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## Rodrigo's Corrido: Race, Postcolonial Theory, and U.S. Civil Rights

Richard Delgado

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# Rodrigo's Corrido: Race, Postcolonial Theory, and U.S. Civil Rights

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Richard Delgado

60 Vand. L. Rev. 1691 (2007)

*Richard Delgado enlists his alter ego, Rodrigo, to analyze Latino legal history and civil rights. Encountering "the Professor" after testifying at a hearing on an immigration bill, Rodrigo excitedly tells his old friend and mentor about a new body of writing he has come across. Postcolonial theory, which deals with issues such as cultural survival, resistance, and collaboration, can help move American civil rights scholarship beyond its current impasse.*

*Over dinner, Rodrigo demonstrates how insights from these writers can enrich U.S. civil rights theory and practice. He also posits a new theory of Latinos' sociolegal construction, based on a triple taboo, that can enable Latino people and litigators to understand and change their condition. Rodrigo shows how dominant society has invested Latinos with a complex stereotype consisting of filth, hypersexuality, and jabber so that Anglos will unconsciously devalue the group and their rights. To progress, therefore, Latino people must understand and contest this social construction, much as their forebears have done through corridos, actos, cantares, and other forms of insurrectionary folk literature and actions.*

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# Rodrigo's Corrido: Race, Postcolonial Theory, and U.S. Civil Rights

*Richard Delgado\**

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### INTRODUCTION: ENTER RODRIGO, SPORTING A NEW PERSONA

I was proofreading my Civil Procedure examination for the third and final time late one chilly afternoon in early December and trying my best to stay alert. To tell the truth, I was feeling a little weary and may have put my head down for a few minutes, when a polite cough from my office doorway caused me to snap upright.

I looked up to see the familiar smiling face and lanky figure of my young friend. "Rodrigo!"<sup>1</sup> I exclaimed, blinking to clear my vision. "It's good to see you. I like your, um, outfit."

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\* Professor of Law & Derrick Bell Fellow, University of Pittsburgh School of Law.

1. See Richard Delgado, *Rodrigo's Chronicle*, 101 YALE L.J. 1357, 1357-59 (1992) (introducing Rodrigo). The son of an African-American serviceman and Italian mother, Rodrigo was born in the United States but raised in Italy when his father was assigned to a U.S. outpost there. Rodrigo graduated from high school at the base school, then attended an Italian university and law school on government scholarships, graduating second in his class. When the reader meets him, he has returned to the United States to investigate graduate law (LL.M.) programs. At the suggestion of his half sister, famed U.S. civil rights lawyer Geneva Crenshaw, see generally DERRICK A. BELL, *AND WE ARE NOT SAVED* 7, 18-25 (1987) (recounting Geneva Crenshaw's personal and professional history), he seeks out "the professor" for career advice. Despite their age difference, the two become good friends, discussing affirmative action and the decline of the West (Delgado, *Rodrigo's Chronicle*, *supra* at 1361-64, 1367-68); law and economics (Richard Delgado, *Rodrigo's Second Chronicle: The Economics and Politics of Race*, 91 MICH. L. REV. 1183, 1187-98 (1993)); love (Richard Delgado, *Rodrigo's Third Chronicle: Care, Competition, and the Redemptive Tragedy of Race*, 81 CAL. L. REV. 387, 397-98 (1993)); legal rules (Richard Delgado, *Rodrigo's Fourth Chronicle: Neutrality and Stasis in Antidiscrimination Law*, 45 STAN. L. REV. 1133, 1152-55 (1993)); the critique of normativity (Richard Delgado, *Rodrigo's Fifth Chronicle: Civitas, Civil Wrongs, and the Politics of Denial*, 45 STAN. L. REV. 1581, 1595-99 (1993)); relations between men and women (Richard Delgado, *Rodrigo's Sixth Chronicle: Intersections, Essences, and the Dilemma of Social Reform*, 68 N.Y.U. L. REV. 639, 639-42 (1993)); Enlightenment political theory (Richard Delgado, *Rodrigo's Seventh Chronicle: Race, Democracy, and the State*, 41 UCLA L. REV. 721, 729-36 (1994)); black crime (Richard Delgado, *Rodrigo's Eighth Chronicle: Black Crime, White Fears—On the Social Construction of Threat*, 80 VA. L. REV. 503, 506-41 (1994)); narrative jurisprudence (Richard Delgado, *Rodrigo's Final Chronicle: Cultural Power, the Law Reviews, and the Attack on Narrative Jurisprudence*, 68 S. CAL. L. REV. 545, 548-57 (1995), reprinted in RICHARD DELGADO, *THE RODRIGO CHRONICLES* 190-211 (1995) (Rodrigo's final chronicle in the first cycle)); the rule of law (Richard Delgado, *Rodrigo's Ninth Chronicle: Race, Legal Instrumentalism, and the Rule of Law*, 143 U. PA. L. REV. 379, 389-95 (1994)); affirmative action (Richard Delgado, *Rodrigo's Tenth Chronicle: Merit and Affirmative Action*, 83 GEO. L.J. 1711, 1713-45 (1995)); clinical theory (Richard Delgado, *Rodrigo's Eleventh Chronicle: Empathy and False Empathy*, 84 CAL. L. REV. 61, 70-80 (1996)); legal formalism (Richard Delgado, *Rodrigo's Twelfth Chronicle: Legal Formalism*, 95 MICH. L. REV. 1105, 1109-20 (1997)); the problem of desperately poor border settlements (Richard Delgado, *Rodrigo's*

"Oh, this," Rodrigo said, removing a wide-brimmed straw hat with a red ribbon in a sweeping gesture and placing it on my office couch. "I just testified at some hearings on the new immigration bill. The invitation came at the last minute, or I would have called you. I'm on my way to a celebration party. I hope this isn't a bad time."

"No, not at all. I'm very happy to see you. Is it a costume party?"

"It's optional. I borrowed this outfit from a musician friend of mine."

I glanced at the shiny black outfit with gold spangles and a bandoleer of realistic looking bullets crossing his chest. "It definitely brings out a new side of you.<sup>2</sup> But it's very becoming. I hope you didn't wear it on the plane." Rodrigo smiled and shook his head. "Sit down," I said. "How did the hearings go?"

"Better than we expected. I think we're going to get a compromise bill. The folks who invited me are very relieved. One version would have been a disaster." Gesturing toward the papers on the desk in front of me, he asked: "Is that a final exam?"

"It is," I said. "Every year, I find making them up one of the least pleasant things about teaching. I have nightmares about building in an unintentional ambiguity and having a bright student point it out or, worse yet, go astray. Are you giving a final this term?"

"No, it's my light semester. I teach an open-enrollment legal history class and a seminar, both paper courses. But did I tell you I'm teaching Latinos and the Law next year?"

"No, you didn't. The Latinos here have been after me to teach a class like that, too. We don't have a Latino faculty member, and they probably see me as their best hope. If I teach it, may I borrow your syllabus?"

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*Thirteenth Chronicle: The Problem of the Shanty*, 85 GEO. L.J. 667, 669-89 (1997)); interracial indifference (Richard Delgado, *Rodrigo's Remonstrance: Love and Despair in an Age of Indifference—Should Humans Have Standing?*, 88 GEO. L.J. 263, 275-97 (2000) [hereinafter Delgado, *Remonstrance*]); Latino civil rights (Richard Delgado, *Rodrigo and Revisionism: Relearning the Lessons of History*, 99 NW. U. L. REV. 805, 813-36 (2005) [hereinafter Delgado, *Revisionism*]); Richard Delgado, *Rodrigo's Fifteenth Chronicle: Racial Mixture, Latino-Critical Scholarship, and the Black-White Binary*, 75 TEX. L. REV. 1181, 1183-99 (1997) [hereinafter Delgado, *Fifteenth Chronicle*]; and many other topics over the next few years. During this period, the brash, talented Rodrigo earns his LL.M. degree and embarks on his first teaching position. The professor meets Rodrigo's friend and soul mate, Giannina, and her mother, Teresa; he also learns that Rodrigo's father's family immigrated to America via the Caribbean. His father Lorenzo looks black and identifies as such, but speaks perfect Spanish.

2. As mentioned, Rodrigo looks black, but his father, a U.S. serviceman, immigrated to the United States from the Caribbean and spoke Spanish, as well as English. Rodrigo identifies with the Latino side of his family, as well as the black. See, e.g., Delgado, *Fifteenth Chronicle*, *supra* note 1, at 1182 n.1 (describing Rodrigo in further detail); Delgado, *Revisionism*, *supra* note 1, at 806 n.2 (introducing Rodrigo).

