Theory and Cultural Production, available at <http://nersp.nerdc.ufl.edu/~malavet/latcrit/lcivdocs/lcivsubs.htm> (last visited Aug. 23, 2000). The one exception was video verité pornography, discussed by Filmmaker Celine Salazar Parreñas. See generally Malavet, *Accidental Crit 1*, supra note 1.

8. See Fifth Annual LatCrit Conference, Substantive Program Outline, Plenary Panel Three: Multi/Cultural Artistic Re/presentation in Mass Media: Capitalism, Power, Privilege and Cultural Production, available at <http://nersp.nerdc.ufl.edu/~malavet/latcrit/lcivdocs/substantiveprogram.htm> (last visited Aug. 23, 2000) [hereinafter *LatCrit V Substantive Program Outline*]. The panel had four presenters, one commentator and one moderator. The presenters were Ruby Andrew, J.S.D. candidate at Stanford Law School and an analyst for the Congressional Research Service, Steven W. Bender, Associate Professor of Law at the University of Oregon School of Law, Juan Velasco, Postdoctoral Fellow at the Chicano Studies Research Center at UCLA, and Dennis Greene, Associate Professor of Law at the University of Oregon School of Law. The commentator was Nancy Ehrenreich, Associate Professor of Law at Denver University College of Law. The author moderated.

9. LatCritical means the LatCrit approach to legal theory. Francisco Valdés has written about Praxis in the LatCrit enterprise:

Following from the recognition that all legal scholarship is political is that LatCrit scholars must conceive of ourselves as activists both within and outside our institutions and professions. Time and again, the authors urge that praxis must be integral to LatCrit projects because it ensures both the grounding and potency of the theory. Praxis provides a framework for organizing our professional time, energy and activities in holistic ways. Praxis, in short, can help cohere our roles as teachers, scholars and activists. The proactive embrace of praxis as organic in all areas of our professional lives thus emerges as elemental to the initial conception of LatCrit theory. Praxis therefore serves as the second LatCrit guidepost.

Francisco Valdes, *Poised at the Cusp: LatCrit Theory, Outsider Jurisprudence and Latina/o Self-Empowerment*, 2 HARV. LATINO L. REV. 1 (1997).

10. The internalization of oppression occurs when a group that is oppressed by the normative society replicates some forms of oppression to marginalize members of its own community along lines of discrimination that parallel those of the normative group. For example, women might be subordinated by the men within the group, and among African Americans, lighter skin hues are considered more desirable. Oliva Espín explains the paradox of a group that is the object of discrimination marginalizing members of its own community:

The prejudices and racism of the dominant society make the retrenchment into tradition appear justifiable. Conversely, the rigidities of tradition appear to justify the racist or prejudicial treatment of the dominant society. These "two mountains" reinforce and encourage each other. Moreover, the effects of racism and sexism are not only felt as pressure from the outside; like all forms of oppression, they become internalized. . . .

OLIVA W. ESPÍN, *WOMEN CROSSING BOUNDARIES: A PSYCHOLOGY OF IMMIGRATION AND TRANSFORMATION OF SEXUALITY* 8 (1999).

11. See generally Pedro A. Malavet, *Puerto Rico: Cultural Nation, American Colony*, 6 MICH. J. RACE & LAW 1 (2001) [hereinafter Malavet, *Cultural Nation*]. This article describes the legal status of Puerto Rico as a United States colony, and of Puerto Ricans as statutory United States citizens. It also discusses the reality of a cultural nationhood on the territory of Puerto Rico which clashes with the Puerto Ricans' lack of sovereignty and with dominant narrative constructed by the U.S., thus making the Puerto Ricans a colonized peoples.

While the construction of cultural identities can be profoundly positive and empowering, as explored below, cultural constructs can also constitute discrimination. By negatively portraying a particular group, the normative society can perpetuate attitudes that subordinate the targeted culture. Additionally, individual groups might even adopt some of the discriminatory tropes, thus internalizing, and in that manner accepting and perpetuating, that discrimination within their culture.

Cultural studies<sup>12</sup> require an unflinchingly honest approach that identifies both positive and negative aspects of any culture. But this is especially challenging in the context of the United States-Puerto Rico colonial relationship because of the dangers inherent in the construction of multiple cultural identities within a single sovereign nation. On the one hand, the development of the concept of cultural nationhood or citizenship might be used to differentiate the colonized peoples from their colonial oppressors.<sup>13</sup> It can additionally be used as a source of empowerment, consciousness and pride.<sup>14</sup> But, on the other hand, cultural exploration might produce legitimate concerns over the dangers of nationalism<sup>15</sup> and cultural imperialism.<sup>16</sup> Accordingly, LatCrit theory must

12. Carla Freccero explains that the term "cultural studies" covers a range of theoretical and political positions that use a variety of methodologies, drawing on ethnography, anthropology, sociology, literature, feminism, Marxism, history, film criticism, psychoanalysis, and semiotics. Cultural studies is anthropological, but unlike anthropology, it begins with the study of postindustrial rather than preindustrial societies. It is like humanism, but unlike traditional humanism it rejects the distinction between so-called low culture and high culture and argues that all forms of culture need to be studied in relation to a given social formation. It is thus interdisciplinary in its approaches. Cultural studies "has grown out of efforts to understand what has shaped post World War II societies and cultures: industrialization, modernization, urbanization, mass communication, commodification, imperialism, a global economy."

CARLA FRECCERO, *POPULAR CULTURE: AN INTRODUCTION* 14 (1999).

13. See, e.g., Malvet, *Cultural Nation*, *supra* note 11 (explaining that the Puerto Ricans are culturally distinct from the normative U.S. society).

14. Hence, "Othering" can be used as a subversive force that empowers marginalized colonial peoples. See Adeno Addis, *On Human Diversity And The Limits Of Tolerance*, in *ETHNICITY AND GROUP RIGHTS* 127 (Will Kymlicka & Ian Shapiro eds., 1997) ("By 'shared identity' I mean to refer to an identity that bonds together, partially and contingently, minorities and majorities, such that different cultural and ethnic groups are seen, and see themselves, as networks of communication where each group comes to understand its distinctiveness as well as the fact that distinctiveness is to a large degree defined in terms of its relationship with the *Other*.").

15. In speaking of the dangers of nationalism, Ronald Beiner ponders: "Either fascism is a uniquely evil expression of an otherwise benign human need for belonging; or there is a kind of latent fascism implicit in any impulse towards group belonging." Ronald Beiner, *Introduction*, in *THEORIZING CITIZENSHIP* 19 (Ronald Beiner ed., 1995) [hereinafter *THEORIZING CITIZENSHIP*].

16. Freccero explains that [i]mperialism can occur on different levels and usually involves territorial annexation, economic and political annexation, juridical (legal) annexation, and ultimately ideological and cultural annexation; these latter are often referred to as cultural imperialism . . . cultural or mental decolonization [is] a "literature/criticism that is participatory in the historical processes of hegemony and resistance to domination rather than (only) formal and analytic." Collective

illuminate the proper balance between identifying cultural faultlines that require reform and imposing cultural imperialism that seeks a homogenized normativity<sup>17</sup> that only perpetuates the hegemony of the colonial power.

The remaining sections of this article will illustrate that Puerto Rican culture, particularly its popular culture, is a strong counter-hegemonic affirmation of a non-sovereign form of nationhood. Puerto Rican cultural nationhood, however, competes with the negative dominant narrative imposed by the United States through its mass media culture, despite the more positive re/tellings found in the current Latin Music Craze.

Initially, Part II includes a narrative about the author's exile, and the perspective that this status brings to this study. Part III constructs a broad and complex concept of culture, centered specifically on popular culture. Popular culture can be production by and of the people, or it can be the commercial mass media product that is consumed by a large number of purchasers. This work will discuss both forms of popular culture and will contrast them with "high culture"<sup>18</sup> because looking down on pop culture is more often elitist than counter-hegemonic. Additionally, when popular culture represents the crossing of physical and/or cultural borderlands, hegemony and counter-hegemony depend on which side of the border you occupy.<sup>19</sup>

In Part IV, postmodern LatCritical theory will be used to interrogate how the current Latin Music Craze might affect the competing and often conflicting narratives about the Puerto Ricans. It will also explore how faultlines exist in, and are perpetuated by, Puerto Rican culture internally, and even by the now more positive but still essentialized<sup>20</sup>

and concerted resistance to programmatic cultural imperialism thus comes to be called 'cultural' or "mental" decolonization.

FRECCERO, *supra* note 12, at 68 (citations omitted).

17. Normative means the dominant societal paradigm, that is, what is considered "normal" in a given sociological context. See Berta Esperanza Hernández-Truyol, *Borders (En)gendered: Normativities, Latinas and a LatCrit Paradigm*, 72 N.Y.U. L. REV. 882, 891 (1997) ("knowledge is socially constructed;" therefore, the "normative paradigm's dominance" defines "normal").

18. "High Culture" maintains that "[c]ulture is the gift of educated taste that marks off a lady or a gentleman from the upstart. For those in the Marxist tradition, culture has its place in the larger class war. High culture cloaks the extortions of the rich. Ersatz mass culture confounds the poor. Only popular cultural traditions can counter the corruption of the mass media." ADAM KUPER, *CULTURE: THE ANTHROPOLOGISTS' ACCOUNT* 4-5 (1999).

19. For example, two other contributors to this symposium provide different perspective on the current Latin Music Craze. See Steven W. Bender, *Will the Wolf Survive?: Latino/a Pop Music in the Cultural Mainstream*, 78 DENV. U. L. REV. 719 (2001) (a Chicano perspective); Nancy Ehrenreich, *Confessions of a White Salsa Dancer: Issues of Appropriation, Appreciation, and Identity in the "Latin Music Craze"*, 78 DENV. U. L. REV. 795 (2001) (a White Angla perspective); see also SHARON ELIZABETH RUSH, *LOVING ACROSS THE COLOR LINE: A WHITE ADOPTIVE MOTHER LEARNS ABOUT RACE* (2000) (a poignant personal narrative about witnessing racism),

20. Essentialism, as used herein, means

[t]he concept of essentialism suggests that there is one legitimate, genuine universal voice that speaks for all members of a group, thus assuming a monolithic experience for all within the particular group – be it women, blacks, Latinas/os, Asians, etc. Feminists of color have been at the forefront of rejecting

re/telling of the Puerto Rican story in the normative United States mass media. The article concludes with a call for continuing critical analysis of popular culture that challenges power hegemonies internal and external to our communities.

## II. EXILE, CULTURES, AND BECOMING THE "OTHER"

As a result of the ongoing colonial experience, there are two Puerto Rican cultures initially: one for the island and another for the culture of the Puerto Ricans who reside outside Puerto Rico. The two are in fact linked into a broader, diverse Puerto Rican cultural experience. Additionally, there is the narrative telling of Puerto Rico by the normative United States mass media popular culture. Because the author is an exile from the island, this section analyzes his struggles along these cultural borderlands.

Many Puerto Ricans might resent an "outsider" imposing his vision on their culture. In other words, even if I am accepted as a native-born Puerto Rican, I might be accused of imposing an imperialistic, "American"<sup>21</sup> vision of society on our cultural nation. In the process, these critics might argue that I would be destroying the culture that I claim to be trying to defend (not to mention belong to). Because of the inherent paradoxes of exile, I want to share a personal narrative about being a *boricua* in exile, which, of course, is a foundation of and for my analysis.

### A. *Ponceño* (Person from Ponce) *Goes to the United States: Othering Part I*

In thinking about culture and nation, and the experience of Puerto Rico, I was struck by how my life's travels are effectively a metaphor for

essentialist approaches because they effect erasures of the multidimensional nature of identities and also collapse multiple differences into a singular homogenized experience.

Berta Esperanza Hernández Truyol, *Latindia II – Latinas/Os, Natives, And Mestizajes – Latcrit Navigation Of Nuevos Mundos, Nuevas Fronteras And Nuevas Teorias*, 33 U.C. DAVIS L. REV. 851, 862 n.26 (2000) (citations omitted).

21. Hernández-Truyol explains the irony of using the term "American" to refer to citizens of the United States of America:

I will use the designation U.S. for the United States of America. Many, if not most or all of the other authors use the terms U.S. and America interchangeably. I decided not to alter the authors' choice of language in that regard. I do find it necessary to comment thereon, however, mostly because I find it ironic that in a book on imperialism the imperialistic practice of denominating the U.S. as "America" remains normative. Indeed, America is much larger than the U.S. alone; there is also Canada [and Mexico] in North America, and all of Latin America and the Caribbean, some locations commonly referred to as Central America, some as South America.

Berta Esperanza Hernández-Truyol, *Introduction, in MORAL IMPERIALISM: A CRITICAL ANTHOLOGY* n.1 (Berta Esperanza Hernández-Truyol ed., 2001).

nation and colony,<sup>22</sup> freedom and serfdom, sovereignty and dependency. The shifting sets can be conceived as the simple boarding of a plane on one side of the Caribbean or the other—for neither of which do I need to switch passports, although I change nationalities.

I was born and raised in Puerto Rico, *la Isla del Encanto*—the Enchanted Island, or as others might translate it, the Island of Enchantment. It was not until I was seventeen (17), and a junior in High School, that family circumstances converged and resulted in my migration to these United States. That journey, while crossing both cultural and citizenship *fronteras* (borders), fortunately did not require a passport, or any obvious change in legal status<sup>23</sup>—although when I came of age, from this side of the border, I would be able to vote for President.<sup>24</sup>

Having finished my secondary education, both academic and cultural, in DeKalb County, Georgia, I chose to attend Emory University in Atlanta and thereafter migrated only slightly North to attend law school at Georgetown University Law Center in Washington, D.C. In the middle of the Summer of 1993, while I again was living in Puerto Rico, as I discuss below, I received a call from the Admissions Director at Georgetown, indicating that she had gathered from my admission essay that I was, and wanted to continue to be, a law teacher. She informed me that the Law Center had a Fellowship for Future Law Teachers<sup>25</sup> and that the selection Committee had voted to offer me that position, even though I had not applied for it. This meant that I could accelerate my plans to start my post-J.D. degree by a year because the Fellowship included a tuition waiver and a small stipend.

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22. “Colony” is used in this article to refer to a polity with a definable territory that lacks legal/political sovereignty because that authority is being exercised by peoples that are distinguishable from the inhabitants of the colony. See generally Malavet, *Cultural Nation*, *supra* note 11.

23. The phrase “obvious change” is used here because Puerto Rican statutory U.S. citizenship does in fact undergo a legal change whenever a Puerto Rican moves from the Island to one of the fifty states. See generally Malavet, *Cultural Nation*, *supra* note 11, at Part III.B.3, Part III.C (explaining legal construction of second-class citizenship for Puerto Ricans who choose to remain on the island territory); see also *infra* note 49 and accompanying text.

24. *De La Rosa v. United States*, 842 F. Supp. 607, 609 (D.C.P.R. 1994) (“granting U.S. citizens residing in Puerto Rico the right to vote in presidential elections would require either that Puerto Rico become a state, or [the adoption of] a constitutional amendment”); cf. *Gregorio Igartúa de la Rosa v. United States*, Civil No. 00-1421(JP), July 19, 2000, 1 (D.C.P.R.) (The Court stated: “The present political status of Puerto Rico has enslaved the United States citizens residing in Puerto Rico by preventing them from voting in Presidential and Congressional elections and therefore is abhorrent to the most sacred of the basic safeguards contained in the Bill of Rights of the Constitution of the United States – freedom.” Accordingly, in denying the government’s Motion to Dismiss, the court ruled that U.S. citizens residing in Puerto Rico either by birth or by relocation from the U.S. mainland, have a constitutional right to vote in Presidential elections.).

25. The “Graduate Fellowship Program for Future Law Professors” is designed “to attract candidates who can bring under-represented perspectives to the development of legal scholarship and increase the diversity of the law teaching profession.” <http://www.law.georgetown.edu/graduate/fellowships.html#3> (last visited August 31, 2000).



During the course of the Fellowship, I was introduced to the American Legal Academy by two faculty mentors.<sup>26</sup> They, and other members of the Georgetown faculty who also were dedicated to the fellowship, encouraged me to remain in the states as a law school teacher.<sup>27</sup> I was surprised to learn that there were only a handful of Latina/o and Puerto Rican law teachers in the United States.<sup>28</sup> Therefore, I started to take their recommendation seriously.

My journey to the legal academy is relevant to set the stage and as a metaphor for the convergence between the reality and the theory of power that makes me, as a United States citizen, both normative and “Other”—the latter of course because of my *puertorriqueñismo* (state of being Puerto Rican). Being Puerto Rican turns me into an inferior “colored person,” an “Other” in this society.<sup>29</sup>

Describing this Othering metaphorically, my feet, which are “clean” in Puerto Rico, become “soiled” here: I become a “*patisucio*,” which literally means to have dirty feet. It is a reference to being poor in Puerto Rico because you could not afford to buy shoes, and your bare feet were thus always dirty. My father often describes himself as a *patisucio* because he got his first pair of shoes in the public school—to which he walked on unpaved streets—in his barrio Bucaná in Ponce. (Ironically, he used to shine shoes as a shoeless child in order to make a bit of extra money for his household.) *Patisucio* is also his acknowledgement of being a class outsider within Puerto Rican society. But my father acquired the honorary class privilege that accompanies education and wealth, and as a result, his children were not *patisucios* in Puerto Rican society. Nevertheless, when I traveled to the United States borderlands, I became a

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26. Each fellow works with at least one faculty mentor to develop a scholarly agenda and to co-teach in their courses. Professor James V. Feinerman and Professor John R. Schertz were my mentors.