“Of course. As you’ll see, I try to give equal attention to all the groups—Mexican Americans, Puerto Ricans, Dominicans, Cubans, and the rest. It was tough fitting everybody in.”

“Sounds like a casebook in the making.”

“Actually, that’s what I was hoping to talk to you about, although I recall you once warned me against taking one on.<sup>3</sup> You said casebooks are black holes that take you away from serious writing. But I have a contract from a major press and think I can turn in the manuscript in eighteen months. My tenure committee says I have plenty of articles under my belt and is happy to see me turning to a book.”

“A casebook on a new subject like Latinos and the Law can be a creative project,” I conceded. “Unlike the forty-seventh casebook on Property, it gives you a chance to shape a new discipline. Have you settled on an approach or an organizing principle yet?”

“I have. Until recently I was thinking of using interest convergence<sup>4</sup> to explain the twists and turns of Latino legal history.”

“Like that casebook we both use,” I said, pointing to a much thumbed red volume sitting on my nearby shelf.<sup>5</sup>

“I’m still going to use interest convergence,” Rodrigo continued, “for example, to explain the rise and fall of English Only movements, immigration roundups, and shifts in policy toward Latin America. But I’m thinking of subsuming it under an even broader principle that represents an entirely new way of looking at American civil rights. I could run it past you, if you have a minute.”

“I do. If I teach that new course, it’ll help me think about the material. What time is your party?”

“Eight, and it’ll probably go on till morning. They told me to ask you and Teresa to come, although you don’t have to stay the whole time if you don’t want to.”<sup>6</sup>

“Let me call her. She has an evening meeting, but I think it ends early. As you know, she loves Latin music and dancing.”

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3. See Richard Delgado, *Rodrigo’s Roundelay: Hernandez v. Texas and the Interest-Convergence Dilemma*, 41 HARV. C.R.-C.L. L. REV. 23, 25 (2006) [hereinafter Delgado, *Rodrigo’s Roundelay*] (exploring Latino civil rights).

4. See Derrick Bell, *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 524-25 (1980) (describing “interest convergence”—the notion that white elites arrange breakthroughs for African Americans only when they also advance the interests of the white elites).

5. See DERRICK BELL, *RACE, RACISM, AND AMERICAN LAW* (5th ed. 2004) (applying interest convergence and other critical race theory themes to the full sweep of African American legal history).

6. See Delgado, *Remonstrance*, *supra* note 1, at 267-68, 275 (introducing Theresa, Rodrigo’s widowed mother-in-law, with whom the professor is immediately smitten).

As I dialed my home number, Rodrigo took off his heavy looking ammunition belt and placed it on the couch beside him.

After a brief conference with my new wife, I looked up. "She says she can make it. In fact, she very much wants to talk to you. She's writing an article on immigration policy for an environmental organization to which she belongs. The membership is split. Some of them see immigration as a kind of pollution and want to seal off the borders."<sup>7</sup>

Rodrigo rolled his eyes.

"She disagrees, of course," I continued. "So, she's hoping to get some ammunition from you. Not that kind," I said, gesturing toward the shiny belt, "but the kind she can use in her column."

Rodrigo grinned. "I'll be glad to help. It'll be partial payment for your feedback on my thesis."

"I'll do what I can. Although I don't know how useful I'll be. I've never taught Immigration Law. And when I teach Race and the Law, I've always emphasized African Americans, maybe because that's the side I know well."<sup>8</sup> Before we start, can I offer you a cup of coffee?"

#### I. IN WHICH RODRIGO SETS OUT HIS NEW SYNTHESIS: WHAT THE AMERICAN CIVIL RIGHTS COMMUNITY CAN LEARN FROM POSTCOLONIAL SCHOLARSHIP

When Rodrigo nodded eagerly and looked in the direction of my new Italian coffeemaker, I stood up. "Have you seen this little beauty? I just got it."

Rodrigo watched with interest as I ladled in the beans, checked the water level, and set the controls. "This is French roast," I said. "You still take regular, right?"

Rodrigo nodded. "Dad and Mom used to have one like that when we lived in Italy. They make great coffee." Then, while I got out the condiments and set them on a tray, he asked: "Where were we?"

"You were going to explain the premise behind that casebook of yours."

"Oh, yes. It's in two parts. The first one is general, applies to all minority groups, and has to do with a body of scholarship called postcolonial theory. Have you heard of it, Professor?"

How amusing that he still calls me "Professor," I thought. More than once I had asked him to call me "Gus," but he almost never did.

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7. Florangela Davila, *Immigration Dispute Spawns Factions, Anger in Sierra Club*, SEATTLE TIMES, Feb. 18, 2004, at A1.

8. "The professor" is African American, a prominent scholar teaching at a major law school and in the twilight of his career. Most of his scholarship has focused on blacks, although from time to time he has resolved to broaden his knowledge to include other groups.



"I have, but I could use a quick refresher," I answered. "If I remember, it's a body of writing mainly by Asian and African scholars . . ."

"And now some Latin Americans,"<sup>9</sup> Rodrigo added.

"Oh, I didn't know that. Anyway, it's a body of writing that seeks to understand the colonial condition, exploring themes such as resistance, collaboration, and language rights.<sup>10</sup> Some writers address the psychology of the oppressed and the role of middlemen and educated elites who collaborate with the overlords.<sup>11</sup> Others write about how the occupying power uses literature and popular culture to depict the natives as simple and in need of tutelage, and the invading force as bearers of civilization and light."<sup>12</sup>

"That's as good a summary as I've heard, Professor. For someone who says he's just an old-fashioned civil rights litigator, you certainly know your critical thought."

"I struggle along as best I can. Even we old-timers are expected to keep up, you know. What's the second part about? Is it about Latinos? You're not thinking of painting them as some sort of internal colony, are you?"

"I am, actually. And I do use the group to show how postcolonial theory can help enrich American civil rights thought.<sup>13</sup> This other part has to do with taboos and is an entirely new way of looking at race and racism. It unites discourse theory and the materialist strand of critical race theory in a synthesis that the movement has long lacked."<sup>14</sup>

I smiled in spite of myself. Rodrigo had never been shy about coining an audacious new theory. Eager to learn where this one might lead, I said: "I'd love to hear. I assume the two parts, postcolonialism and race-as-taboo, are related?"

"They are. I can't wait to run them past you."

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9. Florencia E. Mallon, *The Promise and Dilemma of Subaltern Studies: Perspectives from Latin American History*, 99 AM. HIST. REV. 1491, 1491-92 (1994) (describing new theoretical constructs among Latin American scholars); Latin American Subaltern Study Group, *Founding Statement*, 20 BOUNDARY 2, Autumn 1993, at 110, 110 (describing the Subaltern Studies Group of South Asian scholars as inspiration for Latin American scholars).

10. See *infra* notes 36, 47-96 and accompanying text (discussing the role of language, collaboration and resistance).

11. See, e.g., Richard Byrne, *A Collision of Prose and Politics*, CHRON. HIGHER EDUC., Oct. 13, 2006, at A12 (citing a colonial officer's description of colonial agents or "middlemen"); see *infra* Part I.B (discussing how postcolonial thought explains the problems of domestic minorities).

12. See *infra* Part I.B.4 (discussing the role of culture).

13. See *infra* Part II (introducing Rodrigo's explanation of race as taboo).

14. See Richard Delgado, *Crossroads and Blind Alleys: A Critical Examination of Recent Writings About Race*, 82 TEX. L. REV. 121, 151 (2003) [hereinafter Delgado, *Crossroads and Blind Alleys*] (calling for such a synthesis).

"Me neither," I said, settling back into my chair and switching my telephone recorder to "On."

*A. In Which Rodrigo Explains the First Part of His Thesis: How Postcolonial Thought Can Enrich American Civil Rights Scholarship*

"Professor, have you heard of Rudy Acuña?"

"The author of 'Occupied America: A History of Chicanos'?"<sup>15</sup>

"Yes. I think we discussed him once before. He's that revisionist historian who has influenced a generation of ethnic studies students and is perhaps the most prominent Latino historian in the world."<sup>16</sup>

"And is he a postcolonial, in your opinion?"

"Not fully. But he is one of the handful of American civil rights scholars who show the influence of this other great body of antisubordination theory or use it in their work."<sup>17</sup>

"Didn't he receive some criticism for his suggestion that Latinos were an internal colony of the United States?"

"He did, especially in his book's first edition. In later editions, while retaining the title, he downplayed the internal colony idea.<sup>18</sup> Some of his colleagues thought it gave too little credit to Latino agency and resistance; others, that the idea of an internal colony didn't make sense, that colonization implied an invading force and control from outside."<sup>19</sup>

15. RODOLFO ACUÑA, OCCUPIED AMERICA: A HISTORY OF CHICANOS (4th ed. 2005) [hereinafter ACUÑA, OCCUPIED AMERICA]. See generally California State University Northridge, News Release, Rodolfo Acuña's New Book Focuses on Issues Facing Today's Latinos (July 9, 2003), [http://www.csun.edu/~hfoao102/press\\_releases/summer03/acuna.html](http://www.csun.edu/~hfoao102/press_releases/summer03/acuna.html) [hereinafter Acuña, News Release].

16. See generally Acuña, News Release, *supra* note 15.

17. E.g., Chantal Thomas, *Critical Race Theory and Postcolonial Development Theory: Observations on Methodology*, 45 VILL. L. REV. 1195, 1212-19 (2000) (critiquing postcolonial theory and Critical Race Theory); see *infra* notes 28-30 and accompanying text (discussing the work of Native American scholar and critical race theorist Robert Williams); see also David Ludden, *Introduction: A Brief History of Subalternity*, in READING SUBALTERN STUDIES: CRITICAL HISTORY, CONTESTED MEANING AND THE GLOBALIZATION OF SOUTH ASIA 1, 5-9 (David Ludden ed., 2002) (describing history of "subaltern studies," a subset of postcolonial scholarship); *id.* at 21-25 (describing the movement's recent spread to include Latin American and African writers). On postcolonial thought generally, see THE POSTCOLONIAL STUDIES READER 4 (Bill Ashcroft et al. eds., 1995) (collecting literary works from post-colonial societies).

18. See ACUÑA, OCCUPIED AMERICA, *supra* note 15, at xi-xv, (explaining changes throughout the editions, including a revision of the author's perspective on colonialism). Compare Gilbert G. Gonzalez, *A Critique of the Internal Colony Model*, 1 LATIN AM. PERSP., Spring 1974, at 154, 160 (finding that Latinos are not an internal colony), with Mario Barrera et al., *The Barrio As an Internal Colony*, in 6 URB. AFF. ANN. REV. 465, 465-98 (Harlan Hahn ed., 1972) (describing Latinos as an internal colony).

19. See, e.g., Barrera et al., *supra* note 18 (describing Latinos as an internal colony); Gonzalez, *supra* note 18 (positing that Latinos are not an internal colony).

“And you mention Acuña because . . .”

“Oh, yes. It’s because he is one of the few contemporary American race scholars who exhibit any familiarity with this important tradition that has developed on the other side of the world.<sup>20</sup> Most writers proceed as though the problems of racial minorities here are unique. Only on a few occasions have leaders such as Martin Luther King and Cesar Chavez reached beyond American traditions for inspiration and guidance.”

“I bet we’re thinking of some of the same occasions,” I said. “Both King and Chavez looked to the writings of Mahatma Gandhi and Henry Thoreau for theories of civil disobedience and lawful protest.<sup>21</sup> And the Black Panthers, during their short period of fame, quoted a small library’s worth of revolutionary figures, including Frantz Fanon, Mao Zedong, and Karl Marx, who also play large parts in postcolonial discourse.<sup>22</sup> Eldridge Cleaver, for example, saw the police acting toward domestic minorities much as the armies of colonial powers did toward weaker nations.<sup>23</sup> Malcolm X linked the political struggles of blacks in the United States to anticolonial efforts worldwide.”<sup>24</sup>

“Not bad, Professor. And you probably know that Thoreau, an early anticolonial theorist, would likely have sided with Acuña. When Thoreau composed his famous essay on civil disobedience,<sup>25</sup> he had in mind America’s aggressive war with Mexico in 1848, which resulted in the seizure of what is now the entire American Southwest and California.”

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20. For examples of others, see JOSÉ LUIS MORIN, *LATINO/A RIGHTS AND JUSTICE IN THE UNITED STATES* 18-159 (2004), which examines the history of discrimination against Latino/a populations and suggests solutions to reduce inequality; *supra* note 17 and *infra* notes 190-92 and accompanying text. For important forerunners, see ROBERT ALLEN, *BLACK AWAKENING IN CAPITALIST AMERICA* 11-12 (1969), which uses colonialism as a framework for understanding race relationships in America; ROBERT BLAUNER, *RACIAL OPPRESSION IN AMERICA* 2 (1972), which criticizes existing sociological theories on race relations.

21. *E.g.*, Martin Luther King, Jr., Letter from a Birmingham Jail (Apr. 16, 1963), in *I HAVE A DREAM: WRITINGS AND SPEECHES THAT CHANGED THE WORLD* 83-100 (James M. Washington ed., 1992) (using Christian principles to encourage nonviolent resistance).

22. *See, e.g.*, Richard Delgado, *Explaining the Rise and Fall of African American Fortunes—Interest Convergence and Civil Rights Gains*, 37 *HARV. C.R.-C.L. L. REV.* 369, 381 (2002) [hereinafter Delgado, *Rise and Fall*] (describing the Black Panther Party’s interest in these scholars); ALLEN, *supra* note 20, at 5-7, 50-55 (quoting Carmichael, O’Dell, and Fanon); *see also infra* notes 24, 34, 97 and accompanying text (discussing other figures).

23. ELDRIDGE CLEAVER, *SOUL ON ICE* 129-31 (1968).

24. ALEX HALEY & MALCOLM X, *THE AUTOBIOGRAPHY OF MALCOLM X* 18 (Harold Bloom ed., 1996); *see* ALLEN, *supra* note 20, at 5, 31-33 (commenting on Malcolm X’s establishment of this link); *id.* at 50-55 (discussing views of Stokely Carmichael and other black intellectuals on colonial status of American blacks); *id.* at 9-11, 46-48 (arguing persuasively for this view).

25. HENRY THOREAU, *ON THE DUTY OF CIVIL DISOBEDIENCE* (Collier Books 1962) (1849).

"A land grab approaching in size the empire of Alexander the Great.<sup>26</sup> I read that somewhere the other day."

"I've heard that, too," Rodrigo said. "But back to our famous transcendentalist. Thoreau, detesting our imperialist war, urged his fellow citizens to refuse to pay taxes for it and indeed spent a night in jail."<sup>27</sup>

"I can see how you consider Thoreau an important forerunner to your movement. But what about more recently? Aside from Acuña, have any other contemporary civil rights scholars deployed ideas from postcolonial theory?"

"Only a few," Rodrigo replied. "Native American scholar Robert Williams writes about how early Anglos invoked European notions of property and the Discovery Doctrine to justify the seizure of Indian lands.<sup>28</sup> Postcolonial writers in India and Africa call attention to similar rationalizations.<sup>29</sup> Williams cites the work of Albert Memmi, a leading postcolonial writer, to help understand Native American history.<sup>30</sup> Furthermore, the latest edition of Derrick Bell's casebook devotes a few pages to foreign minorities, such as the Maori of New Zealand and aborigines of Australia, who play major roles in postcolonial discourse.<sup>31</sup> And, of course, Puerto Rican nationalists have long maintained that the island is for all intents and purposes a

26. Compare JUAN PEREA ET AL., RACE AND RACES: CASES AND RESOURCES FOR A MULTIRACIAL AMERICA 254 (2000) (taking over one million square miles from Mexico during the 1846 war) with Dr. Joann Fletcher, *Alexander the Great (356-323 B.C.)*, BBC—HISTORY, [http://www.bbc.co.uk/history/historic\\_figures/alexander\\_the\\_great.shtml](http://www.bbc.co.uk/history/historic_figures/alexander_the_great.shtml) (last visited Sept. 5, 2007).

27. THOREAU, *supra* note 25, at 245; see also Abraham Lincoln, Resolutions in the United States House of Representatives (Dec. 22, 1847), in THE LIFE AND WRITINGS OF ABRAHAM LINCOLN 297, 299 (Phillip van Doren Stern ed., 1940) (echoing Thoreau by protesting the Mexican War and citing the payment of taxes as a method of submitting to government).