27. There were many, but Professor and Associate Dean Elizabeth Patterson and Professor Emma Coleman Jordan were especially invested in this program. Professors Susan Low Bloch, Michael Gottesman, William Vukovich, Charles Abernathy, and Charles Gustafson were also encouraging. Additionally, my immediate predecessor in the program, Nancy Ota, now a professor at Albany, was especially helpful.

28. At last count, I was one of nineteen Puerto Ricans, and 142 Latinas/os in the U.S. legal academy. Michael A. Olivas, comp. *LATINO/A LAW PROFESSORS, 2000-01*, personal correspondence via E-Mail from Michael Olivas, Sept. 2, 2000 (on file with the author). This represents an increase in the overall number of Latina/o law professors, as well as an increase of two in the number of Puerto Ricans in the past six years. See also Michael A. Olivas, *The Education of Latino Lawyers: An Essay on Crop Cultivation*, 14 *CHICANO-LATINO L. REV.* 117, 129 (1994) (when this article was published, there were seventeen Puerto Rican and 140 Latina/o law professors in the U.S.). Naturally, these numbers do not include those teaching in the four law schools in Puerto Rico.

29. See Malavet, *Accidental Crit 1*, *supra* note 1, at 1327. (“What I had not learned until recently, is that when a white American looks at me, he or she sees a *persona de color* [colored person] – and it sure is not a statement in favor of making the diaspora normative.”). In this discussion, I explained that my dad had *pelo malo* (bad hair) – a reference to curly or kinky hair, which reflects an essentialist preference for white features. However, after reading that draft, my father has hastened to point out that he has *medium-bad hair*, which is better than *pelo malo*, but worse than *pelo lacio* (straight hair).

metaphorical *patisucio* from Puerto Rico and the dirt on my feet became code for my social construction as “colored.”

In that sense, it is ironic that I have chosen not to live in my country while it suffers from colonial status. I eschew the concept of a citizenship that is legally second-class, and lacks a passport. Hence, I live in the “states” where I can better seek the benefits of my statutory American citizenship, but partly because of that statutory citizenship, I am Othered and rendered socially second-class here. Nevertheless, personal, professional and emotional links to Puerto Rico cause me to cross the cultural borderlands on different occasions and under diverse circumstances, but now with different perspectives illuminated by exile.

### B. *You Can't Go Home Again: Othering Part II*

The pull to my Enchanted Island had me head South after earning my first law school degree to live my own version of the biblical tale known as the prodigal son.<sup>30</sup> Initially, a tragic, accidental journey took me to work in the U.S. Federal Court<sup>31</sup> within the Puerto Rican borderlands<sup>32</sup>—making the stark reality of my two citizenships, both with a U.S. passport, come to life.<sup>33</sup> The U.S. District Court for the District of Puerto Rico<sup>34</sup> belongs to the First Circuit,<sup>35</sup> together with Maine, Massachusetts, New Hampshire, and Rhode Island.<sup>36</sup> But these state boundaries are not

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30. *Luke 15:11-32* (King James) (“It was meet that we should make merry, and be glad: for this thy brother was dead, and is alive again; and was lost and is found.”).

31. On December 31, 1986, ninety-six persons died as a result of an intentionally-set fire at the San Juan Dupont Plaza Hotel. The first of hundreds of suits was filed just a few days into the New Year of 1987. I watched the fire on television from my father’s home in Ponce where I was staying during the Winter break from Georgetown Law School. I was again home in Ponce, getting ready to take the Puerto Rico Bar exam during the Summer of 1987, when I heard that the Honorable Raymond L. Acosta was looking for a law clerk to fill an emergency position that had opened up to assist him in his work on the DuPont litigation, which by then had been assigned the number MDL-721 by the Multidistrict litigation panel. For some background on the Dupont Litigation, see generally *In Re Recticel Foam Corporation*, 859 F.2d 1000 (1st Cir. 1988); *In Re San Juan Dupont Plaza Hotel Fire Litigation*, 859 F.2d 1007 (1st Cir. 1988); *In Re: Two Appeals Arising Out Of The San Juan Dupont Plaza Hotel Fire Litigation*, 994 F.2d 956 (1st Cir. 1993); *In Re: Thirteen Appeals Arising Out Of The San Juan Dupont Plaza Hotel Fire Litigation*, 56 F.3d 295 (1st Cir. 1995).

32. The United States District Court for the District of Puerto Rico was created by § 34 of the Organic Act of 1900. This court was “the successor to the United States Provisional Court established by General Order, Numbered Eighty-Eight, promulgated by Brigadier-General Davis, United States Volunteers . . .” *Id.*

33. Judge Acosta, a person with a broad-based life experience, had jumped into the waters of Normandy on D-Day plus one, on June 7, 1944. He is a former FBI Agent, who was appointed U.S. Attorney for the District of Puerto Rico by President Carter, and U.S. District Court Judge by President Reagan. I very much enjoyed working for Judge Acosta, but working for the most important agency of the U.S. governance of Puerto Rico was paradoxical. On the effect of the court on Puerto Rico law, see generally JOSÉ TRÍAS MONGE, *EL CHOQUE DE DOS CULTURAS JURÍDICAS EN PUERTO RICO* (1991).

34. 28 U.S.C. § 119 (1999) (“Puerto Rico constitutes one judicial district. Court shall be held at Mayaguez, Ponce, and San Juan.”).

35. 28 U.S.C. § 41 (1999) (The First Circuit includes “Maine, Massachusetts, New Hampshire, Puerto Rico, Rhode Island.”).

36. 28 U.S.C. § 41.

my *fronteras* (borders), the Atlantic represents the physical, political, and psychological barriers that I travel.

This particular lesson in border crossings continued when I became a member of the Bar in Puerto Rico and after my two-year federal clerkship, joined *Bufete Malavet & Ayoroa* (the law firm of Malavet and Ayoroa), my dad's established law practice in my home town of Ponce. I then learned about his extensive record as a *subversivo*,<sup>37</sup> which was imposed on him simply because the police thought that he believed that we ought to travel with a Puerto Rican passport.<sup>38</sup>

A short time after I joined *papi's* (dad's) practice, I also started teaching Federal Courts and Puerto Rico Appellate Procedure at the Pontifical Catholic University of Puerto Rico School of Law. This exposure to the intellectual side of law<sup>39</sup> inspired me to pursue an academic life, a goal that led me, again, to the *estadounidense* (United States) borderlands. Initially, I thought this was a two-way trip, but as discussed above, fate intervened, and I chose to stay in the American borderlands, returning to Puerto Rico now only as a temporary visitor.

Going into exile while owning the passport with which to return home is a difficult choice, even though it can have some benefits, perhaps the most important of which for this discussion is the critical frame

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37. Persons were deemed to be "*subversivos*" (subversives) because they favored the independence of Puerto Rico. See *Noriega-Rodriguez v. Hernandez-Colón*, 122 P.R. Dec. 650 (1988) (the practice of opening police files for people because of political activity violates the Puerto Rico Constitution); see also *Noriega-Rodriguez v. Hernandez-Colón*, 92 JTS 85 (1992) (the files could not be edited to remove or delete the names of undercover agents or other informants before being returned to their subjects). Compare the Puerto Rico cases with the following U.S. Supreme Court decisions: *Communist Party v. Subversive Activities Control Board*, 351 U.S. 115 (1956) (Smith Act activities against the communist party not held unconstitutional); *Laird v. Tatum*, 408 U.S. 1 (1972) (existence of "data gathering system" in which the Pentagon created files on persons it deemed dangerous, did not unduly chill the files' objects first amendment rights). See generally IVONNE ACOSTA, *LA MORDAZA: PUERTO RICO, 1948-1957* 124-125 (1987) (an excellent scholarly analysis of the effects of the Puerto Rican version of the Smith Act); MANUEL SUAREZ, *REQUIEM ON CERRO MARAVILLA: THE POLICE MURDERS IN PUERTO RICO AND THE U.S. GOVERNMENT COVERUP* (1987) (a detailed account of the murder of two pro-independence supporters by Puerto Rico police, and their coverup); *LAS CARPETAS: PERSECUCIÓN POLÍTICA Y DERECHOS CIVILES EN PUERTO RICO* (Ramón Bosque Pérez & José Javier Colón Morera eds., 1997) [hereinafter *LAS CARPETAS*] (an excellent collection of the legal documents related to the landmark "subversive" files decision by the Puerto Rico Supreme Court).

38. I always *thought* he wanted a Puerto Rican passport. However, he tells me today, in reaction to an earlier draft of this narrative, that he would be happy with an Associated Republic and an American Passport. But the police thought otherwise. My father's *carpeta de subversivo* (subversive file) was file number 31336, it had 60 pages. According to a special form titled "*Oficina de Inteligencia*," Office of Intelligence, the officer put an "x" to indicate that my father was active in a pro-independence movement, but that "no" he was not dangerous. *Carpeta No. 31336*, at 55 (copy on file with the author).

39. This is also in keeping with family tradition, because in addition to his work as a law teacher, my father has written extensively about the law. See, e.g., PEDRO MALAVET-VEGA, *EVOLUCIÓN DEL DERECHO CONSTITUCIONAL EN PUERTO RICO* (1998) [MALAVET-VEGA, *EVOLUCIÓN*]; PEDRO MALAVET-VEGA, *MANUAL DE DERECHO NOTARIAL PUERTORRIQUEÑO* (1988); PEDRO MALAVET-VEGA, *MANUAL DE DERECHO PENAL PUERTORRIQUEÑO* (1997).

of reference that exile illuminates. However, when this critical eye is turned inward towards my own culture, I am suddenly transformed into an outsider in my own Puerto Rican borderlands.

I had always been aware of political and class faultlines in Puerto Rican society, because my family had often been both the objects and the honorary beneficiaries of those forms of elitism.<sup>40</sup> Although now I recognize and acknowledge the victims of racism and the unfair nature of the privilege that this discrimination creates, even racial faultlines work in my favor back on the island where I am mapped as white. But other forms of discrimination—such as xenophobia, anti-Semitism, sexism, and homophobia—were clearly illustrated for the first time by the looking glass of exile.

For example, because I am a heterosexual male, I am expected to behave in a particular way in my own community. But I am now much more aware of issues of sex and gender that conflict with those essentialist expectations. That makes sexist and homophobic conduct by my fellow Puerto Ricans in Puerto Rico difficult to take.<sup>41</sup> I am also much more sensitive to issues of race and to the societal privilege that Puerto Rican culture gives me because of whiteness. Finally, as an exile, I am also more attuned to the paradoxical animosity between island and mainland Puerto Rican cultures.<sup>42</sup>

For me, “home” is Ponce, Puerto Rico. No matter how far away from it I may go, my personal, professional, and emotional travels always lead me back to Ponce. But to the extent that I now re/view *La Perla del Sur* (the Pearl of the South)<sup>43</sup> through the looking glass of exile, at least intellectually, I can never really go home again. For me, the curse of exile is that I am socially constructed by the normative United States culture as an inferior, “colored” “Other” and that I can no longer look at my own culture with the critical but uninformed vision of my youth. The next parts of this article represent a deployment of these perspectives to deconstruct the competing narratives of Puerto Rican cultures.

### III. CULTURAS PUERTORRIQUEÑAS (PUERTO RICAN CULTURES)

This discussion of culture is particularly timely because of the Latina/o musical moment that seems to have overtaken the United States

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40. See generally Malavet, *Accidental Crit I*, *supra* note 1, Part IV.

41. This is probably the best example of a form of discrimination that is in fact worn as a badge of honor by many men, as is further explored below at note 181 and accompanying text.

42. This is paradoxical given the strong link between the two cultures, a two-way cultural bridge that is well over 100 years old. This is discussed further in Part IV *infra*.

43. *La Perla del Sur*, the Pearl of the South, is a reference to Ponce, which is on the Southern coast of Puerto Rico.

English-speaking market.<sup>44</sup> Ricky Martin, Marc Anthony,<sup>45</sup> Jennifer López, Enrique Iglesias, and even former Mouseketeer Christina Aguilera<sup>46</sup>—who has re-discovered that her father speaks Spanish—and that other Latino youngster, Carlos Santana<sup>47</sup> are among the most popular artists in the United States today.<sup>48</sup> Especially pertinent for this article is the fact that Anthony, López, and Martin are Puerto Rican.

Accordingly, after laying the necessary theoretical foundation, this part of the article develops a LatCritical reaction to the Latin Music Craze in the United States which can be subdivided into two parts: (1) public portrayals of Latinas/os in general, and of Puerto Ricans in particular, as men without guns or knives, and women who are not prostitutes, and not a drug addict in sight, represent progress in the Puerto Rican/American paradigm; and (2) with all due respect to the label “Latin,” this is not *mi música latina* (my Latin Music). The discussion will be framed in the context of the competing narratives of Puerto Rican cultures across the American borderlands, including those of Puerto Ricans in Puerto Rico, Puerto Ricans in the “United States proper”<sup>49</sup> and that of the normative American society.

#### A. *The LatCritical Study of Culture*

Defining “culture” can be a difficult process for the critical scholar. For example, “[w]hile claiming that they had no wish to add a 165th formal definition of culture to the 164 they had examined, [two important

44. In commenting on the current huge commercial success of Latina/o artists, we should not ignore that Latinas and Latinos have been in the American cultural scene for a long time. Tango, for example, became hugely popular in the United States starting sometime around 1913. JOHN STORM ROBERTS, *THE LATIN TINGE: THE IMPACT OF LATIN AMERICAN MUSIC ON THE UNITED STATES* 44 (1999). However, in terms of commercial success and mass media exposure, the new crop of artists who are clearly identified as being Latinas and Latinos is something new. Bender, *supra* note 19 (discussing other artists of Latina/o heritage who have been popular in the U.S. market, but who have not generally been viewed as Latinas/os, for example, Linda Ronstadt and Mariah Carey; Prof. Bender also carefully documents the commercial success of the current group).

45. Not to be confused with the famous Mexican balladist Marco Antonio Muñoz. Marc Anthony won the Grammy for Best Tropical Latin Performance at the Forty-First Annual Grammy Awards.

46. Aguilera won the Grammy for Best New Artist at the Forty-Second Annual Grammy Awards. [http://grammy.com/awards/new\\_winners.html](http://grammy.com/awards/new_winners.html) (visited August 28, 2000).

47. Santana’s album *Supernatural* dominated the Forty-Second Annual Grammy Awards, winning in the following categories: Record of the Year (for *Smooth*), Album of the Year, Song of the Year (again for *Smooth*), Best Pop Performance by a Duo or Group with a Vocal (for *Maria Maria*), Best Pop Collaboration with Vocals, Best Pop Instrumental Performance, Best Rock Performance by a Duo or Group with a Vocal, Best Rock Instrumental Performance, and Best Rock Album. [http://grammy.com/awards/new\\_winners.html](http://grammy.com/awards/new_winners.html) (visited August 28, 2000).

48. See generally Bender, *supra* note 19, at 729.

49. See *Balzac v. Porto Rico*, 258 U.S. 298 (1922). The Supreme Court expressly indicates that as long as they choose to remain on the Island, Puerto Ricans, who are United States citizens, will not enjoy the full rights of American citizenship. It thus distinguishes between Puerto Ricans as individual United States citizens, and as collective inhabitants of Puerto Rico. As individuals, they are free “to enjoy all political and other rights” granted U.S. citizens, if they “move into the United States proper.” *Id.* at 311. But as long as they remain on the Island, they cannot fully enjoy the rights of United States citizenship.

cultural studies scholars] did finally sum up the way in which 'this central idea is now formulated by most social scientists': 'Culture consists of patterns, explicit and implicit, of and for behavior acquired and transmitted by symbols.' And 'the essential core of culture consists of traditional . . . ideas and especially their attached values.'"<sup>50</sup>

This article analyzes popular culture as a definition of group identity, that is, the culture by and of a peoples. Accordingly, it adopts a philosophically communitarian<sup>51</sup> Cultural Studies view of the term, meaning that

culture is a whole way of life (ideas, attitudes, languages, practices, institutions, structures of power) and a whole range of cultural practices: artistic forms, texts, canons, architecture, mass-produced commodities, and so on. Culture means the actual grounded terrain of practices, representations, languages, and customs of any specific historical society. Culture, in other words, means not only 'high culture,' what we usually call art and literature, but also the everyday practices, representations, and cultural productions of people and of postindustrial societies.<sup>52</sup>

However, this work also studies mass media popular culture. "Mass media" might be defined as "those media that have been derogatorily designated as 'mass culture' or the 'culture industry' by left- and right-wing intellectuals alike."<sup>53</sup> In distinguishing popular culture and mass media culture, Carla Freccero warns that while mass media culture can have substantial hegemonic effects, it can also be used counter-hegemonically.<sup>54</sup> Ultimately, she speaks of "popular culture that more closely resembles the definition of the popular as that which belongs to the people."<sup>55</sup>

"Certainly there are significant differences between popular culture and mass media."<sup>56</sup> But "popular" does not necessarily mean mass-

50. KUPER, *supra* note 18, at 58 (citations omitted).

51. The communitarian concept of citizenship views the "citizen as a member of a community." Herman Van Gunsteren, *Four Conceptions of Citizenship*, in *THE CONDITION OF CITIZENSHIP* 41 (Bart van Steenberg ed., 1994). "This conception strongly emphasizes that being a citizen means belonging to a historically developed community. Individuality is derived from it and determined in terms of it." *Id.* Moreover, "identity and stability of character cannot be realized without the support of a community of friends and like-minded kindred." *Id.*

52. FRECCERO, *supra* note 12, at 13.

53. *Id.* at 9. In the LatCrit context, the description of the Media Panel put it this way:

[1] How does law participate in the process of reducing into arts into an "entertainment industry"; [2] How does the structure of that industry restrict the production and dissemination of authentically transformative cultural forms and events? Conversely, how does it promote the production of homogenized MacCulture or of hegemonic cultural stereotypes?; [and 3] How should LatCrit theory engage these issues?