28. See ROBERT WILLIAMS, THE AMERICAN INDIAN IN WESTERN LEGAL THOUGHT: THE DISCOURSES OF CONQUEST 229-31 (1990) (discussing the Doctrine of Discovery as authorization for the United States to control Indian lands); Robert Williams, *The Algebra of Federal Indian Law*, 1986 WIS. L. REV. 219, 257, 263 (citing *Cherokee Nation v. Georgia* and *Johnson v. McIntosh* as examples of the Discovery Doctrine at work in the United States).

29. See *infra* notes 97-104 and accompanying text (discussing the role of culture); see also *infra* note 129 and accompanying text (discussing similar use of cultural stereotypes to rationalize suppression of Latinos).

30. Robert A. Williams, *Documents of Barbarism*, 31 ARIZ. L. REV. 237, 262, 261-78 (1989); see also ALLEN, *supra* note 20, at 6-10 (invoking similar notions of colonialism as a context for African-American history).

31. See BELL, *supra* note 5, at 82-94 (comparing and contrasting the history of racism in Australia and New Zealand to that of the United States and South Africa); see also *Australian Aboriginal Literature*, in I ENCYCLOPEDIA OF POST-COLONIAL LITERATURES IN ENGLISH 2, 2-4 (E. Benson & L.W. Connolly eds., 1994) (providing an overview of Australian Aboriginal literature and its role in social change).

United States colony with little autonomy or voice in governing its own affairs.”<sup>32</sup>

“And you think that more remains to be mined from the postcolonial tradition?”

“Much more. Few U.S. scholars pursue these parallels systematically or examine the struggles of actually colonized people in Africa, India, and elsewhere for the light they shed on the American dilemma. I hope to do just that.”

“So, you plan to bring together hitherto separate bodies of literature from opposite sides of the world dealing with subjugated people in search of insight, cross-fertilization, and strategies for reform?”

“Precisely,” Rodrigo replied with alacrity. “And I can sketch some of the principal ideas I’ve been finding. What’s exciting is that they will be arriving on the scene just at a time when American civil rights law and theory have come to a standstill.”

“They certainly have,” I agreed. “With minorities registering fewer and fewer gains, and the legal system, public, and government increasingly turning a deaf ear to our problems. The black community, according to Cornel West, counts few effective leaders.<sup>33</sup> A once promising new movement, critical race theory, now expends most of its energy defending identity politics and analyzing ‘discourse.’”<sup>34</sup>

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32. See, e.g., Press Release, Special Committee on Decolonization Calls on United States to Expedite Puerto Rico’s Self-Determination Process, U.N. Doc. GA/COL/3160 (June 14, 2007) (continuing the discussion on facilitating Puerto Rican Self-Determination); Press Release, Special Committee on Decolonization Approves Text Calling on United States to Expedite Puerto Rican Self-Determination Process, U.N. Doc. GA/COL/3138/Rev.1 (June 12, 2006) (summarizing the dominance of the United States over Puerto Rico and recommending further decolonization steps); PEDRO MALAVET, AMERICA’S COLONY: THE POLITICAL AND CULTURAL CONFLICT BETWEEN THE UNITED STATES AND PUERTO RICO 11 (2004) (noting that Puerto Ricans, although U.S. citizens, have little voice in their own government). For additional information on other countries’ progress toward decolonization, see generally Main Documents on Decolonization, List of Non-Self-Governing Territories Since 1945, <http://www.un.org/Depts/dpi/decolonization/docs.htm> (providing documents relating to the history and decolonization efforts of all non-self-governing territories).

33. See CORNEL WEST, RACE MATTERS 35-46 (1993) (lamenting this decline); see also NIKHIL P. SINGH, BLACK IS A COUNTRY: RACE AND THE UNFINISHED STRUGGLE FOR DEMOCRACY 164-85 (2004) (tracing the decline of leadership to official co-optation and the lure of establishment inducements and bribes); Delgado, *Rise and Fall*, *supra* note 22, at 377-85 (noting that white elites gained control over leaders of color as they rose to power); *infra* note 118 (discussing postcolonial criticism of certain civil rights and feminist scholars who focus principally on domestic manifestations of oppression and ignore broader international linkages).

34. See Delgado, *Crossroads and Blind Alleys*, *supra* note 14, at 125, 136-46 (arguing that a focus on discourse has moved away from the original goals of Critical Race Theory).

"Indeed. As one scholar put it, the study of 'race' seems to have replaced the study of race.<sup>35</sup> My approach seeks a way out of this impasse."

"I want to hear more. But does it have any practical consequences? As you know, my tolerance for high theory is somewhat limited. I try to keep up, of course, but after a point, my eyes kind of glaze over."

"I do think postcolonial theory offers much in the way of practical insights. Remember that Gandhi's program of nonviolent resistance liberated India from British rule in a scant quarter-century.<sup>36</sup> Cesar Chavez borrowed some of his tactics in a successful national boycott and unionization drive on behalf of farm workers.<sup>37</sup> Why haven't civil rights workers extended these approaches in search of better schools and health care for minority communities, for example?"

"What about Frantz Fanon?" I asked.

"Him, too. The Algerian psychiatrist wrote about how a colonized people could maintain its mental and emotional health while working to overthrow an unjust regime.<sup>38</sup> Why could some of his ideas not help marginalized communities in the U.S. now suffering from low self-esteem and high levels of drug addiction and suicide?"<sup>39</sup>

35. *Id.* at 125.

36. ANTONY COPLEY, *GANDHI: AGAINST THE TIDE* 30-49, 99-104 (1987); BHIKHU PAREKH, *COLONIALISM, TRADITION, AND REFORM: ANALYSIS OF GANDHI'S POLITICAL DISCOURSE* 81-119, 120-54, 272-93 (rev. ed. 1999) (discussing many features of the leader's program, including "yugadharma" and self-purification, nonviolence, and indianization of culture and self); Ludden, *supra* note 17, at 10 (describing Gandhi as a nationalist).

37. See Delgado, *Revisionism*, *supra* note 1, at 830-32 (discussing Chavez's programs and life).

38. See FRANTZ FANON, *THE WRETCHED OF THE EARTH* 249-316 (1963) [hereinafter FANON, *WRETCHED OF THE EARTH*] (describing mental illnesses in a colonized population and offering independence as a solution); FRANTZ FANON, *BLACK SKIN, WHITE MASKS* 141-209 (Charles L. Markmann trans., Grove Press 1967) (1952) [hereinafter FANON, *WHITE MASKS*] (identifying the influence of white culture and colonialism on "Negro" mental health); see also Patrisia Gonzales, *In the Spirit of the Ancestors: Reconciling Post Tribal Stress Disorders*, COLUMN OF THE AMERICAS, May 1, 2006, available at <http://uctp.blogspot.com/2006/05/in-spirit-of-ancestors-reconciling.html> (noting that, with indigenous people and Latinos, "de-indianization" may be a source of mental illness). On minority mental health generally, see ALVIN POUSSAINT, *WHY BLACKS KILL BLACKS* (1972) (exploring common psychological deficits in the African-American population).

39. See ALEJANDRO PORTES & RUBÉN J. RUMBAUT, *LEGACIES: THE STORY OF THE IMMIGRANT SECOND GENERATION* 276-80 (2001) (explaining the downward assimilation among future generations of Mexican immigrants); Center for Disease Control, *Suicide Among Hispanics, United States 1997-2001*, 53 MORBIDITY & MORTALITY WKLY. REP. 471, 478 (2004) (finding suicide the third leading cause of death for young Hispanics); Glen Flores et al., *The Health of Latino Children: Urgent Priorities, Unanswered Questions, and Research Agenda*, 288 J. AM. MED. ASS'N 82, 85 (2002) (examining disproportionate behavioral and mental health issues among Latino children); Donna Hoyert et al., *Deaths: Final Data for 2003*, 54 NAT'L VITAL STAT.

“He also wrote that the colonized subject achieves psychic wholeness by washing in the blood of the colonial oppressor,”<sup>40</sup> I added. “I assume you are not going to suggest that?”

“Well, no,” Rodrigo replied. “But much of his writing remains applicable today. And a contemporary writer, Gayatri Spivak, offers a rich analysis of Western culture and the role of mass media in representing minorities as undeserving and ambitionless.<sup>41</sup> We could bring those writings to bear on problems of hate speech and debates over the content of TV.”<sup>42</sup>

“Along those lines, Edward Said’s analysis of the role of Western literature in creating the fiction of the exotic Oriental<sup>43</sup> might shed light on the way Hollywood and television depict Latinos as buffoons and servants, and African Americans in even more demeaning terms.”<sup>44</sup>

“You are better versed in the postcolonial literature than you give yourself credit for.” Rodrigo shot me a penetrating look. “Are you sure you don’t want to co-author that casebook with me?”

“No thanks,” I said. “One was enough. And those few flashes pretty much exhausted my knowledge of postcolonial theory. I’m ready

REP. 1, 5, 42 (2006) (comparing death rates for Black, Hispanic, and White populations by cause of death); Kwame McKenzie et al., *Suicide in Ethnic Minority Groups*, 183 BRIT. J. PSYCHIATRY 100, 100-01 (2003) (explaining risk factors and suicide rates for ethnic minorities).

40. See FANON, WRETCHED OF THE EARTH, *supra* note 38, at 94 (describing violence as a means of restoring a former subject’s self-respect); see also SINGH, *supra* note 33, at 188-91 (discussing the legitimate role of violent reassertion of identity).

41. See Anthony Alfieri, *Race Trials*, 76 TEX. L. REV. 1293, 1348 (1998) (discussing Spivak’s “strategic essentialism” as exemplified in a move in which a defense counsel draws on a cultural stereotype); Ludden, *supra* note 17, at 17-19 (discussing Spivak’s contribution to a new “literary turn,” a form of discursive, cultural criticism); Gayatri C. Spivak, *Subaltern Studies: Deconstructing Historiography*, in SELECTED SUBALTERN STUDIES 3, 13-14 (Ranjit Guha & Gayatri C. Spivak eds., 1988) (describing the use of “consciousness” within subaltern studies); see also EDWARD SAID, CULTURE AND IMPERIALISM 100 (1993) [hereinafter SAID, CULTURE] (discussing the West’s tendency to represent foreign cultures in ways that enable Western culture’s dominance); Gayatri Spivak, *Can the Subaltern Speak?*, in MARXISM AND THE INTERPRETATION OF CULTURE 271, 287-88, 294-96, 306 (C. Nelson & L. Grossberg eds., 1988). (describing the West’s “decolonization” strategies and calling for “antisexist” projects to benefit women oppressed by race or class, as these women have no voice).

42. See, e.g., RICHARD DELGADO & JEAN STEFANCIC, UNDERSTANDING WORDS THAT WOUND 111-38, 159-74 (2004) (describing new mediums for hate speech and the impact of hate speech on various ethnic groups).

43. See SAID, CULTURE, *supra* note 41, at 110 (exploring the impact of Orientalist discourse on intellectual and creative works); EDWARD SAID, ORIENTALISM 1-6, 55-61, 72-73 (1979) [hereinafter SAID, ORIENTALISM] (noting that after a time, all Western writers on the Orient began to see that part of the world through the same lens—as exotic, alien, despotic, cruel, and sensuous).

44. E.g., Richard Delgado & Jean Stefancic, *Images of the Outsider: Can Free Expression Remedy Systemic Social Ills?*, 77 CORNELL L. REV. 1258, 1261-75 (1992) [hereinafter Delgado & Stefancic, *Images*] (reviewing the history of media caricatures of African Americans, Native Americans, Asian Americans, and Mexican Americans).

to hear what else you have in mind. But first, would you like a refill of that coffee?"

"I could use one," Rodrigo replied, nodding his head so animatedly that I doubted he really needed the caffeine. "But what if I took you out for a bite to eat? I saw a little restaurant down the street that looked like it just opened. I think it's Argentinean."

"I could use a bite," I said. "With Teresa at that meeting, I'm on my own for dinner. And I've been meaning to try out that very restaurant." Eyeing my companion's garb, I added, "And you probably won't feel so conspicuous if we eat there."

"That occurred to me, too," Rodrigo said. It was one of the few times I remember seeing my self-assured young friend blush. Hah! I thought, a chink in his armor. I reminded myself to press him hard on that new theory.

*B. In Which Rodrigo and the Professor Discuss the First Part of Rodrigo's Thesis: How Postcolonial Thought Can Help Illuminate the Problems of Domestic Minorities in the United States*

Five minutes later, we had settled in a comfortable booth in the homey restaurant, with paintings of pampas, cowboys, and scenes of Buenos Aires on the walls and soft strains of South American music in the background. After the courteous waiter took our orders ("An Argentine steak for me, medium rare," my omnivorous friend said. "Seafood paella for me—doctor's orders."), we continued:

"I'm glad you're interested in postcolonial theory, Professor," Rodrigo began. "Because I think it can serve as a rich source of ideas for American civil rights communities."

"Even blacks?" I asked.

"Yes. Although my main objective is to find models for understanding the Latino condition, postcolonial knowledge can shed light on the struggles of all domestic minorities."

"That's where the first part of your thesis comes in, right?" Rodrigo nodded, and I continued: "namely, broad, overarching themes from postcolonial literature. We mentioned a few already—collaboration, resistance, language rights.<sup>45</sup> I gather you found others?"

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45. See *supra* notes 10-13 and accompanying text (introducing postcolonial theory). But see SAID, CULTURE, *supra* note 41, at xxiii (noting that empire always denies that it is empire; it always makes the same mistakes as earlier empires—including the enforcers of the empire insisting that they are doing their subjects a favor); see also *id.* at 285-87 (describing American "exceptionalism," according to which U.S. invasions are never seen as colonial acts but evidence of our heightened morality and sense of responsibility).



"I did. And although I think you'll find them exciting, the part you'll really enjoy is the second one, about Latinos. As I said, the two parts, the general and the specific, work together. Oh, here comes our waiter."

We paused while the courteous waiter set steaming plates of savory food in front of us. By tacit assent, we ate in silence for a few minutes.

"How's your steak?" I asked.

"Perfect," Rodrigo replied. "Couldn't be better. And your paella?"

"Delicious. Even if the recipe comes from a colonial country<sup>46</sup> that brutalized its subjects, they did know a thing or two about cuisine."

The waiter appeared briefly a second time to ask whether everything was satisfactory. We both responded enthusiastically, he left; Rodrigo took a drink from his water glass and began.

### 1. The Role of Language

"We mentioned language rights a minute ago. That's one area where postcolonial writing could contribute to struggles raging here. For example, I'm sure you are familiar with the debate over a minority 'voice.'"<sup>47</sup>

"Of course," I said. "Critical race theorists such as Mari Matsuda and Richard Delgado argued that there was one and decried what they called 'imperial scholarship' in which prominent white male scholars teaching at the major law schools dominated writing about civil rights, citing and referring to each other, while ignoring minority scholars such as Derrick Bell and Kimberle Crenshaw, who were just beginning to write.<sup>48</sup> Randall Kennedy took the critics to task, arguing that it made no difference who wrote civil rights scholarship, so long as it was good.<sup>49</sup> Later, Ann Coughlin,<sup>50</sup> Daniel Farber,<sup>51</sup> Suzanna

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46. To wit, Spain.

47. See, e.g., Randall Kennedy, *Racial Critiques of Legal Academia*, 102 HARV. L. REV. 1745, 1755-60 (1989) (discussing minority scholarship in legal education); Richard Delgado, *Mindset and Metaphor: A Response to Randall Kennedy's Racial Critiques of Legal Academia*, 103 HARV. L. REV. 1872, 1877 (1990) (critiquing Kennedy's approach while acknowledging the valid scholarly question of voice); Richard Delgado, *When A Story is Just a Story: Does Voice Really Matter?*, 76 VA. L. REV. 95, 95-96 (1990) (continuing the debate over the importance of minority voices in legal scholarship).

48. Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 U. PA. L. REV. 561, 561-65 (1984); see also Mari Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. REV. 323, 324-26 (1987) (suggesting that "looking to the bottom" will help both minorities and critical legal scholars achieve their goals).

49. Kennedy, *supra* note 47, at 1801-07.

Sherry,<sup>52</sup> and a host of others attacked narrative scholarship as unreliable, subjective, and unscholarly. And, of course, your Latino friends endorse bilingualism and bilingual education, while nativists and the English Only movement decry them.”<sup>53</sup>

“That’s a good catalog, Professor. I couldn’t have done better myself.”

“But I’d like to hear how postcolonial theory contributes to our understanding of these issues.”