*LatCrit V Substantive Program Outline*, *supra* note 8.

54. "Popular culture is a currency, however, that circulates between the academy and public culture, and as such it can at least constitute a common terrain of contestation." FRECCERO, *supra* note 12, at 9.

55. *Id.* at 9.

56. *Id.* at 135 n.1.

media-imposed,<sup>57</sup> and the art of popular culture *is* art.<sup>58</sup> In identifying and distinguishing popular culture from mass-media-imposed culture, this article deploys the competing narratives of popular cultures both to identify hegemony and to counter it.<sup>59</sup>

Finally, critical theory warns that one must be careful not to essentialize in this process of constructing and analyzing culture. In linking Puerto Rican ethnicity and citizenship,<sup>60</sup> it is imperative to avoid the evils of ethnic strife and balkanization that a hegemonic culture might impose. This article demonstrates that it is possible to celebrate a particular culture and avoid deploying it as a justification to attack fellow human beings because of their culture<sup>61</sup> by identifying both positive and negative forces in the competing narrative tellings of the Puerto Ricans.

In discussing the competing narratives of and by the Puerto Ricans, one must change frames of reference often. Although principally concerned with Puerto Rican culture in Puerto Rico, this article discusses Puerto Rican popular culture,<sup>62</sup> Puerto Rican-American popular culture,<sup>63</sup>

57. "However, no LatCrit analysis of the transformative power of the arts would be complete without attention to the impact of economic power, profit incentives, and market structures on the production of artistic representations." *LatCrit V Substantive Program Outline*, *supra* note 8.

58. Freccero explains that: "Graeme Turner attributes to Stuart Hall and Paddy Whannel the 'influential distinction between popular art (which derives from folk cultures) and mass art (which does not): 'The typical 'art' of the mass media today is not a continuity from, but a corruption of, popular art,' they say." FRECCERO, *supra* note 12, at 135 n.1 (citations omitted).

59. As counterhegemony, "popular culture becomes the currency of political polemic and debate." FRECCERO, *supra* note 12, at 8. It is deployed against the hegemonic "dominant culture." *Id.* This is a process that is essential for legal scholars, as explained again in the Media Panel description:

Whether in culture or politics, the language of law is a crucial field for mediating questions of either symbolic or literal representation. Responding to critics of post modern theory, who complain that cultural politics has replaced real politics with "the representation of politics," we shall explore the "politics of representation" and reveal the various ways in which mass-media constitute a form of exclusionary and patriarchal political activation through the mis/use of power. Analysis of mass-media narratives allows us to engage in an interdisciplinary, scholarly and critical study of certain cultural representations that is consistent with the previously articulated commitments of LatCrit theory to the construction of community and the transformation of material realities.

*LatCrit V Substantive Program Outline*, *supra* note 8.

60. To the extent that this article is based on the concept of Puerto Rican cultural nationhood, it is certainly at least partially using ethnicity as a marker for a particular form of citizenship. In the context of the citizenship debates in political and legal philosophy, this is an attempt to define what Ronald Beiner calls the "elusive synthesis of liberal cosmopolitanism and illiberal particularism, to the extent that it is attainable, is what I want to call 'citizenship.'" Beiner, *supra* note 15, at 12-13. In trying to come up with this definition, he struggles with what he describes as the "universalism/particularism conundrum," which he defines as: "To opt wholeheartedly for universalism implies deracination—rootlessness. To opt wholeheartedly for particularism implies parochialism, exclusivity, and narrow-minded closure of horizons." *Id.*

61. Adeno Addis, in arguing against secession, identifies the need for co-existence: "Whether the multiplicity is the 'unintended' consequence of colonialism or the organizing principle, the defining feature, of the particular nation-state, the uncontroverted fact is that most nations are indeed multiethnic and multicultural." Addis, *supra* note 14, at 113.

62. The popular culture of Puerto Ricans living in the islands of Puerto Rico.

American popular culture,<sup>64</sup> and the mass media culture that brings all three popular cultures into co-existing and sometimes conflicting spaces within the American diaspora.

### B. *Gringos, Puertorriqueños, and Niuyoricans*

Puerto Rico is a group of islands bordered by the Atlantic Ocean and Caribbean seas,<sup>65</sup> which has been a United States territory since 1898.<sup>66</sup> Puerto Ricans are statutory United States citizens.<sup>67</sup> This citizenship has produced substantial relocation by Puerto Ricans in the United States.<sup>68</sup>

63. The popular culture of Puerto Ricans in the "United States proper" as that term is defined in *Balzac v. Porto Rico*, 258 U.S. 298 (1922). Essentially, although Puerto Rico is United States territory and Puerto Ricans are United States citizens, the United States proper is used here to refer to the 50 states of the Union.

64. This is not to suggest an acceptance of a single American homogenized culture, since that would be the result of an essentialist process that imposes a homogenized normativity. However, there is at least an attempt at a normative Angla/o American culture that does not include the Latinas/os within the U.S. borderlands.

65. Unless otherwise expressly indicated, references to the *isla* or island should be read as synonymous with all the Puerto Rican islands. Puerto Rico is composed of several islands. However, it is generally referred to as the "*Isla del Encanto*" (The Enchanted Island or the Isle of Enchantment), or simply as the "island." The Islands of Puerto Rico are the main island known as Puerto Rico and a series of smaller islands, including, but not limited to, Vieques, Culebra, Mona, and Monito. See 48 U.S.C. § 731 (1999) ("The provisions of this Act shall apply to the island of Puerto Rico and to the adjacent islands belonging to the United States, and waters of those islands; and the name Puerto Rico as used in this Act shall be held to include not only the island of that name but all the adjacent islands as aforesaid.").

66. Puerto Rico was ceded to the U.S. by the treaty that ended the Spanish American War. The official title is the "Treaty of Peace Between the United States of America and the Kingdom of Spain." See P.R. LAWS ANN. VOL. 1, HISTORICAL DOCUMENTS, at 16 (1999). Article II of the Treaty reads: "Spain cedes to the United States the island of Porto Rico [sic] and other islands now under Spanish sovereignty in the West Indies, and the island of Guam in the Marianas or Ladrões;" RACE AND RACES: CASES AND RESOURCES FOR A DIVERSE AMERICA 327 (Juan Perea et al. eds., 2000) (hereinafter RACE AND RACES) (citing 11 TREATIES AND OTHER INTERNATIONAL AGREEMENTS OF THE UNITED STATES OF AMERICA 1776-1949 615-19 (Charles I. Bevans ed., 1974)). The editors of the Puerto Rico collection changed the references to "Porto Rico" included in the original English to "Puerto Rico." See P.R. LAWS ANN. VOL. 1, HISTORICAL DOCUMENTS, at 17 (1999).

On Puerto Rico's continued territorial status, see generally Malavet, *Cultural Nation*, *supra* note 11. See also Ediberto Roman, *Empire Forgotten: The United States's Colonization Of Puerto Rico*, 42 VILL. L. REV. 1119, 1151 & n.146 (1997).

67. See Treaty of Paris, Dec. 10, 1898, U.S.-Spain, art. IX, T.S. No. 343, in RACE AND RACES, *supra* note 66, at 327 (citing 11 TREATIES AND OTHER INTERNATIONAL AGREEMENTS OF THE UNITED STATES OF AMERICA 1776-1949 615-19 (Charles I. Bevans ed. 1974) ("The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress.")); see also Jones Act of 1917, ch. 145, 39 Stat. 951, 953 (1917) (conferring U.S. citizenship on all "citizens of Porto Rico [sic];" it adopted the definition of Puerto Rican citizenship included in the Foraker Act); Foraker Act, ch. 191, 31 Stat. 79 (1900) ("That all inhabitants continuing to reside therein who were Spanish subjects on the eleventh day of April, eighteen hundred and ninety-nine, and then resided in Puerto Rico, and their children born subsequent thereto, shall be deemed and held to be citizens of Puerto Rico, and as such entitled to the protection of the United States, except such as shall have elected to preserve their allegiance to the Crown of Spain . . ."). See generally Malavet, *Cultural Nation*, *supra* note 11.

68. Puerto Rico has almost four million residents, and there are over 2.7 million Puerto Ricans in the United States mainland. FRANCISCO R. RIVERA BÁTIZ & CARLOS E. SANTIAGO, ISLAND PARADOX: PUERTO RICO IN THE 1990S 23, 127 (1996) (the 1990 census recorded 3.5 million residents of Puerto Rico, and 2.7 million Puerto Ricans in the mainland). On the cultural links between mainland and island Puerto Rican communities, see generally RUTH GLASSER, MY MUSIC IS MY FLAG: PUERTO RICAN MUSICIANS AND THEIR NEW YORK COMMUNITIES 1917-1940 (1995);



Thus, there are at least two substantial Puerto Rican communities that interact with and are distinguished from *estadounidenses* (citizens of the United States): Puerto Ricans in Puerto Rico and Puerto Ricans in the United States.

The current Latin pop music craze reflects these borderlands: Ricky Martin was born and raised in Puerto Rico, and Marc Anthony and Jennifer López were born and raised in New York City. In the Latin Music Craze, all three artists play mostly for an Angla/o *estadounidense* audience. In Puerto Rico, the terms that are used to distinguish the three groups of American citizens described above are *gringo* (used to refer to a non-Latina/o citizen of the United States who is not Puerto Rican), *niuyorican* (although it specifically refers to New York City, it is used to refer to persons of Puerto Rican descent born anywhere in the United States), and *isleño* (used to refer to Puerto Ricans from the island).

The dominant narrative about Puerto Ricans by the United States carefully cultivates the view that the people of Puerto Rico, despite their U.S. citizenship, are too brown, too Latina/o and too “foreign”—too unassimilable—to be incorporated into the United States.<sup>69</sup> More recently, Puerto Ricans have been portrayed as “unpatriotic” and “ungrateful” in the public discourses over the release of Puerto Rican political prisoners<sup>70</sup> and over the protests of the Navy’s use of Vieques as a bombing range.<sup>71</sup> In addition to legally constructing Puerto Ricans as second-class citizens,

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ANGEL G. QUINTERO RIVERA, *SALSA SABOR Y CONTROL: SOCIOLOGÍA DE LA MÚSICA TROPICAL* (1998).

69. Hence, Puerto Rico remains an organized but unincorporated territory of the United States. See generally Malavet, *Cultural Nation*, *supra* note 11. The essentialized homogeneity reflected in each of these labels is discussed and deconstructed in Part IV below.

70. An article in the *NEW YORK TIMES* reflects this latter attitude. On Sunday, September 13, 1999, the paper ran an article headlined “Hundreds Gather to Welcome Pardoned Militants in Puerto Rico.” *Hundreds Gather to Welcome Pardoned Militants in Puerto Rico*, *NEW YORK TIMES*, Sept. 13, 1999, at A1. The last paragraph of that story read as follows: “As residents of a United States commonwealth, Puerto Ricans do not pay Federal taxes but receive \$11 billion annually in Federal aid. They are United States citizens but cannot vote for President.” *Id.*

Initially, the statement, as drafted, is factually incorrect. Puerto Ricans do not pay Federal income taxes, but they do have to pay Social Security and FICA taxes on income earned in Puerto Rico. See Malavet, *Cultural Nation*, *supra* note 11. But more importantly, the article implies that those who believe in Puerto Rican Independence are being ungrateful to the United States for its “generosity” in providing “Federal Aid.” This characterization is carefully calculated to create a false impression of all Puerto Ricans as living off the “generosity” of the United States. Puerto Rico is a United States Territory, and Puerto Ricans are United States citizens. Therefore, the United States is simply fulfilling its obligations to citizens of the United States, not providing “aid” out of the goodness of its heart. In fact, the United States citizens residing in Puerto Rico receive federal benefits at a lower rate than citizens residing in the Continental United States. See Malavet, *Cultural Nation*, *supra* note 11.

71. See, e.g., *The Pentagon and Vieques*, *WASH. POST*, Oct. 22, 1999, at A32 (“Chairing a Vieques hearing Tuesday, Sen. John Warner said that, doing their patriotic duty, his own constituents in Quantico sit closer to an active live-fire range than do residents of Vieques.”).

the United States reinforces this devaluation of Puerto Rican dignity<sup>72</sup> by stereotyping Puerto Rican difference and Otherness.<sup>73</sup>

The United States seeks to “Other” the Puerto Ricans as U.S. citizens who are not cultural “Americans.”<sup>74</sup> In turn, the Puerto Ricans have culturally embraced their distinction from the *gringos*. Accordingly, the United States attempts to “Americanize” the Puerto Ricans that were rejected.<sup>75</sup>

In addition to island *puertorriqueños/as* distinguishing themselves from “*gringos*,” they also distinguish themselves from the *niuyoricans*. The Puerto Rican experience in the United States outside of the island is, in general, much more bilingual and multi-cultural than that of the *isleños*, which is discussed below.<sup>76</sup>

One interesting example of the conflict between social constructions of culture can be found in competing definitions of the very word *gringo*. There are several stories about the derivation of the term. One argues that it comes from “*green coats*,” thus, a reference to the uniforms worn by

72. For example, Teddy Roosevelt, Jr., who had been appointed governor of the island by President Herbert Hoover, called the Puerto Ricans “shameless by birth” and added that he did not “know anything more comic and irritating than Puerto Rico.” *PUERTO RICO: A POLITICAL AND CULTURAL HISTORY* 212, 220 (Arturo Morales Carrión ed., 1983). Another appointed governor, Rexford G. Tugwell, later President of the University of Chicago, referred to Puerto Ricans as “mulatto, Indian, Spanish people” who therefore made “poor material for social organization.” *Id.* at 232.

73. Since the outset of United States colonization, it was evident that the United States interest in conquering land did not extend equally to the colonized peoples. The Treaty of Paris, through which Spain ceded Puerto Rico to the United States, unlike the Treaty of Guadalupe Hidalgo, which ceded conquered Mexican territory, did not guarantee United States citizenship for the inhabitants of Puerto Rico. In fact, the Spaniards on the Island could choose to retain their citizenship, but everyone else on it was left in a legal limbo. This is not to say that they were not interested *at all* in the people. The United States wanted *consumers*, not citizens. See Román, *supra* note 66. Later, citizenship is given to make Puerto Ricans eligible to die for “our” country. See REXFORD GUY TUGWELL, *THE STRICKEN LAND: THE STORY OF PUERTO RICO* 70 (1946). But they are certainly *not* to receive all the “blessings of liberty” that are supposed to accompany that citizenship. See Malavet, *Cultural Nation*, *supra* note 11 (discussing *Califano v. Torres* and *Harris v. Rosario*).

74. In contrasting “Americans” and Puerto Rican United States citizens, the U.S. Supreme Court stated:

Alaska was a very different case from that of Porto Rico. It was an enormous territory, very sparsely settled and offering opportunity for immigration and settlement by *American citizens*. It was on the American Continent and within easy reach of the then United States. It involved none of the difficulties which incorporation of the Philippines and Porto Rico presents. . . .

*Balzac v. Porto Rico*, 258 U.S. at 309 (emphasis added). See generally Malavet, *Cultural Nation*, *supra* note 11. The statement is enlightening since this case was an examination of the United States citizenship that had been granted to the Puerto Ricans in 1917; thus, the Supreme Court characterizes the U.S. citizens in Puerto Rico as not being “American.”

75. As is reflected in the Puerto Rican cultural identity discussed in Part III. See also Malavet, *Cultural Nation*, *supra* note 11.

76. Nevertheless, the faultlines and intersectionalities of these two Puerto Rican cultures are discussed in the footnotes in Part III.