“Oh yes. Writers like Ngugi wa Thiong’o,<sup>54</sup> Chinua Achebe,<sup>55</sup> Haunani-Kay Trask,<sup>56</sup> Frantz Fanon,<sup>57</sup> and Trinh Minh-Ha<sup>58</sup> have been pointing out how the colonial subject forced to speak English or French loses touch with his own people. This happened, of course, with American Indian, Alaskan Native, and Australian aboriginal children sent to English-speaking boarding schools.<sup>59</sup> But it can also

50. Ann Coughlin, *Regulating the Self: Autobiographical Performances in Outsider Scholarship*, 81 VA. L. REV. 1229, 1231-34 (1995).

51. DANIEL FARBER & SUZANNA SHERRY, BEYOND ALL REASON: THE RADICAL ASSAULT ON TRUTH IN AMERICAN LAW 31, 86 (1997).

52. *Id.*

53. See PEREA ET AL., *supra* note 26, at 541-48, 848-61 (containing notes, questions, and case excerpts on these issues).

54. See, e.g., Ngugi wa Thiong’o, *Moving the Center: An Interview with Charles Cantalupo*, in THE WORLD OF NGUGI WA THIONG’O 219-20 (Charles Cantalupo ed., 1993) [hereinafter WORLD] (asserting that, regarding the role of language, whenever the language of a group is suppressed it also affects the individual); NGUGI WA THIONG’O, DECOLONIZING THE MIND: THE POLITICS OF LANGUAGE IN AFRICAN LITERATURE 4 (1986) [hereinafter THIONG’O, DECOLONIZING] (asserting that “[t]he choice of language and the use to which language is put is central to a people’s definition of themselves in relation to their natural and social environment” in discussing the strong role language plays in cultural identity).

55. See generally CHINUA ACHEBE, THINGS FALL APART (1952) (describing the disintegration of a proud, purposive village under the onslaught of English colonialism); CHINUA ACHEBE, ANTHILLS OF THE SAVANNAH (1987) [hereinafter ACHEBE, ANTHILLS] (describing the postcolonial challenges of corruption and instability that continue to plague the African political climate).

56. See HAUNANI-KAY TRASK, FROM A NATIVE DAUGHTER: COLONIALISM AND SOVEREIGNTY IN HAWAII 3, 21 (1993) (discussing the impact of forcing native Hawaiians to speak English and asserting that the adoption of English as the official language of the islands in 1896 negatively redefined Hawaiian culture and society).

57. See FANON, WHITE MASKS, *supra* note 38, at 17-18, 27 (discussing the role of adopting a colonizer’s language in assimilating the colonized’s native identity).

58. See TRINH MINH-HA, WOMAN, NATIVE, OTHER 47-76 (1989) (asserting that language is an extremely powerful form of “subjugation” and that “with each sign that gives language its shapes lies a stereotype of which I am both the manipulator and the manipulated”).

59. On American Indian, Canadian, and Australian boarding schools, see PEREA ET AL., *supra* note 26, at 862, 937-38, which discusses the difficulties Native Americans encountered in attending English speaking schools and federal boarding schools, as they forbade the use of native languages and religions; Julie Cassidy, *The Stolen Generations—Canada and Australia*, 11 DEAKIN L. REV. 131 (2006), which examines the practice of removing children from their familial homes and placing them in institutions in Canada, Australia, and the U.S., and discusses selected instances of litigation that arose out of this practice. Recall, as well, how Soviet “Russification” policy toward the states that it colonized, e.g., Lithuania, Latvia, and Ukraine,

happen to an adult writer such as Ngugi wa Thiong'o. If he writes in English or French, he ends up writing for an audience that consists of the occupying force and their relatives in the homeland. He chooses terms and issues that appeal to them and are understandable in light of their experience. He unconsciously softens his punches and tries to reach common ground with them."<sup>60</sup>

"For the sake of argument," I said, "what's wrong with that? Isn't crossover what every writer wants?"

"Of course it's important to appeal to European progressives, if only to speed their exit. But, for wa Thiong'o, it's a big mistake to write with them in mind. For the colonial language stealthily incorporates the worldview of the conquering nation. Terms like 'merit,' 'leader,' 'responsible government,' 'folk medicine,' and 'tribe' render the colonial subject one down. It's very hard to make an argument for liberation using the language of the oppressor. All the terms carry meanings that other people have given them. You end up sounding irresponsible, quaint, or ridiculous."<sup>61</sup>

discouraged the speaking of local languages and dialects. *E.g.*, Editorial, *Russification*, N.Y. TIMES, July 6, 1972 (briefly discussing the Russian practice of extirpating Lithuanian religion and culture in the process of assimilating its people); *see also* Raimonds Cerūzis, *The Latvian Institute, 12th Century-1914: The Age of German, Polish, Swedish, and Russian Rule in Latvia* (2006), [http://www.li.lv/index.php?option=com\\_content&task=view&id=70&Itemid=441](http://www.li.lv/index.php?option=com_content&task=view&id=70&Itemid=441) (noting the "active cultural development" and increasing national consciousness that stemmed from the use of the native Latvian language in the 19<sup>th</sup> century).

60. *See* THIONG'O, *DECOLONIZING*, *supra* note 54, at 23, 27-29 (recounting the occasional chastisement he received when he began writing in Gikuyu, his native tongue, and the pressure within the academic community to write in English); Ngugi wa Thiong'o, *The Language of African Literature*, in *THE POSTCOLONIAL STUDIES READER*, *supra* note 17, at 285, 287 (discussing the assumption by some that English was the "natural language of literary" culture); *see also* *Australian Aboriginal Literature*, *supra* note 31, at 2-4 (discussing aboriginal literature in Australia and noting that "[w]hite Australian criticism tended to circumscribe the scope and influence of black writing by pointing to black writers' use of outdated forms and a preoccupation with confrontational topics"); W.H. New, *New Language, New World*, in *THE POSTCOLONIAL STUDIES READER*, *supra* note 17, at 303, 305-08 (noting that "writers themselves have been among . . . the clearest commentators on the relation they find between the language they live with, the culture they live in, and the world they create").

61. *Cf.* THIONG'O, *DECOLONIZING*, *supra* note 54, at 23, 27-28 (recounting the occasional chastisement he received when he began writing in Gikuyu, his native tongue, and the pressure in the academic community to write in English); Alamin Mazuri & Lupenga Mphande, *Orality and Literature of Combat: The Legacy of Fanon*, in *WORLD*, *supra* note 54, at 159-60, 163 (discussing Ngugi's purposeful increasing use of his native language to promote African indigenous languages in African writing); *see also* FANON, *WHITE MASKS*, *supra* note 38, at 17 (identifying a "self-division" that resulted from colonial subjugation); Thiong'o, *The Language of African Literature*, *supra* note 60 ("[Language is] the most important vehicle through which . . . power fascinated and held the soul prisoner. The bullet was the means of the physical subjugation. Language was the means of . . . spiritual subjugation."); Ngugi wa Thiong'o, *On the Abolition of the English Department*, in *THE POSTCOLONIAL STUDIES READER*, *supra* note 17, at 438 (proposing the abolition of the English department at an African university).

"Derrick Bell once pointed out something similar, showing how litigation under American law leads public interest lawyers to sacrifice their clients' interests time after time."<sup>62</sup>

"And that genius, Alan Freeman, showed how the very structure of antidiscrimination law rendered minorities worse off, even when they won.<sup>63</sup> Girardeau Spann did, too."<sup>64</sup>

"And I'm sure you have noticed how certain critical theorists use counterstories to displace master narratives such as without-intent-no-discrimination or the idea that colorblindness could ever be a coherent civil rights strategy.<sup>65</sup> These narratives inform civil rights law so deeply that, over time, they come to seem commonplace and natural. But they aren't—they shift burdens and presumptions in a way that keeps us always running uphill."

"Yes." Rodrigo scribbled something on a piece of paper and tucked it into his pocket. "Many race-crits, especially storytellers such as Derrick Bell,<sup>66</sup> Patricia Williams,<sup>67</sup> and Richard Delgado,<sup>68</sup> are discontent with the dominant language of the law. Writing in a

62. Derrick Bell, *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470, 471-516 (1976). Bell points out that public interest litigation often embroils the lawyer in a dilemma: The client wants a simple, concrete goal, such as better schools for her kids or a pair of shoes to wear to church. The lawyer's organization, such as the NAACP, however, wants a major, breakthrough victory announcing a broad, ringing new legal principle. The lawyer, then, wants to plunge ahead, risking everything for a Brown-type victory. The client is ready to accept something much more modest. See also COPLEY, *supra* note 36, at 38-39, 101 (noting that this famous anticolonial figure began as an assimilationist and admirer of British culture and tradition, but ended up rejecting law, petitioning, payment of taxes, and other structures of colonial administration).

63. Alan Freeman, *Legitimizing Racial Discrimination through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine*, 62 MINN. L. REV. 1049, 1050-51 (1978).

64. See GIRARDEAU SPANN, *RACE AGAINST THE COURT: THE SUPREME COURT AND MINORITIES IN CONTEMPORARY AMERICA* 162-63 (1993) (arguing that the Supreme Court is unable to protect against majoritarian preferences and rather "actually advances those preferences through its adjudications").

65. *E.g.*, Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2439 (1989) (arguing that counterstories can assist in avoiding the "impoverishment" of racial and class-based isolation and can "enable the listener and the teller to build a world richer than either could make alone").

66. *E.g.*, DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* 101-04 (1992) ("[W]hile white antidiscrimination laws seem to protect blacks from bias, discrimination in fact continues under a myriad of guises . . .").

67. *E.g.*, PATRICIA WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* 5-14 (1991) (asserting that many of the insights about the ethics of law and the meaning of law have "been buried in relatively arcane vocabulary and abstraction" and that "legal language flattens and confines in absolutes the complexity of meaning inherent in any given problem").

68. *E.g.*, DELGADO, *THE RODRIGO CHRONICLES*, *supra* note 1, at 7 ("[Serious legal writers have moved] beyond mere doctrinal analysis to political theory, legal history, and interdisciplinary analysis. There is a whole new emphasis on legal culture, perspective, and on what some call 'positionality,' as well as a renewed focus on the sociopolitical dimension of judging and legal reasoning.").

different key, or even a different language, might solve some of those problems.”

“And for a broad theory of the role of language they can look to the work of wa Thiong’o and other postcolonials who distrust the dominant language and dominant discourse.”

“Exactly,” Rodrigo said. “As Edward Said once explained, the power to narrate is the power to destroy.<sup>69</sup> Thus, resistance figures must tell and retell their stories. And many of those writers consciously ignore English or French, even though they know them well and choose to write in a native language, even an oral one, with no written vocabulary or alphabet.<sup>70</sup> Wa Thiong’o, for example, explains that when he criticized the racism of the colonial system, he won praises and prizes, and his novels were in all the syllabi. But when he started writing in a language understood by the peasants and questioning the very foundations of imperialism and foreign domination of the Kenyan economy and culture, he was sent to maximum security prison.<sup>71</sup> For him, literature was a form of combat. Oh, and he wrote children’s literature, too.”<sup>72</sup>

“Breathtaking,” I said. “That would certainly give force . . .”

“And a voice . . .”

“Right. To Latinos insisting on a legitimate role for Spanish. That language enables them to speak out against oppression and discrimination in a way that one can’t—at least so readily—in English, the language of the very group that is oppressing them. A powerful insight, Rodrigo. Do other postcolonial writers say the same thing?”

“Many do. Braj B. Kachru writes: ‘The English language is a tool of power, domination and elitist identity, and of communication

69. See SAID, *CULTURE*, *supra* note 41, at xii (“[T]he power to narrate, or to block other narratives from forming and emerging, is very important to culture and imperialism, and constitutes one of the main connections between them.”); see also THE POSTCOLONIAL STUDIES READER, *supra* note 17, at 283-318 (containing examples of postcolonial writers describing the importance of language for cultural survival).

70. Mazuri & Mphande, *supra* note 61, at 159-81 (noting that in some African societies “writing was . . . to a large extent, a mere expression of the oral world” and that “Ngugi as well as many other African writers, incorporate into their works fragments from the oral tradition”); COPLEY, *supra* note 36, at 40 (noting that Gandhi, too, emphasized the use of vernacular languages).

71. Neil Lazarus, *(Re)turn to the People: Ngugi wa Thiong’o and the Crisis of Postcolonial African Intellectualism*, in *WORLD*, *supra* note 54, at 23; Ngugi wa Thiong’o, *Moving the Center: An Interview with Charles Cantalupo*, in *WORLD*, *supra* note 54, at 216.

72. Kathleen Greenfield, *Murdering the Sleep of Dictators: Corruption, Betrayal, and the Call to Revolution in the World of Ngugi wa Thiong’o*, in *WORLD*, *supra* note 54, at 27; Kimani Wa Njogu, *Decolonizing the Child*, in *WORLD*, *supra* note 54, at 130-37.

across continents.”<sup>73</sup> I have the quote right here. This echoes the finding of contemporary Lat-crit authors who write that Latinos are ‘perhaps more attached to their language than any other non-English speaking immigrant or minority group.’<sup>74</sup>

“Fascinating,” I said. “I did not know that. Maybe that’s because, as your friend Trinh Minh-Ha put it, ‘Language is one of the most complex forms of subjugation, being at the same time the locus of power and unconscious servility.’<sup>75</sup> I just brought that up on my laptop while you were speaking. And here’s a cross-reference to Raja Rao . . .”

“Another well-known postcolonial author. I’ve run across a lot of his writings.”

“I’m not surprised. Rao says that the colonial subject who adopts the language of the conqueror ‘has to convey in a language that is not one’s own the spirit that is one’s own. One has to convey the various shades and omissions of a certain thought movement that looks maltreated in an alien language.’<sup>76</sup>

“In fact,” Rodrigo replied, fishing a second piece of paper out of his pocket. “Simon During says much the same thing. I have it right here. ‘For the postcolonial to speak or write in the imperial tongues is to call forth a problem of identity, to be thrown into mimicry and ambivalence.’<sup>77</sup>

“Trenchant,” I exclaimed. “It reminds me of Fanon’s words about psychiatric self-preservation. The native must take forceful action, or else he or she succumbs to despair and depression.<sup>78</sup> Holding onto one’s language could be a potent way of achieving mental health for the colonized subject such as the Latino.”

73. Braj B. Kachru, *The Alchemy of English*, in THE POSTCOLONIAL STUDIES READER, *supra* note 17, at 291; *see also* SAID, *CULTURE*, *supra* note 41, at 267 (noting that the French forbade the use of Arabic in colonial Algerian school instruction).

74. THE LATINO CONDITION 557 (Richard Delgado & Jean Stefancic eds., 1998) (editors’ note).

75. MINH-HA, *supra* note 58, at 52; *see also* Bill Ashcroft, *Constitutive Graphonomy*, in THE POSTCOLONIAL STUDIES READER, *supra* note 17, at 298, 300-02 (“[A]ll language emerges out of conflict . . . [T]he post-colonial text brings language and meaning to a discursive site in which they are mutually constituted, and at this site the importance of usage is inescapable . . . . [Language cannot] be said to perform its function by reflecting or referring to the world in a purely contingent way . . .”).

76. Raj Rao, *Language and Spirit*, in THE POSTCOLONIAL STUDIES READER, *supra* note 17, at 296.

77. Simon During, *Postmodernism or Postcolonialism Today*, in THE POSTCOLONIAL STUDIES READER, *supra* note 17, at 125.

78. *E.g.*, FANON, *WHITE MASKS*, *supra* note 38, at 141-210 (arguing that “in every society, in every collectivity, exists—must exist—a channel, an outlet through which the forces accumulated in the form of aggression can be released” in describing his conception of a “collective catharsis”); *see also* COPLEY, *supra* note 36, at 36 (portraying Gandhi’s fasting as a step to establishing a “warrior ethic”); *infra* notes 80-90 and accompanying text (discussing the study of resistance).

“And with Latinos, it may explain why the second generation, the children of the immigrants, do much worse than the first, with a high rate of drop-out, drug-taking, arrest, and other forms of pathology.<sup>79</sup> This could give ammunition to Latino and Asian bilingual activists seeking support for their programs. I have much more on this. Maybe when we talk specifically about Latinos a little bit later, I’ll bring it in.”

“I hope you do,” I said. “I don’t know much about Latinos and the language controversy, though I’m eager to learn. But I think you said you had a number of other themes.”

## 2. The Study of Resistance

“Much more. We only have time for the main ones. This could be a life’s work.”

“Or at least your work for the next eighteen months,” I added, “while you are putting together that casebook.”