U.S. soldiers during the Mexican War.<sup>77</sup> Another story argues that the term originated in a bastardization of the song "*Green Grows the Grass*" allegedly sung by U.S. soldiers invading Mexico in 1847.<sup>78</sup> Whether the term's use in the Americas originates thusly is open to question, but it is clear that the word itself predates Mexican-US conflicts. As early as the eighteenth century, the word was reportedly used in Spain as a bastardization of the word "*griego*" (Greek) and was used to refer to anyone speaking a foreign tongue or with a foreign accent.<sup>79</sup> The usage is thus analogous to the American phrase "it's Greek to me."<sup>80</sup>

More interestingly, Spanish dictionaries describe *gringo* as a simple adjective.<sup>81</sup> In contemporary usage in Spain, it is used to refer to a foreigner, especially one who speaks English. In Argentina, it is used to refer to white, blonde Europeans. In the Americas, it is used to refer to citizens of the United States.<sup>82</sup> But English dictionaries uniformly define it as a word used "disparagingly" or as a "contemptuous" reference to English-speakers generally and U.S. citizens in particular.<sup>83</sup> To most Spanish-speaking Latinas/os the term *gringo* is simply a term used to refer to U.S. citizens. It is made necessary by the fact that the United States of America is one of very few nations in the world that lacks a country name.<sup>84</sup> However, English speakers are uniformly told that they are being insulted, rather than properly identified.<sup>85</sup> Just as their empow-

77. U.S. troops wore green jackets during the Mexican campaigns. MILITARY UNIFORMS IN AMERICA, VOL. 2: YEARS OF GROWTH (John Robert Elting et al. eds., 1974). The U.S. troops that landed in Puerto Rico were actually wearing Civil-War era blue. CARL SANDBURG, ALWAYS THE YOUNG STRANGERS (1953), in THE PUERTO RICANS: A DOCUMENTARY HISTORY 97 (Kal Wagenheim & Olga Jiménez de Wagenheim eds., 1996) ("We still wore the heavy blue-wool pants of the Army of the Potomac in '65 and thick canvas leggings laced from ankles to knees.").

78. This derivation has been widely rejected by etymologists. See JORGE MEJÍA PRIETO, ASÍ HABLA EL MEXICANO 83 (1984) (no basis for "Green grow the grass" derivation); THE RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 841 (1987) (taking the same position as Mejía Prieto).

79. PRIETO, *supra* note 78, at 83 (a dictionary published in 1765 explained that "gringo" was a term used in Málaga, Spain, to refer to foreigners unable to speak Spanish easily, and was probably a bastardization of "greek," which was generally used to mean "incomprehensible language").

80. As in the phrase, "chemical formulas are *greek* to me." WEBSTER'S NEW COLLEGIATE DICTIONARY 537 (9th ed. 1984) (*italics* original). The medieval Latin phrase "*Graecum est; non potest legi*: It is Greek; it cannot be read" is the origin of the term's use in English to mean "something unintelligible." *Id.*

81. *E.g.*, AMERICANISMOS 287 (*gringo* is an adjective meaning foreigner or North American from the United States); DICCIONARIO DE LA LENGUA ESPAÑOLA, VOL. 1, 1059 (*gringo* is an adjective meaning foreign, white Europeans, North American from the U.S.).

82. 1 DICCIONARIO DE LA LENGUA ESPAÑOLA 1059.

83. 6 THE OXFORD ENGLISH DICTIONARY 849 (J.A. Simpson, et al, ed., 1989) ("contemptuous"); WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 537 ("used disparagingly"); THE RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 841 (1987) ("usually disparaging").

84. The others arguably being The United Arab Emirates and perhaps the Commonwealth of Independent States. The term is also preferable to allowing United States citizens, who after all occupy just one of the many countries of the Americas to make "American" their property. See also Hernández-Truyol, *supra* note 21.

85. Whether many Americans feel that the term is an epithet or not is open to question, as illustrated by two personal anecdotes. My sister's godfather, a white U.S. citizen who has lived in

ering native language is negatively presented to English speakers, Puerto Ricans construct themselves positively, and in turn are negatively constructed by the United States.

The dominant narrative of the Puerto Rican has traditionally been imposed by United States mass media. In contrast, the Puerto Ricans on the island have a powerful culture that I call *mi cultura Puertorriqueña*, which is described in the next part of the article.

### C. *Mi Cultura Puertorriqueña* (My Puerto Rican Culture)<sup>86</sup>

As hurricane Debby approached Puerto Rico, and it started to become clear that the storm would not make a direct hit on the island, *El Nuevo Día*, a daily newspaper, put the following headline on its web site: “*Esperando a Debby Alcapurria en Mano.*”<sup>87</sup> The headline can be translated as “Waiting for Debby, with *Alcapurria* in Hand.” An *alcapurria* is a mixture of mashed green banana and *yautía* (tannier), stuffed with beef or pork, and then deep fried.<sup>88</sup> Waiting for a hurricane—after boarding up the house, getting supplies, and picking up any items that might become missiles in a wind storm—with a cold drink and an *alcapurria*, while listening to the radio, is an apt symbol of Puerto Rican culture.<sup>89</sup>

More generally, while reflecting a social consciousness distinct from that of its two colonial rulers, Puerto Rican popular culture is both the product and the prisoner of 500 years of history under Spanish and United States colonial rule. Puerto Rican culture is not ideal; it has racialized, ethnicized, and gendered faultlines that will be engaged in this article, but it is different from the United States’ culture. However, to put it simply, culturally, Puerto Rico was a Latin-American country when the first United States troops came ashore in Guánica in 1898. Today, it is still a culturally Latin-American country, populated by Latinas and Latinos.<sup>90</sup>

Puerto Rico for over thirty years, likes to be called a *gringo*, as a descriptive name, and often describes himself as such. One of my white anglo teachers at Georgetown Law School, who was then an Undersecretary of the Treasury, used the term regularly in his class and clearly found it appropriate and not offensive. However, one of my students at the University of Florida compared it to the word “nigger” when she questioned my having used it in class (in a discussion of 28 U.S.C. § 1332(a)(2) (alienage jurisdiction)).

86. With some minor exceptions, this section repeats the analysis of Puerto Rican culture that I presented in Malavet, *Cultural Nation*, *supra* note 11.

87. See <http://www.endi.com/> (visited August 22, 2000) (copy on file with author).

88. See CARMEN ABOY VALLDEJULI, *COCINA CRIOLLA* 226 -227(1992) (a classic Puerto Rican cookbook that is also available in English); MARTA COLL CAMALEZ DE VELÁZQUEZ, ELIZABETH SÁNCHEZ FLORES, ESTHER SEJO DE ZAYAS, *SILUETAS QUE PUEDEN CAMBIAR: CALORÍAS EN PLATOS Y ALIMENTOS DE USO FRECUENTE EN PUERTO RICO Y EN OTROS PAÍSES DE AMÉRICA Y EL CARIBE* 74 (1991) (a 60-gram *alcapurria* has 230 calories, 16.1 grams of cholesterol, 4.0 grams of protein, and 16.6 grams of fat).

89. The process of waiting for the hurricane in Puerto Rico has been masterfully and humorously described by the Cuban comic Alvarez-Guedes.

90. As reflected in thriving popular cultural narratives, this identity is true and strong, in spite of the strong efforts to “Americanize” the country during the early part of the United States colony.

The law and its institutions, starting with those imposed by the Spaniards, are an important part of Puerto Rican culture. Both reflect a mixture of our two colonial rulers. In the area of constitutional, criminal, administrative and procedural law, Puerto Rico has a system that has been forged by United States' influence.<sup>91</sup> In private law, especially those areas covered by the Civil Code,<sup>92</sup> Puerto Rico bears an unmistakable Spanish influence.<sup>93</sup> Despite the clash of the two different legal cultures,<sup>94</sup> Spanish civil law on the one hand, and Anglo-American common law on the other, both have managed to co-exist, producing a uniquely Puerto Rican legal system.<sup>95</sup>

But while the rules of law might reflect a multi-colonial mixture, the language used in the law is Spanish,<sup>96</sup> which is incontrovertibly the dominant language on the island,<sup>97</sup> and is the language of local admini-

*See generally* AIDA NEGRÓN-DE MONTILLA, *LA AMERICANIZACIÓN EN PUERTO RICO Y EL SISTEMA DE INSTRUCCIÓN PÚBLICA 1900/1930* (1977); Malavet, *Cultural Nation*, *supra* note 11.

91. *See generally* MALAVET-VEGA, *EVOLUCIÓN*, *supra* note 39, MONGE, *supra* note 33.

92. Principally Family Law, Contract, Property and Torts. *See generally* Pedro A. Malavet, *Counsel for the Situation: The Latin Notary, a Historical and Comparative Model*, 19 HASTINGS INT'L. & COMP. L. REV. 389-488 (1996) [hereinafter *Counsel for the Situation*]; Pedro A. Malavet, *The Non-Adversarial, Extra-Judicial Search For Legality And Truth: Foreign Notarial Transactions As An Inexpensive And Reliable Model For A Market-Driven System Of Informed Contracting And Fact-Determination*, 16 WISC. INT'L L.J. 1 (1997) [hereinafter *Extra-Judicial*]; and Pedro A. Malavet, *The Foreign Notarial Legal Services Monopoly: Why Should We Care?*, 31 JOHN MARSHALL L. REV. 945 (1998) [hereinafter *Notarial Monopoly*].

93. The Puerto Rico Civil Code, now title 31 of the Laws of Puerto Rico annotated, is still substantially the Spanish Civil Code for Puerto Rico and Cuba of 1898. M. Rodríguez Ramos, *Brief History of the Codes of Puerto Rico*, 23 TUL. L. REV. 1, 345 (1949).

94. One area where the clash has produced particularly unhappy results is tort law. *See* GUAROA VELÁZQUEZ, *LAS OBLIGACIONES SEGÚN EL DERECHO PUERTORRIQUEÑO* xxiv (1964). *See generally* Carmelo Delgado Cintrón, *La Tansculturación del Pensamiento Jurídico en Puerto Rico*, 45 REVISTA JUR. UPR 305 (1976); CARMELO DELGADO CINTRÓN, *DERECHO Y COLONILISMO* (1988).

95. *See generally* Malavet, *Counsel for the Situation*, *supra* note 92; Malavet, *Extra-Judicial*, *supra* note 92; Malavet, *Notarial Monopoly*, *supra* note 92.

96. Since Spanish was used as a matter of course, the Foraker Act and the Jones Act needed to expressly stipulate that proceedings in the United States District Court, and appeals from the Supreme Court of Puerto Rico to the Circuit, had to be conducted in English. Foraker Act § 34 ("All pleadings and proceedings in [U.S. District Court for Puerto Rico] shall be conducted in the English language."); Jones Act § 42 ("All pleadings and proceedings in the District Court of the United States for Puerto Rico shall be conducted in the English language."). In *People v. Superior Court*, 92 P.R.R. 580, the Puerto Rico Supreme Court denied a litigant's request to proceed in English rather than in Spanish in local court, even though both English and Spanish were the official languages. 582 P.R.R. 585, 589-590 ("the means of expression of our people is Spanish, and that is a reality that cannot be changed by any law"); *See also* P.R. CIVIL CODE ART. 13 ("In case of discrepancy between the English and Spanish texts of a statute passed by the Legislative Assembly of Puerto Rico, the text in which the same originated in either house, shall prevail in the construction of said statute, except in the following cases: (a) If the statute is a translation or adaptation of a statute of the United States or of any State or Territory thereof, the English text shall be given preference over the Spanish. (b) If the statute is of Spanish origin, the Spanish text shall be preferred to the English. (c) If the matter of preference cannot be decided under the foregoing rules, the Spanish text shall prevail.").

97. While this is true for the *isla*, it is not for Puerto Ricans outside Puerto Rico for whom bilingualism, and sometimes English mono-lingualism are the norm. *See* Celia Alvarez, *Code Switching in Narrative Performance: Social, Structural, and Pragmatic Function in the Puerto*

stration and public education.<sup>98</sup> Significantly for this work, Spanish is also the language of the popular arts,<sup>99</sup> and, hence, culture.<sup>100</sup> As will be shown here, Puerto Rico's cultural tropes—dietary and celebratory, including musical—are uniquely *puertorriquenas/os*.

Dietary practices have long been considered an essential part of a culture, and Puerto Rico is no exception. Although there are Puerto Rican Jews and Moslems,<sup>101</sup> the strict dietary rules of those religions do not apply to the Puerto Rican staple diet.<sup>102</sup> Accordingly, pork is a major part of the diet, especially on celebratory occasions,<sup>103</sup> and shellfish and all other forms of seafood are traditional foods as one would expect in a

tropical island.<sup>104</sup> Rice, red beans, *tostones* or *mofongo*,<sup>105</sup> and the daily loaf of bread are staple foods. *Panaderías* (bread stores) can be found in almost every neighborhood, invariably offering *pan de agua* (water

*Rican Speech Community in East Harlem*, in *SOCIOLINGUISTICS OF THE SPANISH SPEAKING-WORLD: IBERIA, LATIN AMERICA, UNITED STATES* 271-298 (Carol Klee & Luis A. Ramos García eds., 1991).

98. See AMÍLCAR A. BARRETO, *LANGUAGE, ELITES, AND THE STATE: NATIONALISM IN PUERTO RICO AND QUEBEC* 118 (1998) (the language of instruction in Puerto Rico public schools is Spanish). The Puerto Rico schools are divided into elementary schools (K-6th grade), intermediate schools (7, 8, 9 grades) and High Schools (10, 11, 12th grades). P.R. REGULATIONS § 31-91. The language of instruction for Junior High Schools is Spanish. *Id.* at (5). "Every subject in the elementary schools, except English, shall be taught in the Spanish language." P.R. REGULATIONS § 31-93.

99. To the extent that the art form uses languages, as is the case, for example, in literature and music.

100. Language is generally considered an essential part of ethnicity or ethnic identity. See generally Joshua A. Fishman, *Language, Ethnicity and Racism*, in *SOCIOLINGUISTICS: A READER AND COURSEBOOK* 329-340 (Nikolas Coupland & Adam Jaworski eds., 1997).

101. Religious diversity in the Latina/o communities is not rare. For a comedic take on being "jewy-rican," see <http://www.latinolink.com/article> (visited Aug. 28, 2000) (reviewing the work of Jewish-Puerto Rican comedian Richie Bulldog (Richie Abramowitz)). For an artistic exploration and Re/construction of a Latina's identity that includes Palestinian Orthodox Christian, Polish Jewish, while growing up Salvadoran Catholic, see the artist Muriel Hasboun's exhibit *Todos los Santos* (All the Saints). <http://www.zonezero.com/exposiciones/fotografos/muriel2/> (visited Aug. 14, 2000).

102. On the Puerto Rican diet generally, see CARMEN ABOY VALLDEJULI, *COCINA CRIOLLA* (1992) (a classic Puerto Rican cookbook that is also available in English); MARTA COLL CAMALEZ DE VELÁZQUEZ, ELIZABETH SÁNCHEZ FLORES, ESTHER SELO DE ZAYAS, *SILUETAS QUE PUEDEN CAMBIAR: CALORÍAS EN PLATOS Y ALIMENTOS DE USO FRECUENTE EN PUERTO RICO Y EN OTROS PAÍSES DE AMÉRICA Y EL CARIBE* (1991) (a dietary and caloric guide based on the traditional Puerto Rican diet, with bilingual index).

103. The traditional Christmas meal will include Roast Pork, rice with *gandules* (pigeon peas) and *pasteles*. See PEDRO MALAVET-VEGA, *NAVIDAD QUE VUELVE* 28-29 (1987) [hereinafter MALAVET-VEGA, *NAVIDAD*].

104. The Taino inhabitants of Puerto Rico used shellfish as a major part of diet, especially conch, leaving huge mounds of the discarded shells for archeologists to find. On the taino diet generally, see IRVING ROUSE, *THE TAINOS: RISE & DECLINE OF THE PEOPLE WHO GREETED COLUMBUS* 13, 57 (1992).

105. *Tostones* are pieces of green plantain that are fried once to get the plantain soft; the plantain is then pressed and fried again until crunchy on the outside. *Mofongo* is plantain that is fried only until soft, and is then mixed with garlic, pork rinds and olive oil, and formed into a ball. ABOY-VALLDEJULI, *COCINA CRIOLLA*, *supra* note 102, at 188, 228. The *mofongo* may sometimes be fried again or baked after being made into a ball. Both *tostones* and *mofongo* are often served stuffed with seafood prepared in a light tomato sauce, or with *asopao*, a heavy rice-based soup that is traditionally made with either chicken or seafood. *Id.* at 317.

bread) or *pan de manteca* (bread with lard).<sup>106</sup> Rum, made from sugar cane, is the national alcoholic drink.<sup>107</sup> *Piraguas*, shaved ice covered in syrup, and home-made ice creams made with local fruits are very popular in the tropical heat and are traditionally served from movable carts.

Shared celebrations, such as *fiestas patronales* (patron saint festivals) and important holidays, also mostly of a religious origin, such as Christmas and Holy Week, mark Puerto Rican culture. The Patron Saint festivals are celebrated in every municipality in Puerto Rico, and the matter is even regulated by Puerto Rico's laws.<sup>108</sup> The celebration always includes food, drink, and music of all kinds, but dance music, especially salsa, attracts the most people. Traditionally, one day of the *patronales* will be dedicated to honoring and remembering the *ausentes* (absent persons), usually persons who have migrated away from the town. In fact, many Puerto Ricans living in the United States choose this date to return to their home towns.

In an example of some United States influence, but adapted to the Puerto Rican way, Thanksgiving is now celebrated, but mostly it marks the start of the Christmas holiday.<sup>109</sup> The content of the Christmas celebration, and its length, however, are much different from the United States traditional celebration; they are definitely Puerto Rican. *Parrandas*, very common during Christmas, are basically large moving parties in which a musical serenade is brought to a friend or family member's home. In exchange for good music and the company of friends, the home owner welcomes the group into the house and gives them food and drink.<sup>110</sup> The traditional Christmas foods are *lechón asado* (roast pig), *arroz con gandules* (rice with pigeon peas), *pasteles* (a mixture of tannier and green plantain, stuffed with beef, pork or chicken, wrapped in ba-

106. Hence, the sale of bread is closely regulated by the government. See, e.g., P.R. LAWS ANN., TIT. 23 § 919 (1996) (regulating the labeling and weight tolerances of bread); P.R. LAWS ANN., TIT. 24 § 851 (1996) (defining enriched flower bread).

107. Rum has been produced in Puerto Rico for centuries, both legally and illegally. The illegal kind is called *pitirro* or the more colorful appellation *lágrimas de mangle* (tears from the salt-water swamp). MALAVET-VEGA, NAVIDAD, *supra* note 103, at 37-40. Don Q (short for Don Quijote) is made in Ponce. But there are many other brands, including Bacardi, which came to Puerto Rico upon leaving Havana. Home grown brands include Palo Viejo, Ron del Barrilito (the three-star variety is an excellent dark rum aged in barrels).

108. See, e.g., 15 P.R. LAWS ANN. § 80 (allowing for "picas" – kiosks for gambling – only during patron saint celebrations); 21 P.R. LAWS ANN. § 4359(8) ("patron saint feast days" celebrations excluded from limitation on election-year spending by municipalities); 21 P.R. LAWS ANN. § 4309 (municipal governments may adjust their budgets with revenues from patron saint feast days). The Attorney General of Puerto Rico issued an opinion indicating that there is no constitutional prohibition against participation of the Church in programming certain activities which are traditionally performed at municipal *fiestas*. Op. Sec. Just. No. 14 (1983) (author's translation from spanish original).

109. Though many Puerto Ricans are surprised to find that the turkey is native to the Americas.

110. If the music is bad, the door remains closed (unless they are *really* good friends!). The *trullas* are part of an open, outdoor celebration of Christmas that is part of the tropical tradition. MALAVET-VEGA, NAVIDAD, *supra* note 103, at 40-42. The concept of a designated driver becomes important on these occasions.

nana leaves).<sup>111</sup> For dessert, *coquito* (Puerto Rican coconut eggnog)<sup>112</sup> and *arroz con dulce* (rice flavored with coconut milk and sweetened with brown sugar).<sup>113</sup> The Christmas holidays include the Epiphany, January 6,<sup>114</sup> the date when children usually get toys.<sup>115</sup> The overall celebration lasts beyond the Epiphany into the so-called *octavas* and *octavitas*—a full eight days of further partying or religious observance, depending on the participants.<sup>116</sup>

Turning specifically to musical heritage as a vehicle of a singular culture, this piece will now present the history and development of *música popular Puertorriqueña* (Puerto Rican popular music).

Popular music in particular represents the Puerto Rican identity. Notwithstanding the current Latin Music Craze, prominently displaying a homogenized product by Puerto Ricans Marc Anthony, Jennifer López, and Ricky Martin, there is general agreement on many diverse forms of Puerto Rican popular music. However, there is a strong debate over whether there is a single specific Puerto Rican “national music,” driven by the overall debate between defenders of “high culture” versus “popular culture,” which is often reduced to questions of class and race.

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111. MALAVET-VEGA, NAVIDAD, *supra* note 103, at 28-29.

112. *Coquito* is made with raw egg yolks, sweetened condensed milk, condensed milk, and coconut milk (made by blending coconut shavings with water), flavored with a spice broth of water in which cloves, cinnamon and nutmeg are boiled. Rum is optional. It is served chilled. PEDRO MALAVET-VEGA, LAS PASCUAS DE DON PEDRO (1994); *see also* MALAVET-VEGA, NAVIDAD, *supra* note 103, at 28-29.

113. The smell of *arroz con dulce* is unmistakable. The spices are boiled and their smells permeate the entire house with cinnamon, cloves and annis. For a good recipe and a narrative description of the process of making *arroz con dulce*, *see* MALAVET-VEGA, LAS PASCUAS DE DON PEDRO, *supra* note 112. *Pegao* literally means “stuck” and is a reference to the rice that sticks to the bottom of the pot. For many Puerto Ricans, this hard, crunchy byproduct of the rice cooking process is a real delicacy. The *pegao* from *arroz con dulce*, still warm, is a real Christmas treat.

114. The Catholic celebration of the Epiphany is also the occasion for the *Promesas de Reyes* (Promises to the Wisemen). Usually, when faced with a difficult situation, a family will make a religious vow to hold a large celebration in honor of the Three Wise Men if their prayers are answered. The fulfillment of the *promesa* requires the building of an altar to the Wisemen. The altar becomes the location for rosaries to be recited, and often sung, usually by women. The rosaries start on the night of January 5, and last into the morning of January 6. On January 6, the celebration, which always includes music, is held. Neighbors, family and friends are invited. MALAVET-VEGA, NAVIDAD, *supra* note 103, at 28-29. A friend who is a physician is credited with saving the life of a young boy. He is usually the guest of honor at the family’s *promesa*, which has been held for over ten years. The family lives in modest home, but they have slowly built a large parking area and a cement building (almost as large as their home) to host the *promesa*.

115. There has been some incursion of the American tradition of Santa Claus, which has meant that gifts are given to children on December 25. This is often also justified in practical terms, since kids have more time to play with their toys before having to go back to school. Nevertheless, toy sales are strongest between December 26 and January 5.

116. The *octavas* are the eight days after the Epiphany. As a religious observance, the Catholic Church maintains a solemn liturgy. As part of the popular Christmas holiday, they are an extension of the Holiday Season. *Octavitas* is another eight day extension of the celebration or observance, which, depending on the person, could last indefinitely. MALAVET-VEGA, NAVIDAD, *supra* note 103, at 30-31.



The traditional view is that the *Danza*, a waltz-like salon dance music usually composed by classically trained musicians, is the Puerto Rican national music.<sup>117</sup> *Danza* is most definitely Puerto Rican, but it is the music adopted by and associated with the upper class and cannot fairly be considered the "National" music in the context of *cultura popular* (popular culture).<sup>118</sup> The alternative candidates for the title of national music are *salsa*, especially favored by those who defend the African influence in Puerto Rican culture, and the *seis*, a music produced by the Puerto Rican *jíbaro*, the agricultural peasant of the mountains. José Luis González, in his critical essay *El País de Cuatro Pisos*,<sup>119</sup> bemoans both the classist and racist use of *Danza*, with its inherent denial of the African experience, as well as the cult of the *jíbaro*, which he likewise associates with an enforced preference for whiteness.<sup>120</sup>

117. See, e.g., ANTONIO S. PEDREIRA, *INSULARISMO* 154-155 (1971) ("Danza is a faithful reflection of who and what [the Puerto Ricans are]."); Amaury Veray, *La Misión Social de la Danza Puertorriqueña de Juan Morel Campos*, in 5 *REVISTA DEL INSTITUTO DE CULTURA PUERTORRIQUEÑA* 38-46 (1959) (though he recognizes that it is upper class music, he argues that *Danza* is our most refined music, which has become the best musical reflection of Puerto Ricans); Hector Campos Parsi, *La Música en Puerto Rico*, in *LA GRAN ENCLOPEDIA DE PUERTO RICO* (1977) (*Danza* was a national popular musical form developed by "educated musicians, of refined taste").

118. The adoption of *Danza* is definitely favored as a racist and classist construct when one focuses on the audience that listened and danced to it, which is clearly the social construct built around the cult of the *Danza*. But the association of *Danza* with whiteness and privilege is more difficult to understand when one looks "behind the music" at the most famous composers of *Danzas* many of whom were black, classically trained musicians, who were not members of the upper class. PEDRO MALAVET-VEGA, *HISTORIA DE LA CANCIÓN POPULAR EN PUERTO RICO* 243-48, 315-318 (1493-1898) (1992) [hereinafter MALAVET-VEGA, *HISTORIA*]. This is part of a long social construction of Puerto Rican art as being white, because it was made for whites. But it ignores the fact that those making the art were often blacks, whose contribution is often devalued by stating that the composers, musicians or other artists were slaves who were given instruments or otherwise trained by their masters. These statements do not stand up to critical scrutiny. The contribution of persons of color to Puerto Rican culture is undeniable. *Id.* at 469-478 (analyzing the black and African influence in Puerto Rican popular music). Additionally, Puerto Rico's most famous painter was José Campeche, a free man, the mulatto son of a slave who bought his own freedom. Thus, the social construction of class and race conflicts with the reality. I hope to explore this problem and trace it to its origin in the development of *criolla/o* culture in a future article.

119. González specifically criticizes the "jibarism" of the plantation owners who yearn to return to the "good old days" of Spanish classism and racism. See JOSÉ LUIS GONZÁLEZ, *EL PAÍS DE CUATRO PISOS* (1980) [hereinafter *EL PAÍS DE CUATRO PISOS*]; see also JOSÉ LUIS GONZÁLEZ, *NUEVA VISITA AL CUARTO PISO* (1987); JOSÉ LUIS GONZÁLEZ, *PUERTO RICO: THE FOUR STOREYED COUNTRY* (Gerald Guinness trans., 1993) (the English version of the original polemic). The publication of this and other essays which so openly challenged Puerto Rican racism caused a major uproar within Puerto Rican scholarly circles. Many pointed out that Mr. González, who self-identifies as the son of Puerto Rican father and Dominican mother, was born in the Dominican Republic and has lived mostly in exile in Mexico, where he is a professor of literature at the National Autonomous University in Mexico City. See *EL PAÍS DE CUATRO PISOS*, *supra* note 119, at 105 (essay on the author in exile).

120. There is no doubt that even though it was made by persons who were not members of the white upper class, the *Danza* was embraced and adopted by Puerto Rico's white elite. See Eugenio Fernández Méndez, *Puerto Rico en el Siglo XIX: Siglo de la Lucha por la Democracia y la Autonomía*, 50 *REVISTA DEL INSTITUTO DE CULTURA PUERTORRIQUEÑA* 36 (1971) (*Danza* was the music favored by the lords of the large sugar plantations). There is also a racist tinge in what González rightly identifies as a romanticized version of the *jíbaro* that has been adopted by the upper classes as a counter to the African influence in modern Puerto Rico.

However, the *jíbaro seis* has a powerful and legitimate claim to being a Puerto Rican national popular music that is neither classist nor racist. It was the music of the true *jíbaro*, the poor peasant farmer of Puerto Rico. This music has other prominent characteristics: (1) it was born in Puerto Rico in the nineteenth century; (2) it has had a strong and long-standing influence in Puerto Rican music generally; (3) it is easily identified by most Puerto Ricans as "Puerto Rican music;" and (4) it is still popular music today.<sup>121</sup> Additionally, the *seis* uses the most important native musical instrument, the *cuatro*.<sup>122</sup> Long before *salsa* or its historical antecedents like the *plena* had appeared, the *seis* was the music of poor, that is, most *puertorriqueñas/os*.<sup>123</sup>

This article is not concerned with awarding the title of Puerto Rican national musical form, but ultimately, the debate over Puerto Rican national music serves clearly to underscore two things: one, the richness and diversity within Puerto Rican culture; two, the debate also discloses the problematics of race and class that can be found in the racially-mixed *cultura india, española y africana* (Indian, Spanish, and African culture) of Puerto Rico.<sup>124</sup>

Music and dance create a link between the three major influences within the Puerto Rican peoples. The Taino natives engaged in dances, often designed to tell important tribal stories, called *Areytos*.<sup>125</sup> The Puerto Rican *criollo/a*<sup>126</sup> was often accused of being much too interested

121. This is contrary to *Danza*, which most people in and out of the Island would not be able to associate with Puerto Rico, and was popular in the nineteenth century, but not into the twentieth century. See generally Pedro Malavet-Vega, *Cultura y Musica Popular Puertorriqueña* (Mar. 25, 1996) (unpublished essay, on file with author).

122. The tainos had drums, *palitos* (wooden sticks), *güiros* (a dried hollow gourd with ridges that were played with a rasp), and *maracas*, which are still in use in Puerto Rican popular culture. See MALAVET-VEGA, *HISTORIA*, *supra* note 118, at 96-97, 99. But the one instrument that was produced in Puerto Rico, and which has endured the test of time is the *cuatro*, a small stringed instrument that got its name because initially it had four strings. Later, it developed into four double strings, and eventually a fifth set of strings was added, for the current configuration of ten (but the name is still the *cuatro*). MALAVET-VEGA, *HISTORIA*, *supra* note 118, at 489-90. The instruments are hand made in an almost artisanal way in Puerto Rico, often by persons who are excellent woodworkers, but who lack specific training in the production of musical instruments. Accordingly, they vary greatly in quality, and keeping them in tune, especially because of their high-tension stringing, is a real challenge. The strings are metal, and playing them requires a pick and strong fingers. The sound of the *cuatro* is high-pitched, somewhat similar to that of an American banjo. It is an essential instrument for anyone playing *seis* and almost every one of the traditional Christmas songs.

123. The *seis* traces its roots early in the nineteenth century, whereas the *plena* is a musical form of the twentieth century, with origins in the *bombas*, originally slave dances using drums called *bombas*, of the late nineteenth century. MALAVET-VEGA, *HISTORIA*, *supra* note 118, at 129-39.

124. This listing is by order of arrival. The gender problematics in music and culture generally are also being addressed from feminist perspectives. See, e.g., FRANCES R. APARICIO, *LISTENING TO SALSA: GENDER, LATIN POPULAR MUSIC AND PUERTO RICAN CULTURES* (1998).

125. See ROUSE, *supra* note 104, at 15-17; MALAVET-VEGA, *HISTORIA*, *supra* note 118, at 96-98.

126. "Criollos" means "native-born Puerto Ricans." Fray Iñigo Abbad y Lasierra, *Noticias de la Historia Geográfica, Civil y Política de la Isla de San Juan Bautista de Puerto Rico* (1788), in *THE PUERTO RICANS: A DOCUMENTARY HISTORY* 33 (Kal Wagenheim & Olga Jiménez de

in dancing.<sup>127</sup> Even the now-much-too-respectable *Danza* was considered "scandalous" by some conservative *criollas/os*, who criticized the closeness of the dancers and their movements.<sup>128</sup> Today, *salsa*<sup>129</sup> and *merengue*<sup>130</sup> keep the *puertorriqueñas/os* moving together fast, and *boleros* (slow ballads), a bit more slowly.

Music is naturally an essential element of daily life as well as of special occasions.<sup>131</sup> Music can be designed for dancing, listening, or both. The result is the constant presence in Puerto Rico of big bands that play dance music, and smaller groups that play music to be listened to and/or to be danced. The best example of the latter are the *Trios* (three person groups) that specialize in *boleros*.<sup>132</sup> The big bands were initially the precursors of *salsa* and are now the main practitioners of it, with the *Sonora Ponceña*<sup>133</sup> and *El Gran Combo de Puerto Rico*<sup>134</sup> celebrating fifty years

Wagenheim eds., 1996). In this article, the term will be used inclusively to extend to the entire Puerto Rican diaspora. But what persons, or more directly, what races, are included within the term can be a matter of controversy. An early colonial Spanish view was that "criollo/a" referred to "[t]hose who are born [in Puerto Rico], no matter from what breed or mixture. . . . The Europeans are called *blancos* [whites], or *hombres de la otra banda* [men from the other side]." *Id.* at 33. On the other hand, some would limit the term to apply to white native-born persons. Others, more subtly, refer to the "Criollo elites," who were white. See, e.g., JOSÉ TERRERO: HISTORIA DE ESPAÑA 437 (Juan Regla ed., 1972) ("clases criollas ilustradas" the "enlightened criollo classes").

127. Several authors of extensive histories of Puerto Rico during the eighteenth century specifically note the Puerto Rican's love for dancing and dance parties that lasted for days. See, e.g., ABBAD Y LASIERRA, *supra* note 126, at 35 ("The favorite diversion of these *isleños* [islanders] is dancing: They organize a dance for no other reason than to pass the time.").

128. A letter to the editor of a newspaper in Ponce, Puerto Rico, published on May 13, 1854, urged all "decent" parents not to allow their children to dance *Danza*. MALAVET-VEGA, HISTORIA, *supra* note 118, at 237.

129. There is some controversy over *salsa*'s place of birth, i.e., whether it was really born in the Caribbean as a variant of the *guaracha*, or in the barrios of New York, as what my dad calls the "*himno nacional del barrio latino de Nueva York*" (the national anthem of the Latina/o barrio in New York). See PEDRO MALAVET-VEGA, DEL BOLERO A LA NUEVA CANCIÓN 83-93 (1988) [hereinafter MALAVET-VEGA, BOLERO]. There is some doubt about the origin of the term *salsa* as applied to the Latina/o musical genre. Commercially, it appears in Venezuela, where it had been popularized in the mid-sixties by a disc-jockey, and a record titled *Llego la Salsa*, issued in 1966. The FANIA movie, "*Salsa*," filmed during a live performance in New York City in 1971, also made the term popular. The 1970s are also the beginning of the great migration from New York to Puerto Rico of the Fania All Stars. *Id.*

130. *Merengue* was a name initially given to what today is known as *danza* in Puerto Rico. However, its contemporary usage refers to a form of dance music with a definitely afro-Caribbean beat that is most associated with the Dominican Republic. Recently, Juan Luis Guerra, and his group 4:40, have popularized *merengues* with lyrics displaying social consciousness.

131. In a study of fifty songs that Felipe Rodríguez included in his repertoire, Malavet-Vega found that most of them discussed male-female relationships. PEDRO MALAVET-VEGA, LA VELLONERA ESTA DIRECTA: FELIPE RODRIGUEZ (LA VOZ) Y LOS AÑOS CINCUENTA 395 (1987). But in the text of the songs there are other important themes as well, such as the family, the home, work, children, childhood, Church or religion, history and social or political facts, weddings, illness, God or Jesus, and death. *Id.* at 405.

132. On this genre generally, see PABLO MARCIAL ORTIZ-RAMOS, A TRES VOCES Y GUITARRAS: LOS TRÍOS EN PUERTO RICO (1991); MALAVET-VEGA, BOLERO, *supra* note 129. On the strong relationship between this genre of music and Puerto Rican culture in and outside the Island, see MALAVET-VEGA, LA VELLONERA, *supra* note 131.

133. "*Sonora*" is a Spanish term for band, and "Ponceña" means coming from Ponce, a city in the South of Puerto Rico, hence, the Ponce Band.

in show business this year.<sup>135</sup> Today, *salsa* is undoubtedly the most popular form of Puerto Rican music.<sup>136</sup>

Popular music is a part of the cultural fabric of the Puerto Ricans not simply because of its capacity to entertain and to make people move, but also because it often presents an unflinching look at the realities and hardships of daily life. For example, the *baquiné* is a party to *celebrate* that a baby who died during or shortly after birth has gone to heaven without suffering the hardships of life on earth.<sup>137</sup> Specifically as to Christmas tradition, the book *Navidad que Vuelve* (Christmas Returns) examined the song *Los Reyes No Llegaron*,<sup>138</sup> (The Wisemen/Kings did not Arrive) which was a perfect description of the level of poverty in Puerto Rico in the 1950s. *Los Reyes* tells the story of a young orphan who thinks that the wise men have forgotten him, because they did not bring him a present.<sup>139</sup> Another poignant example of a song carrying a message of economic hardship is *Lamento Borincano* (Puerto Rican Lament), a song that describes the toil involved in a day in the life of a farmer in Puerto Rico at the beginning of the twentieth century.<sup>140</sup>

Music can also be a teaching tool that allows the singer to bypass society's problems, such as illiteracy, and still educate.<sup>141</sup> Music can overcome many challenges, sometimes plainly containing political subtexts. Puerto Rican popular music, with its oral tradition, represents an important form of resistance in a repressive colonial society.

134. "Combo" is a Spanish term for musical group, so this band is named "The Big Band from Puerto Rico."

135. The big bands of Cuba dominated the dance beat from the 1930s until the 1960s. In Puerto Rico, *Rafael Cortijo y su Combo* breaks loose in the early 1950s. This was the quintessential Latin Big Band, which transformed the Latin beat into *salsa*. *El Gran Combo de Puerto Rico* was founded in 1952. *La Sonora Ponceña* starts in the 1950s as well, but it was really in the 1960s and 1970s that it hit its stride. (And it is still going strong.) But undoubtedly *salsa* then explodes in popularity in New York City, in the Latina/o community there. MALAVET-VEGA, BOLERO, *supra* note 129, at 83-93. The FANIA record label – the *salsa* version of Motown – was founded in New York in 1964. In the early 1970s, *salsa* icons like Eddie Palmieri, Willie Colon, Hector Lavoe and Ismael Miranda (*Maelo*) are making *salsa* incredibly popular. The songs of Tite Curet Alonso and Ruben Blades, who first became internationally popular when he recorded with Willie Colon, also helped to popularize the genre. *Id.* at 161.

136. And it has become very popular across cultural boundaries, especially with the success of New York-born Puerto Rican Marco Antonio, better known as Marc Anthony.

137. MALAVET-VEGA, HISTORIA, *supra* note 118, at 375 (describing Francisco Oller's famous painting "El Velorio" depicting musicians at a *baquiné*).

138. MALAVET-VEGA, NAVIDAD, *supra* note 103, at 133.

139. See generally *Id.* at 27.

140. Rafael Hernández, *Lamento Borincano*, 2 LA CANCIÓN POPULAR 70 (1987).

141. For example, in 1951, songs were produced to instruct people on how or why to fill out the ballot: *Referéndum, referéndum, referéndum quiere decir . . . / la consulta que se le hace al pueblo . . .* is a song instructing that the referendum is a consultation of the people by ballot. This song was commissioned by the Popular Democratic Party and used in support of the approval of Puerto Rico's 1952 Constitution by popular ballot. MALAVET-VEGA, HISTORIA, *supra* note 118, at 24. The popular vote for the Puerto Rico Constitution, which became effective in 1952, was held on June 4, 1951. FEDERICO RIBES TOVAR, A CHRONOLOGICAL HISTORY OF PUERTO RICO 516-517 (1973).

In the colonial context, cultural expression takes on the added dimension of political self-awareness and assertiveness.<sup>142</sup> Songs also recognized Puerto Rico's wish for independence<sup>143</sup> and accompanying self-awareness as peoples during the Spanish colonial period. Lola Rodríguez de Tió provided a call to arms in the revolutionary version of *La Borinqueña*,<sup>144</sup> the Puerto Rican national anthem (now with different lyrics).<sup>145</sup> Puerto Ricans have also engaged in the use of song as a vehicle for resistance with the second colonial rulers.<sup>146</sup> For example, Andrés Jiménez's "*El Jíbaro*," demands that Puerto Ricans stand up to the American tyranny, by exclaiming "*¡Coño, despierta boricua!*," which is loosely translated into "*damn wake up people of Puerto Rico.*"<sup>147</sup>

As just prominently shown with the example of its music, Puerto Rican culture is a rich and diverse tapestry that does indeed mix Native, Spanish and African heritage.<sup>148</sup> It is a strong culture that is rightly proud, if perhaps unaware, of its cultural faultlines, although there is serious ongoing debate about the matter. Nevertheless, it is a culture based on shared social experiences, consistent with its tropical origin. The shared symbolism of the Spanish-speaking, *pastel*-eating, *coquito*-drinking experience, among many other complex relationships, produces the Puerto

142. During the Spanish colony, for example, the song *El Ciclón*, (the Hurricane) was in fact a reference to Spanish colonial rulers. The author describes how the singing birds in their cages – a reference to the many persons put in jail by the new government imposed by Spain – stop singing when the *Ciclón* is coming. MALAVET-VEGA, *HISTORIA*, *supra* note 118, at 352-357.

143. For example, *El Grito de Lares/ se ha de repetir/ y todos sabremos/ vencer o morir* (The Cry of Lares/ shall be repeated/ and we all shall now [how]/ to win or to die) is part of song remembering the attempted anti-Spanish revolt in Lares, Puerto Rico, on September 23, 1868. MALAVET-VEGA, *HISTORIA*, *supra* note 118, at 265, 273.

144. The opening lyrics of the Rodríguez de Tió version of *La Borinqueña* called on Puerto Ricans to fight for independence: *¡Despierta boricueño, / que han dado la señal! / ¡Despierta de ese sueño, / que es hora de luchar!* (Wake up boricueño the signal has been given! / Wake up from that dream/sleepiness/ that is the time to fight!). MALAVET-VEGA, *HISTORIA*, *supra* note 118, at 266. "Boricueño" is also spelled borinqueño, this is a reference to the inhabitants of *Boriquén* or *Borinquen*, a bastardization of the native term for the Island today called Puerto Rico.

145. Compare the fiery words of the Rodríguez De Tió version, to the completely submissive text of the current official version, which opens as follows: *La Tierra de Borinquen, / donde he nacido yo, / es un jardín florido / de mágico primor . . .* (The land of *Borinquen*/ where I have been born/ is a flowery garden/ of magical beauty . . .). It is not hard to see why *Doña Lola* was described by her contemporaries as a *pólvora* (explosive black powder). MALAVET-VEGA, *HISTORIA*, *supra* note 118, at 266. The version *la Borinqueña* by Rodríguez the Tió also states in part: *Nosotros queremos la libertad / y nuestro machete nos la dará*, We want our liberty / and our machetes will give it to us. MALAVET-VEGA, *HISTORIA*, *supra* note 118, at 266-268.

146. The *música de protesta*, music of [political] protest, in Puerto Rico in the late 1960s and 1970s, includes a heavy dose of pro-independence sentiment. See generally MALAVET-VEGA, *BOLERO*, *supra* note 103, at 115-150.

147. Of course, protest can have its costs. In Puerto Rico, pro-independence artists like Lucecita Benítez, Roy Brown, Américo Boschetti, Antonio Cabán Vale, Sharon Riley, Andrés Jiménez, Danny Rivera, and others were targeted for surveillance by the police. MALAVET-VEGA, *HISTORIA*, *supra* note 118, at 21. In Argentina, 1.3% of the *desaparecidos* were artists. *Id.* at 22 (citing NUNCA MÁS, INFORME DE LA COMISIÓN NACIONAL SOBRE LA DESAPARICIÓN DE PERSONAS, [EN ARGENTINA] 296 (Barcelona 1985)).

148. However, as discussed, not in equal proportions, and this certainly does not translate into a homogenized racial identity, as discussed in Part IV *infra*.

Rican culture.<sup>149</sup> The remaining sections of this article will explore the relationship between the Puerto Rican culture described above and the narratives of the current Latin Music Craze, contextualized in postmodern LatCritical theory.

#### IV. POSTMODERN TRAVELS THROUGH *FRONTERAS CULTURALES* (CULTURAL BORDERLANDS)

In the current deconstructionist postmodern age, the idea of liberal universalism is rejected as being “merely a cover for an imperialistic particularism.”<sup>150</sup> Postmodernism<sup>151</sup> also points out the theoretical shortcomings of current philosophical movements and warns against the mistakes of extremism, at any end of the philosophical spectrum.<sup>152</sup> This is especially true when one engages in Cultural Studies.

The articles in this symposium which focus on culture study and on the many re/presentations of Latinas/os interrogate which culture owns which aspects of those re/presentations. My perspective is a bit different. I see *mi cultura latina* as something that I embrace and which represents me, while crossing the many borderlands produced by colonialism and exile. In other words, I see my cultural realities and contexts, from a postmodern perspective. This construct is made possible by a theoretical distinction between popular or people’s culture and political culture, that is, between cultural and political citizenships.

I have argued in other works that the Puerto Ricans must be able to develop “shared identities”<sup>153</sup> within their own community as political

149. This is not to suggest that you cannot be Puerto Rican if you consume none of these items or speak no Spanish, however, these are *symbols* of culture and nation. They will be deployed here to identify and empower.

150. Beiner, *supra* note 15, at 9 (“Appeals to universal reason typically serve to silence, stigmatize and marginalize groups and identities that lie beyond the boundaries of a white, male, Eurocentric hegemon. Universalism is merely the cover for an imperialistic particularism.”).

151. Although I find his treatment of postmodernism overly harsh, there are some helpful descriptions in David West, *The Contribution of Continental Philosophy, in A COMPANION TO CONTEMPORARY POLITICAL PHILOSOPHY* (Robert E. Goodin & Phillip Pettit eds., 1993).

Postmodernism proposes a last desperate leap from the fateful complex of Western history. Anti-humanism, with its critique of the subject and genealogical history, has shaken the pillars of Western political thought. Heidegger’s dismantling of metaphysics and Derrida’s deconstruction carry the corrosion of critique to the fundamental conceptual foundations of modernity.

*Id.* at 64. West adds later in the Essay: “Postmodernists seek to disrupt all forms of discourse, and particularly forms of political discourse, which might encourage the totalitarian suppression of diversity.” *Id.* at 65.

152. Beiner for example, describes what he calls the “universalism/ particularism conundrum,” which he defines as: “To opt wholeheartedly for universalism implies deracination – rootlessness. To opt wholeheartedly for particularism implies parochialism, exclusivity, and narrow-minded closure of horizons.” Beiner, *supra* note 15, at 12.

153. Addis explains:

By “shared identity” I mean to refer to an identity that bonds together, partially and contingently, minorities and majorities, such that different cultural and ethnic groups are seen, and see themselves, as networks of communication where each

and cultural citizens of the Republic of Puerto Rico, or within the United States community, as political citizens of the United States who have their culture respected by the normative society.<sup>154</sup> To construct the Puerto Ricans as cultural "citizens of the world,"<sup>155</sup> or even of the United States, would constitute an imposed homogeneity. Conversely, however, this construct might imply an imposition of a homogenized United States Angla/o culture, which would be equally essentialized.<sup>156</sup>

I reject the notion that being Puerto Rican (or American, or Irish) first and a citizen of the World second is morally questionable or irrelevant.<sup>157</sup> This argument implies that nationalism may be deployed as a positive force,<sup>158</sup> as long as it is limited by a pluralistic communitarian

group comes to understand its distinctiveness as well as the fact that that distinctiveness is to a large degree defined in terms of its relationship with the Other. Viewed in this way, the notion of shared identity is not a final state of harmony, as communitarians would claim. It is rather a process that would allow diverse groups to link each other in a continuous dialogue with the possibility that the life of each group will illuminate the conditions of others such that in the process the groups might develop, however provisionally and contingently, "common vocabularies of emancipation," and of justice. I think Seyla Benhabib is right when she observed that "[t]he feelings of friendship and solidarity result . . . through the extension of our moral and political imagination . . . through the actual confrontation in public life with the point of view of those who are otherwise strangers to us but who become known to us through their public presence as voices and perspectives we have to take into account."

Addis, *supra* note 14, at 127 (the notion of shared identity is not a final state of harmony, as communitarians would claim).

154. See Malavet, *Cultural Nation*, *supra* note 11.

155. Martha Nussbaum advocates cosmopolitan citizenship thusly:

The accident of where one is born is just that, an accident; any human being might have been born in any nation. Recognizing this, [Diogenes'] Stoic successors held, we should not allow differences of nationality or class or ethnic membership or even gender to erect barriers between us and our fellow human beings. We should recognize humanity wherever it occurs, and give its fundamental ingredients, reason and moral capacity, our first allegiance and respect.

Martha C. Nussbaum, *Patriotism and Cosmopolitanism*, in *FOR LOVE OF COUNTRY: DEBATING THE LIMITS OF PATRIOTISM* 7 (Joshua Cohen ed., 1996).

156. Professor Ehrenreich warns against this danger in her essay. Ehrenreich, *supra* note 19.

157. Cf. Nussbaum, *supra* note 155. Nussbaum states that

Once someone has said, I am an Indian first, a citizen of the world second, once he or she has made that morally questionable move of self-definition by a *morally irrelevant characteristic*, then what, indeed, will stop that person from saying, as Tagore's characters so quickly learn to say, I am a Hindu first, and an Indian second, or I am an upper-caste landlord first, and a Hindu second? Only the cosmopolitan stance of the landlord Nikhil – so boringly flat in the eyes of his young wife Bimala and his passionate nationalist friend Sandip – has the promise of transcending these divisions, because only this stance asks us to give our first allegiance to what is morally good – and that which, being good, I can recommend to all human beings.

*Id.* (referring to TAGORE, *THE HOME AND THE WORLD*).

158. Walzer describes this type of nationalism:

The quality of nationalism is also determined within civil society where national groups coexist and overlap with families and religious communities (two social formations largely neglected in modernist answers to the question about the good life) and where nationalism is expressed in schools and movements, organizations for mutual aid, cultural and historical societies. It is because groups like these are

consciousness.<sup>159</sup> In this context, Puerto Ricans should be able to choose to be Puerto Rican patriots,<sup>160</sup> and more generally, peoples of the world should be able to choose a national affiliation.

But nationalism, either Puerto Rican or American, cannot become dogma.<sup>161</sup> Just as Puerto Ricans should be respected as a minority culture within the United States, they should respect disenfranchised communities within the Puerto Rican peoples, either under American or Puerto Rican sovereignty. Puerto Ricans would be making a choice between legal and political sovereignty for themselves, or cultural sovereignty within a supranational political culture.<sup>162</sup> This requires Puerto Rico and the United States to live up to the ideal described by Jürgen Habermas of a diverse “political culture” that exercises “constitutional patriotism.”<sup>163</sup>

The perspective of the many Puerto Rican borderlands will now become our changing frame of reference, viewed through a postmodern

entangled with other groups, similar in kind but different in aim, that civil society holds out the hope of a domesticated nationalism. In states dominated by a single nation, the multiplicity of the groups pluralizes nationalist politics and culture; in states with more than one nation, the density of the networks prevents radical polarization.

Michael Walzer, *The Civil Society Argument*, in *THEORIZING CITIZENSHIP*, *supra* note 15, at 166.

159. In other words, nationalism does not have to be inherently fascist. *See* discussion *supra* note 15.

160. “[Richard] Rorty urges Americans, especially the American left, not to disdain patriotism as a value, and indeed to give central importance to “the emotions of national pride” and “a sense of shared national identity.” Rorty argues that we cannot even criticize ourselves well unless we also “rejoice” in our American identity and define ourselves fundamentally in terms of that identity. Rorty seems to hold that the primary alternative to a politics based on patriotism and national identity is what he calls a “politics of difference,” one based on internal divisions among America’s ethnic, racial, religious, and other subgroups. He nowhere considers the possibility of a more international basis for political emotion and concern.” Nussbaum, *supra* note 155, at 4.

161. Pocock uses the French Revolution as an example to describe the terrifying results of citizenship becoming dogma which justifies the destruction of your “enemies,” i.e., outsiders. The French revolution went from an uprising of citizens against the *ancien regime*, to the terror of citizenship being deployed to justify the destruction of the enemy. Virtue became terror. *See* J.G.A. Pocock, *The Ideal of Citizenship Since Classical Times*, in *THEORIZING CITIZENSHIP*, *supra* note 15, at 50.

162. *See* Jürgen Habermas, *Citizenship and National Identity*, in *THEORIZING CITIZENSHIP*, *supra* note 15, at 264.

[E]xamples of multicultural societies like . . . the United States demonstrate that a political culture in the seedbed of which constitutional principles are rooted by no means has to be based on all citizens sharing the same language or the same ethnic and cultural origins. Rather, the political culture must serve as the common denominator for a constitutional patriotism which simultaneously sharpens an awareness of the multiplicity and integrity of the different forms of life which coexist in a multicultural society.

*Id.*

163. *See* Habermas, *supra* note 162, at 264. Habermas states that [o]ne’s own national tradition will . . . have to be appropriated in such a manner that it is related to and relativized by the vantage points of the other national cultures. It must be connected with the overlapping consensus of a common, supranationally shared political culture. . . . Particularist anchoring of *this sort* would in way impair the universalist meaning of popular sovereignty and human rights.

*Id.* (emphasis original).



lens. The current Latin Music Craze both challenges and reinforces faultlines imposed on Puerto Rican culture by the normative United States society, and those internally imposed by the essentializing forces within Puerto Rican society. The next sections of the article will focus specifically on faultlines and how they are challenged by or reflected in the work of the new Latina/o artists.

#### A. *Faultlines in and about Puerto Rican Cultures*

The Spanish Colony of 1493 to 1898 created, for worse and for better, the Puerto Rican culture described above. But this society is not the culture of the Taino natives who greeted Columbus in the Caribbean;<sup>164</sup> it is not the culture of the Africans, free and enslaved, who came or were brought to the Island; and it is not the culture of the *conquistadores* (conquerors), Spanish or *estadounidense*. Rather, it is a separate and distinct hybrid.<sup>165</sup> The Spaniards effectively designed the blueprint for the gender, cultural, religious, ethnic, and racial mix in the island by conquering and destroying the natives, raping the native women, bringing in settlers, allowing immigration, and importing African slaves. The Spanish then proceeded legally to define and organize their practically constructed local society.<sup>166</sup>

Within this complex context, the Puerto Ricans started to construct a Puerto Rican selfhood—a separate and distinct history.<sup>167</sup> As a result of that process, the prevailing society in Puerto Rico is today Spanish-speaking, largely Catholic, and racially diverse. Unfortunately, like many

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164. ROUSE, *supra* note 104, at 5 (“Columbus encountered Tainos throughout most of the West Indies.”). On the “discovery” and conquest of Puerto Rico, see generally ROBERT H. FUSON, JUAN PONCE DE LEÓN AND THE SPANISH DISCOVERY OF PUERTO RICO AND FLORIDA 71-75 (2000).

165. ETHNICITY AND U.S. FOREIGN POLICY (Abdul Aziz Said ed., 1981); ETHNICITY IN AN INTERNATIONAL CONTEXT (Abdul Aziz Said & Luiz R. Simmons eds., 1976).

166. This is not to suggest that there were no other influences. Immigration and smuggling were major parts of the Puerto Rican experience during the Spanish colonial period. See INMIGRACIÓN Y CLASES SOCIALES EN EL PUERTO RICO DEL SIGLO XIX (Francisco A. Scarano ed., 1985).

167. On the development of Puerto Rican culture during the four hundred years of Spanish rule, see generally MALAVET-VEGA, HISTORIA, *supra* note 118. For an interesting collection of historical Puerto Rican folktales, mostly dating to the Spanish period, see ROBERT L. MUCKLEY & ADELA MARTÍNEZ SANTIAGO, STORIES FROM PUERTO RICO/HISTORIAS DE PUERTO RICO (1999).

other societies, Puerto Rican culture is also heteropatriarchal,<sup>168</sup> sexist,<sup>169</sup> racist,<sup>170</sup> homophobic,<sup>171</sup> and elitist.<sup>172</sup>

An empirical study of Puerto Rican “intolerance” found that the test subjects were openly willing to admit a strong dislike for homosexuals—who were the identified group that was most likely to suffer from discrimination.<sup>173</sup> The same study also identified xenophobia<sup>174</sup> and class discrimination<sup>175</sup> among Puerto Ricans. Xenophobia and so-called class discrimination, however, are often codes for racism in Puerto Rican society.<sup>176</sup> Nevertheless, despite its internal faultlines, fundamentally, Puerto Rican culture is different; it is “Other”—used here in its positive sense—than the normative narrative about the Anglo United States culture and the Puerto Ricans within it.

West Side Story (WSS) is probably the dominant narrative telling of the Puerto Rican story for *estadounidenses*. An untitled essay attributed to Mort Goode accompanies the compact disc with the original songs of this musical. It describes the scene accompanied by the song “America” as a “playful argument . . . between Anita ([played by] Chita Rivera) and two homesick Puerto Rican girls [played by unidentified actresses] over

168. RAFAEL L. RAMÍREZ, WHAT IT MEANS TO BE A MAN: REFLECTIONS ON PUERTO RICAN MASCULINITY (Rosa E. Casper trans., 1999); see also FRANCES R. APARICIO, LISTENING TO SALSA: GENDER, LATIN POPULAR MUSIC, AND PUERTO RICAN CULTURES (1998).

169. For two narratives about Puerto Rico and exile, told from feminist perspectives, see JUDITH ORTIZ-COFER, SILENT DANCING: A PARTIAL REMEMBRANCE OF A PUERTO RICAN CHILDHOOD (1990), and ESMERALDA SANTIAGO, WHEN I WAS PUERTO RICAN (1998); see also APARICIO, *supra* note 168. On the plight of Latina immigrants to the United States more generally, see OLIVA M. ESPÍN, LATINA REALITIES: ESSAYS ON HEALING, MIGRATION, AND SEXUALITY (1997), and ESPÍN, *supra* note 10.

170. For a provocative challenge of the traditional views on Puerto Rican identity, particularly the denial of existing racism and race-based hierarchies, see EL PAÍS DE CUATRO PISOS, *supra* note 119; JAY KINSBRUNER, NOT OF PURE BLOOD: THE FREE PEOPLE OF COLOR AND RACIAL PREJUDICE IN NINETEENTH-CENTURY PUERTO RICO (1996).

171. RAMÍREZ, *supra* note 168.

172. EILEEN J. SUÁREZ FINDLEY, IMPOSING DECENCY: THE POLITICS OF SEXUALITY AND RACE IN PUERTO RICO, 1870-1920 (1999) (while the main focus of this book is sexuality and race, class becomes an essential context for its discussion); AURORA LEVINS MORALES, MEDICINE STORIES: HISTORY, CULTURE AND THE POLITICS OF INTEGRITY (1998).

173. Jorge Benítez-Nazario, *La Intolerancia y la Cultura Puertorriqueña*, in LAS CARPETAS, *supra* note 37, at 117-132. Gay men and lesbians were more likely to suffer from discrimination than the second highest group, ex-convicts. *Id.*

174. Anti “foreigner” feelings were expressed, the overwhelming object (fifty-seven out of seventy-seven respondents who express anti-foreigner views) were directed at Dominicans. Benítez-Nazario, *supra* note 173, at 126. For an excellent study of the treatment of Dominicans in Puerto Rico, see MLAGROS ITURRONGO, VOCES QUISQUEYANAS EN PUERTO RICO 23 (2000) (discussing racism against Dominicans in Puerto Rico, and use of term “negro” (black) among Dominicans to refer only to Haitians or Africans).

175. “Other social origin” was identified as the basis of discrimination by the study. Benítez-Nazario, *supra* note 173, at 126, Table I. However, the definition of “social origin” is unclear.

176. COMISIÓN DE DERECHOS CIVILES DE PUERTO RICO, ¿SÓMOS RACISTAS? 23 (1998) (the Puerto Rico Civil Rights Commission discusses racism in Puerto Rican society and specifically identifies anti-Dominican xenophobia as a form of racial discrimination). FINDLEY, *supra* note 172. JAY KINSBRUNER, NOT OF PURE BLOOD: THE FREE PEOPLE OF COLOR AND RACIAL PREJUDICE IN NINETEENTH CENTURY PUERTO RICO (1996).

the relative merits of life back home and in Manhattan.”<sup>177</sup> Although the lyrics might be described as “interesting,” the manner in which this song was performed is offensive, with affected language that mirrors only the worst of stereotypes about Puerto Ricans. Moreover, WSS presents Puerto Rican men only as poor, uneducated gang members. Puerto Rican women are likewise poor and violent, but they are also the objects of racialized desire.

The current Latin Music Craze has changed the dominant narrative of WSS, on balance for the better, although WSS had set a very low threshold to overcome. Below, the article will discuss the good, bad, and troubling aspects of the new narrative telling of the Puerto Ricans represented by the success of Ricky Martin, Jennifer López, and Marc Anthony.<sup>178</sup>

### B. *Commodification in the Current Latin Music Craze*

Initially, this part must distinguish between identifying cultural faultlines and deploying culture to justify bad behavior.<sup>179</sup> Specifically, the commodification<sup>180</sup> of Latinas/os in the current Latin Music Craze

177. Mort Goode, Essay, page 4, *West Side Story*, CD by Columbia Records/CBS, Inc.

178. This is in keeping with the expressed purpose of the Media Panel:

Therefore, this panel addresses the question of representation of outsiders in the Mass Media. Representation has at least two dimensions (1) the literal, as in “how many persons of a particular group are ‘represented’ or are present?” and (2) the symbolic, as in “how are members ‘represented’ or portrayed?” These two types of representation have a complex relationship that overlaps culture, politics and law. In culture, the question of how members of a particular group are portrayed is related to how group members are allowed to be present. In politics, the questions of how many members of a group are present to be counted is related to how that particular group is represented in a legislature or other political body.

*LatCrit V Substantive Program Outline*, *supra* note 8.

179. See generally Leti Volpp, *Blaming Culture for Bad Behavior*, 12 *YALE J. L. & HUM.* 89 (2000); Leti Volpp, *(Mis)identifying Culture: Asian Women and the “Cultural Defense,”* 17 *HARV. WOMEN’S L. J.* 57 (1994); Leti Volpp, *Talking “Culture”: Gender, Race, Nation, and the Politics of Multiculturalism*, 96 *COLUMBIA L. REV.* 1573 (1996). Professor Volpp criticizes the erasure of critical voices within normative minority cultures that is effected by the seeming acceptance of faultlines as cultural traits. However, cultural faultlines are identified here as the objects of needed LatCritical praxis, not to justify discriminatory tropes.

180. “Commodification,” as used in this article, means to define something as a commodity, that is, as property. See Duncan Kennedy, *A Symposium of Critical Legal Study: The Role of Law in Economic Thought: Essays on the Fetishism of Commodities*, 34 *AM. U. L. REV.* 939, 962-963 (1985) (“Property is the legal name for a commodity. . .”). In economic theory, it appears to involve the valuation of almost anything and everything in order to reach the most “efficient” result. *Id.* However, such a conceptual scheme suffers from the limitations of economic theory, particularly its inability or unwillingness to accept idiosyncratic valuation. Professor Kennedy explains it thusly:

The idea of a completely commodified economy runs up against the problem of conflicting uses, or externalities. The idea of the commodification of valued experiences just can’t tell us what to do when my valued experience generates anti-values for you. This is the familiar problem of nuisance law, but it goes far beyond the familiar. The idea of commodity embodies two opposite elements, and neither of them can be taken to its logical extreme without annihilating the other. One element is that of security of the commodity owner in the enjoyment of his thing or experience. The other element is that of freedom to use the thing for his own enjoyment regardless of the consequences for others. The property owner

illustrates faultlines that must be corrected rather than forgiven. Even the consumption of the products of these newly popular artists within Latina/o culture represents an internal form of commodification. And Puerto Rican culture includes other forms of commodification.<sup>181</sup> On the other hand, there are positive aspects to the current narrative telling of the Puerto Rican story in America. By way of introduction however, I will point out that I am not seeking to blame the artists for the shortcomings of the society to which they sell their product.

The narrative record of the current Latin Music Craze is mixed, as professors Bender and Ehrenreich discuss. In his contribution to this symposium, Professor Bender deftly analyzes the current crop of Latina/o pop artists that have become popular among the larger American audience. He specifically focuses on language as a possible source of both positive re/construction of the Latina/o narrative and the danger of cultural homogenization. In her contribution to the symposium, Professor Nancy Ehrenreich writes about rejecting interpretations of Anglo/a interest in Latin productions as either good or bad.<sup>182</sup>

Perhaps I am essentializing or just missing something, but I do not see Marc Anthony as the "Hot Latin Lover." However, the American mass media clearly disagrees and presents the *salsa* singer in often racialized sexual constructs.<sup>183</sup> Nevertheless, Ricky Martin and Jennifer López are very clearly and consistently commodified as racialized, hypersexual bodies.<sup>184</sup>

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thinks of herself as able to do what she wants with her land, but also as able to prevent others from doing things that interfere with her "quiet enjoyment" of her land.

*Id.*

181. For example, the commodification of women results in their as well as their children's subordination in Puerto Rican society. Puerto Rican men wear infidelity as a badge of honor – among other men. "*Yo se mucho de [mi profesión o trabajo] y de pegársela a mi mujer*" ("I know a lot about [my profession or job] and about being unfaithful to my wife") is a commonly-used phrase among men. Serial philandering produces a re/allocation of economic and emotional resources away from the family unit and effects a commodification of women as objects of conquest and control for the men. This is not to say that other cultures do not practice infidelity, that is simply not true. But the public discussion of it, though not unique, is an essential part of our culture.

182. Ehrenreich, *supra* note 19.

183. For example, one reference reads: "It's that incredible combination of seductive voice, muy caliente moves, intense acting abilities, and – oh yeah – a whole lotta sex appeal. Can you stand his heat?" Dennis Hensley, *Why Marc Anthony Makes us Sizzle*, COSMOPOLITAN, Feb. 1, 2000, at 204, 204; see also Robert Dominguez, *A Success in Any Language*, NEW YORK DAILY NEWS, Feb. 9, 2000, New York Now Section, at 43 (referring to Marc Anthony as "The sexy salsa superstar"); Marc Guarino, *Roadhouse Rock Doesn't get Better Than McMurtry*, CHICAGO DAILY HERALD, Feb. 11, 2000, Time Out! Concert Picks Section, at 4 ("Marc Anthony, who is considered a suave, sexier Ricky Martin."). Compare Dave Tianen, *He's No 'N Sync, but Manilow Still Sets Hearts Aflutter*, MILWAUKEE J. SENTINEL, Apr. 28, 2000, at 8B ("[Barry Manilow] has none of the aura of danger that has marked musical sex symbols from Sinatra to Marc Anthony.").

184. One newspaper report distinguished Martin's sex appeal from Marc Anthony's thusly: "If Ricky Martin stands for sex, Marc Anthony represents love . . ." John Benson, *Marc Anthony*, CLEVELAND SCENE, Mar. 30, 2000, Music Section.

As Professor Bender tells us, Ricky Martin is the hot Puerto Rican tamale.<sup>185</sup> His videos shown on MTV are carefully choreographed to show a “Latin” hypersexuality. The portrayal represents some progress simply because Martin is not a knife-wielding member of a criminal gang, as Puerto Rican men were depicted in WSS. However, the construct of Martin as an object of desire is a patent form of commodification of his racialized body. He is “teenage eye candy,” the essentialized “Hot Latin Lover.”<sup>186</sup>

Jennifer López also presents a mixed picture. She is depicted as beautiful in a “different” way, and she is not the desperately poor, uneducated woman of WSS, which represents progress. But the construct of her image is equally commodified. She is a hypersexual racialized body, who is in fact essentialized into one “magnificent” body part: her ass.<sup>187</sup> Never have so many references to one ass been heard in United States media.<sup>188</sup> Then there was “the Jennifer López dress” at the Forty-Second Grammy Awards Ceremony.<sup>189</sup> The construct of Latinas as beautiful, self-assured women is progress, their racialized commodification leaves room for critical praxis.<sup>190</sup>

185. Bender, *supra* note 19, at 731-32 (noting the ignorance reflected in associating a Puerto Rican with a food item that we do not have).

186. “He’s been shakin’ his bon-bons since he was a boy.” Behind the Music, <http://www.vh1.com/insiddevh1/shows/btm/rickymartin.jhtml> (visited August 29, 2000); *see also*, Bender, *supra* note 19, at 733-34.

187. The vulgar term is used here advisedly to illustrate the commodification of which Ms. López has become the object.

188. For example, and probably most notoriously, at the Sixteenth Annual MTV Video Music Awards on September 9, 1999, host Chris Rock stated, referring to Jennifer Lopez, that “[s]he came with two limos: one for her and one for her ass.” *People in The News: Rock on Fire During MTV Music Awards*, LAS VEGAS REV.-J., Sept. 12, 1999, at 16C.

189. The ceremony was televised live on Wednesday, February 23, 2000. *Clothes Make the López*, <http://www.vh1/thewire/news/article.jhtml?ID=303> (visited Aug. 30, 2000). This report from the Grammys summed it up as follows:

The sound you heard when Jennifer López came out on the stage of Los Angeles’ Staples Center to present the best pop Album with David Duchovny was a thousand male tongues hitting the floor. And me dropping my didgeridoo [sic]. Casting a jaded eye over the gauzy green Versace robe that barely clung to Lopez’s talents, Duchovny said, ‘This is the first time in five or six years that I’m sure no one is looking at me.’

The dress has now come to be known as the “Jennifer López dress.” *See, e.g.*, Tom Carter, *Travel with Steves for the Fun of It*, WASH. TIMES, Aug. 19, 2000, E1 (“We passed the Versace boutique with the Jennifer López dress in the window . . .”).

190. Since Ms. López is socially constructed in the United States as “foreign” despite her American citizenship, her racialized commodification can occur even among “people eager to be culturally ‘sensitive.’” ESPÍN, *supra* note 10, at 8. Dr. Espín explains: “Under the guise of respect, they may racialize and exoticize immigrant women, particularly those who come from non-European countries. Many well-intentioned people believe that the ‘true’ immigrant has to be ‘different’ even if she does not want to be. Tragically, they contribute to the oppression of immigrant women in the name of respecting their culture and preserving their values.” *Id.* at 8-9.

### C. *The Myth of Latina/o Homogeneity*

In addition to their sexualized commodification, the three Puerto Rican artists and the other performers in the current Latin Music Craze are often the objects of the Myth of Latina/o Homogeneity. This essentialized vision posits that all Latinas/os constitute one “foreign nationality,” relative to the U.S., and a single mixed race.<sup>191</sup> Hence, Ricky Martin becomes a “hot tamale” and Marc Anthony a “hot jalapeño.”<sup>192</sup> Racially, Latinas/os are essentialized, and often essentialize themselves,<sup>193</sup> as *una raza* (one race), *india, española y africana* (Indian—meaning Native American—Spanish and African).<sup>194</sup>

As applied to the Puerto Ricans, the notion of homogeneity imposes on them a collective colonial vision. Puerto Ricans are constructed by the United States as being altogether brown-skinned.<sup>195</sup> The Puerto Ricans are also the Latina/o “Other” and, therefore—despite their U.S. citizen-

191. Accordingly, Latinas/os are generally constructed as the “Other” within United States borderlands:

The existing, essentialist notion of the “American” has excluded “others” who look or sound foreign to the self-selected norm setters, creating a class of aliens within the borders. This “American” ideal excludes many, particularly Latinas/os, who cannot blend into the “melting pot” because of the colorizing, feminizing, Spanishizing, and latinizing consequences of their membership. This “American” definition of normativity has created an exclusive/elite community with *fronteras* denying access to “others.”

Hernandez-Truyol, *supra* note 17, at 926 (footnote omitted); see also Berta Esperanza Hernandez-Truyol, *Sex, Culture, And Rights: A Re/Conceptualization Of Violence For The Twenty-First Century*, 60 ALB. L. REV. 607 (1997); Berta Esperanza Hernandez-Truyol, *Women's Rights As Human Rights – Rules, Realities And The Role Of Culture: A Formula For Reform*, 21 BROOKLYN J. INT'L L. 605 (1996).

192. Bender, *supra* note 19, at 732. Tamales are not a regular part of the Puerto Rican diet, nor are jalapeño peppers, since Puerto Rican cooking is generally spicy but not spicy-hot. Marc Anthony has stated that he has never eaten a jalapeño and dislikes references to them addressed at him. Bender, *supra* note 19, at 732.

193. This is the subject of much debate in the LatCrit community. See, e.g., IAN F. HANEY LÓPEZ, *WHITE BY LAW* (1996); Tanya Katerí Hernández, “Multiracial” Discourse: Racial Classifications in an Era of Color-Blind Jurisprudence, 57 MD. L. REV. 97 (1998); Kevin R. Johnson, “Melting Pot” or “Ring of Fire”? Assimilation and the Mexican-American Experience, 85 CAL. L. REV. 1259 (1997); Ian F. Haney Lopez, *Race and Erasure: The Salience of Race To LatCrit Theory*, 85 CAL. L. REV. 1143 (1997); Ian F. Haney Lopez, *Retaining Race: LatCrit Theory and Mexican American Identity in Hernandez v. Texas*, 2 HARV. LATINO L. REV. 279 (1997); Angel Oquendo, *Re-imagining the Latino/a Race*, in *THE LATINO/A CONDITION* 60 (Richard Delgado & Jean Stefancic eds., 1998); Juan F. Perea, *The Black/White Binary Paradigm of Race: The “Normal Science” of American Racial Thought*, 85 CAL. L. REV. 1213 (1997).

194. See, e.g., *La Sonora Ponceña's* song *Descendencia* (Being descended of) in the Album “Birthday Party”: “Somos latinos, somos la esencia de Puerto Rico, quien me discute ese honor . . . Orgullosa de mi cantar, latina, yo siempre estoy, . . . Mezcla de español, africano y taino. Author’s translation: “We are Latinos, we are the essence of Puerto Rico, who argues/challenges this honor? . . . Proud of my singing, Latin, I always am, . . . A Mixture of Spaniard, African, and Taino.”

195. During the Congressional debate on the 1917 Organic Act for Puerto Rico, United States Representative Joseph Cannon stated that the “the racial question” made the Puerto Ricans ineligible for statehood and made them suspect as “people competent for self-government.” He supported his argument with the following statistical analysis: “Porto Rico is populated by a mixed race. About 30 per cent pure African. . . . 75 to 80 percent of the population . . . was pure African or had an African strain in their blood.” RACE AND RACES, *supra* note 66, at 346.

ship—"foreign" relative to the United States.<sup>196</sup> As a result of these constructs, the Puerto Ricans become too "Other" to be "real Americans." Consequently, although the United States had the legal right to acquire Puerto Rican soil through conquest,<sup>197</sup> the cultural unassimilability of the Puerto Ricans means that they are unqualified for full legal and political incorporation into the United States.<sup>198</sup>

Professor Bender criticizes the homogenization of the Latina/o experience through the attempt to create a (pan)latino identity in the current Latina/o musical moment. Even the changes in names—Ricky Martin's given name is Enrique Martín-Morales, and Marc Anthony's is Marco Antonio Muñoz—are cited as examples of the need to appear non-threatening by being sufficiently assimilated, that is, homogenized.<sup>199</sup> Professor Ehrenreich worries about the appropriation of aspects of Latina/o culture by the normative American society. But she is also concerned about the construct of cultures as static and thus essentialized, imposed structures.<sup>200</sup>

The work of the three Puerto Rican artists that has become commercially popular in the United States reflects an essentialized vision of a static Latina/o homogeneity. For example, the most successful songs are those performed in English, which is negative in the context of promoting the acceptance of Spanish as an "American" language, but positive if we focus on the acknowledgement of Latina/o bilingualism. However,

196. The paradox of citizenship for Puerto Ricans is rather striking. On the one hand, they are citizens of the United States, but on the other hand, they are socially constructed as being "foreign." Pro-independence Puerto Ricans always have a hard time with this one, since they *want* to be foreign, relative to the United States, they want to be a citizen of the Republic of Puerto Rico. For a good scholarly discussion of the paradox, see Ediberto Roman, *The Alien-Citizen Paradox And Other Consequences Of U.S. Colonialism*, 26 FLA. ST. U. L. REV. 1 (1998). For an American perspective on Puerto Ricans being constructed as *foreign*, see TUGWELL, *supra* note 73, at 70, 481.

197. See *Johnson v. MacIntosh*, 21 U.S. 543 (1822) (ruling that the "right of discovery" and the "right of conquest" gave Europeans legal title over the American Continents).

198. See *Johnson*, 21 U.S. 543. The court stated that Native Americans could not be *assimilated*, i.e., they could not "be incorporated with the victorious nation, and become subjects or citizens of the government with which they are connected." *Id.* at 584-585. Incorporation was not "practicable," thus requiring the Europeans to choose between "abandoning the country, and relinquishing their pompous claims to it, or of enforcing those claims by the sword." The Supreme Court justified genocide as follows:

When the conquest is complete, . . . the conquered inhabitants can be blended with the conquerors, or safely governed as a distinct people . . .

But the tribes of Indians inhabiting this country were fierce savages, whose occupation was war, and whose subsistence was drawn chiefly from the forest. To leave them in possession of their country, was to leave the country a wilderness; to govern them as a distinct people, was impossible, because they were as brave and as high spirited as they were fierce, and were ready to repel by arms every attempt on their independence.

On Latina/o assimilation generally, see Johnson, *supra* note 193 (a poignant discussion of growing up Latina/o in California); George A. Martínez, *Latinos, Assimilation and the Law: A Philosophical Perspective*, 20 U.C.L.A. CHICANO-LATINO L. REV. 1 (1999) (drawing analogies between American demands of assimilation and insect biology and *Star Trek's* Borg characters).

199. Bender, *supra* note 19, at 745.

200. Ehrenreich, *supra* note 19, at 799.

the consumption of this homogenized product provides the artists with a limited opportunity for subversion of English normativity.

Marc Anthony, for example, has developed the most linguistically and musically complex repertoire among the three Puerto Rican artists. He includes many songs in Spanish in his albums and has albums that are sung exclusively in Spanish.<sup>201</sup> His HBO special had an outstanding repertoire of music, from *Preciosa*, the beautiful ballad by Rafael Hernández, to Anthony's own ballads and salsa tunes. Nevertheless, his albums in Spanish are placed in the back of the music store, whereas his English language product, recorded by the same artist in the same place (the U.S.A.), is put in the front of the musical bus.<sup>202</sup> In other words, despite his best efforts, Marc Anthony is either an English-speaking U.S. Latino artist or a Spanish-speaking "foreigner."<sup>203</sup> He clarifies that he is a bilingual Puerto Rican-American.<sup>204</sup>

The current homogenized product for the American mass market has a "Latin" beat and perhaps a "Latin" flavor that packages the aspects of Latina/o culture that Americans find alluring. For example, the Latin beat and hypersexualized dancing in the video of "*Livin' la vida loca*" uses Spanish merely as a spice rather than as the primary language of communication<sup>205</sup> and Latina/o racialized bodies as quite literal sex/appeal.

Nevertheless, the visibility of these Latina/o artists constitutes a more positive re-telling of the Puerto Rican story in the United States, especially because three of the most famous performers (Martin, López, and Anthony) are Puerto Ricans and they publicly self-map as Puerto Rican.<sup>206</sup> These artists sing in Spanish, even though that is not their most

201. So do López and Martin. Martin, in fact, first became successful with Spanish-language albums. But Marc Anthony presents, in my view, a wider variety of musical genres in his concerts and CDs.

202. Professor Bender describes this incident in his article. Bender, *supra* note 19, at 735.

203. Discussing the term "Latin Music Invasion," Professor Bender identifies the irony of referring to the success of these artists as "invaders" given that of the group already identified, only two were born outside United States territory: Carlos Santana, who was born in Mexico, and Enrique Iglesias, who was born in Spain. The others are U.S. citizens born on U.S. territory (Martin was born in Puerto Rico). Bender describes how Marc Anthony captured the paradox when he wondered why his Spanish language CDs were in the "International" section at the back of music stores in Times Square. The CDs had been recorded on Forty-Seventh Street, literally only a few blocks from the store that classified them as "foreign." Bender, *supra* note 19, at 735, n. 68.

204. There may be progress here, represented by the Jennifer López and Marc Anthony video duet in Spanish, which is being shown on VH-1. The artists themselves do not hide, and in fact embrace their Spanish language openly. The question is, will the American mass media culture accept it? Professor Bender does cite one troubling example in which Linda Ronstadt was heckled for singing in Spanish in support of her album *Canciones de mi Padre*. Bender, *supra* note 19, at 726-27.

205. However, the language of success can be constructed in different ways. For example, the success of bilingual Latinas/os might symbolize that Spanish poses no threat to English in the United States, and that bilingualism is not a horrible thing. Prof. Steven Bender develops this theme in his article. Bender, *supra* note 19, at 727.

206. It was impossible to miss the hundreds of Puerto Rican flags on prominent display in Madison Square Garden for the Marc Anthony's live HBO concert. However, that would require that Americans recognize the flag. Initially, they would have to distinguish it from the equal design of the



popular product. They also present a successful picture of Puerto Ricans in America.

## V. CONCLUSION

I will not condemn or dismiss the current Latin Music Craze just because it is not *mi cultura puertorriqueña*. Despite its limitations, I find many aspects of the present popularity of Latina/o artists quite empowering. To put it simply, the invisibility of Latinas/os from the cultural mainstream in the United States has, at least for the moment, abated.<sup>207</sup> More interestingly, the previous negative images of Latinas/os are being replaced by a positive albeit homogenized commodity. However, the artists themselves, when given the opportunity, tell their personal narratives of being Puerto Rican Latinas/os in the United States and of being bilingual, multicultural, multi-dimensional persons.<sup>208</sup> Moreover, the current rapid and overwhelming success of Latina/o performers gives to the LatCrit community an opportunity for education and scholarship.

LatCritical scholarship, for example, can properly explain that the Puerto Ricans are a colonized peoples and that it is the paradox of colonial peoples that they are often both the products and the continuing victims of colonialism. Colonized societies are often multi-cultural; yet, oppression becomes internalized to such an extent that wealth, power, and privilege are reserved for the chosen few, at the expense of other members of the community, in a process that replicates rather than rejects the power structures of the colonizer. Generally speaking, women, persons with darker skin hues, "foreigners," and other outsiders are marginalized in this society, even after the colonial power is gone. Moreover, oppression is so internalized that many victims do not wish to see discrimination and often do not see themselves as the outsiders.

On the other hand, submitting to the homogenization of the American mass media, without subverting it, is likewise to allow ourselves to be culturally colonized. It is also a missed opportunity to replace the dominant essentialized narrative about the Puerto Ricans and replace it with a positive re/telling of our story. LatCrit scholarship is uniquely

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Cuban flag, which changes the color scheme. The Puerto Rican flag has a blue triangle and red stripes, and the Cuban flag has a red triangle and blue stripes. Additionally the blue stripes of the Cuban flag are often in a much lighter shade of blue than the navy blue of the Puerto Rican flag's triangle. Both flags were designed on the same day in the late 1890s on 25th Street in Manhattan in New York City. OLGA JIMÉNEZ DE WAGENHEIM, *PUERTO RICO: AN INTERPRETATIVE HISTORY FROM PRE-COLUMBIAN TIMES TO 1900*, 198 (1998).

207. Cf. Juan Perea, *Los Olvidados: On the Making of Invisible People*, 70 N.Y.U. L. REV. 965-66 (1995) ("When I write of Latino invisibility, I mean a relative lack of positive public identity and legitimacy.").

208. The VH-1 specials dedicated to Jennifer López and Ricky Martin are probably examples of this (although both are also rather exotically packaged). Marc Anthony's HBO Special Live from Madison Square Garden is also an opportunity to see the broad range of this performer.

positioned to perform and inform this process of resistance of homogenization and re/construction of a multicultural narrative.

The current Latina/o musical moment in American mass media certainly represents progress in the narrative telling of the Latina/o experience in this country by the normative American society. We have gone from the hoods, prostitutes, drug dealers, gang members, and generally inferior people associated with *West Side Story* and other mass media fare to a slick, high-income, homogenized product that encapsulates the image of the "hot Latin Lover." While the essentialized vision that is represented by this homogenization is certainly partly objectionable, it ought not lead us to reject the relative improvements represented by the newly popular artists, or necessarily to blame them for their commodification (although the artists themselves must bear some responsibility for allowing themselves to be packaged in that manner).

The Latin Music Craze requires critical scholars to do two things. First, we must recognize the historical progression in the re/presentation of Latinas/os, with the necessary acknowledgement of progress in the normative Anglo/o society's re/telling of our story. Second, we must continue to apply a critical eye to the current narrative to identify its prevailing shortcomings, thus ensuring continued education and progress.

This critical and educational process must be performed at all levels of our cultural borderlands. As United States citizens and scholars, we must ensure that our "American" culture counts within the normative narrative of the United States. In other words, we must refuse to accept a static, normative version of American Anglo/a culture and show instead the richness of American multiculturalism.

As Latinas/os, we also must work to identify and to tear down existing power hegemonies within our individual cultures, as well as within the larger U.S. society. In this struggle, the proper artistic and scholarly deployment of Latina/o popular cultures that survive, and even thrive within the American mass media culture, can serve as a form of political praxis that subverts existing internal and external power hegemonies affecting LatCrit communities. The current Latin Music Craze can thus serve as an important asset for LatCritical praxis.