“For later on, too. I can see a series of law review articles developing the various themes from postcolonial discourse that promise to shed light on the U.S. racial scene.”

“We mentioned a number of them back in my office.”

“Oh, yes. Besides the role of language—resistance and collaboration.<sup>80</sup> And then there’s the psychology of the oppressor and the oppressed.<sup>81</sup> Take resistance: postcolonial writers such as Memmi, Said, and Gandhi write about how the colonial subject mounts resistance to the overlords by withdrawing labor and support.<sup>82</sup> Some

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79. See, e.g., PORTES & RUMBAUT, *supra* note 39 (discussing the trend of “downward assimilation” in second generation Mexican-Americans).

80. See *supra* notes 10-12 and accompanying text (discussing the colonial tradition).

81. *Id.*

82. See ALBERT MEMMI, *THE COLONIZER AND THE COLONIZED* 120-52 (1991) [hereinafter MEMMI, *COLONIZER*] (arguing that “revolt is the only way out of the colonial situation, and the colonized realizes it sooner or later”); ALBERT MEMMI, *DOMINATED MAN* 3-26 (1968) (arguing that “when the oppressed has seen the extent of his oppression in this way, then it becomes unbearable to him” in discussing the potential for an impending revolt by black Americans); Ludden, *supra* note 17, at 1-7, 20 (discussing scholarly work in Subaltern Studies, noting that the topic of insurgency had garnered special attention); see also COPLEY, *supra* note 36, at 30-36, 38 (describing Gandhi’s techniques of nonviolent resistance and non-cooperation with the British overlords); PAREKH, *supra* note 36, at 148-51 (discussing Gandhi’s nonviolent resistance and observing that “every oppressive and exploitative system ultimately depended on the cooperation of its victims, and it would not last a day without their active or passive material and moral support”); ARUNDHATI ROY, *WAR TALK* 9-17 (2003) (reporting on nonviolent resistance in central India opposing the eviction of a thousand indigenous families to make way for the building of a dam); JAMES C. SCOTT, *WEAPONS OF THE WEAK: EVERYDAY FORMS OF PEASANT RESISTANCE* xv-xvii (1986) (noting that organized, outright resistance by the lower class is actually rare, and the more common mechanisms of resistance have been “foot dragging, dissimulation, desertion, false compliance, pilfering, feigned ignorance, slander, arson, sabotage, and so on”); E.P. THOMPSON,

of this takes the form of small acts, such as slowdowns, pretending not to understand, or teaching his children about indigenous culture and knowledge to supplement the Western version the child learns at school.”<sup>83</sup>

“Sometimes resistance takes dramatic forms,” I said, “such as sabotage, poisoning, or arson. Howard Zinn<sup>84</sup> and Herbert Aptheker<sup>85</sup> write about that.”

“As in the South during slavery. Oppressed people everywhere have mounted resistance. Postcolonial writing merely enables one to see how this is part of a universal struggle for dignity and against cultural domination.”

“I seem to recall that Jean-Paul Sartre said something similar.”

“Yes.” Rodrigo looked down at the same piece of paper. “In his introduction to Memmi’s *The Colonizer and the Colonized*, Sartre said that the colonized and the colonizer are locked in an ‘implacable dependence that molds their characters and dictates their conduct.’

THE MAKING OF THE ENGLISH WORKING CLASS 62-78, 225-28, 500-21 (1966) (discussing various forms of resistance employed throughout the evolution of the English working class, ranging from violent riots to the more peaceful destruction of machines which were displacing agrarian workers and organization of trade unions); David Arnold, *Gramsci and Peasant Subalternity in India*, in MAPPING SUBALTERN STUDIES AND THE POSTCOLONIAL 39-40, 45 (Vinayak Chaturvedi ed., 2000) (describing passivity as a resistance tactic and positing that the failings of mass movements in India is attributable to the refusal of the Indian bourgeoisie to unite with the peasantry); Gyan Pandey, *Peasant Revolt in Indian Nationalism*, in SELECTED SUBALTERN STUDIES, *supra* note 41, at 233 (discussing the revolt by peasants in Awadh in 1921 which took the form of looting of bazaars, attacks on landlords, and battles with police); Arundhati Roy, *Mesopotamia. Babylon. The Tigris and Euphrates*, THE GUARDIAN, Apr. 2, 2003, at 2, available at <http://www.guardian.co.uk/g2/story/0,3604,927712,00.html> (“[D]eject was an old tradition with us natives. When we are invaded/colonized/occupied and stripped of all dignity, we turn to guile and opportunism.”).

83. See, e.g., PEREA ET AL., *supra* note 26, at 297 (noting the folklore that developed about Cortina and Cortez); ROBERT J. ROSENBAUM, MEXICANO RESISTANCE IN THE SOUTHWEST 15-17, 42-49 (1981) (discussing the history of Mexicano resistance, principally in the 19<sup>th</sup> century, after American expansion West, and the ensuing folklore of figures such as Juan Cortina and Gregorio Cortez); SAID, CULTURE, *supra* note 41, at xii, 209-67 (discussing thematic similarities across a number of cultures in resisting colonization and occupation); see also MEMMI, COLONIZER, *supra* note 82, at 104-05 (pointing out that the colonized subject is ignorant of his own history—when he goes to school, he learns about Joan of Arc). On “literary resistance,” see, e.g., Stephen Slemon, *Unsettling the Empire*, in THE POSTCOLONIAL STUDIES READER, *supra* note 17, at 104-10, which discusses the nature of literary resistance and asks whether “something [is] actually there in the text or is . . . produced and reproduced in and through communities of readers and through mediating structures of their own culturally specific histories.”

84. See HOWARD ZINN, A PEOPLE’S HISTORY OF THE UNITED STATES: 1492-PRESENT 131, 198-99, 382-83 (rev. & updated ed. 1995) (discussing numerous forms and instances of resistance throughout American history, including slave revolts, violent labor movement uprisings, black militancy, and more).

85. See HERBERT APTHEKER, AMERICAN NEGRO SLAVE REVOLTS 162-340 (6th ed. 1993) (providing a comprehensive study and accounting of slave revolts in the United States from 1791 through the Civil War era); see also FANON, WRETCHED OF THE EARTH, *supra* note 38, at 37 (pointing out that liberation from colonial yoke requires “absolute violence”).



But every colonial situation bears the seeds of its own destruction. The colonial subject eventually revolts. The colonial situation eventually explodes.”<sup>86</sup>

“We’ve had too little of that sort of writing lately,” I said. “Most present-day race writers seem to assume whites, blacks, and others will continue to live together roughly as they do now, with only a few refinements in legal doctrine and a little asset-sharing. We need to imagine a better future than that.”

“And that’s what many of the postcolonial writers do,” Rodrigo exclaimed. “I knew you would find this exciting. Memmi says that the subject must stop fighting under the banner of the values of the master.<sup>87</sup> To live, he must rise above his colonized being, must do away with colonization entirely. Colonialism distorts relationships, destroys or petrifies institutions, and corrupts men and women on both sides of the line, colonizer and colonized. Revolt is inevitable, so that the sooner native intellectuals and leaders start planning for it, the better.”<sup>88</sup>

“Heady stuff.”

“Indeed.” Rodrigo leaned forward in his chair. “Empire is doomed. Racism, too. It’s just a matter of time. Colonizer and colonized are tied together in mutual need. But their relationship suffers a fatal flaw that can only end in revolt by the weaker party.<sup>89</sup> Every colonized subject. . .”

86. Jean-Paul Sartre, *Introduction*, in MEMMI, COLONIZER, *supra* note 82, at ix, xvii; see ALLEN, *supra* note 20, at 61-63 (discussing the Ford Foundation’s efforts to “channel and control the black liberation movement and forestall future urban revolts”); MEMMI, COLONIZER, *supra* note 82, at 120-27 (“[I]f one chooses to understand the colonial system, he must admit that it is unstable and its equilibrium constantly threatened.”); see also AIMÉ CÉSAIRE, DISCOURSE ON COLONIALISM 60-61 (1955) (warning that the U.S. is no liberator and that American domination is the kind from which one never recovers); ARUNDHATI ROY, THE CHECKBOOK AND THE CRUISE MISSILE 45 (2004) [hereinafter ROY, CHECKBOOK] (“Historically, we know that every empire overreaches itself and eventually implodes. Then another one rises to take its place.”); Arundhati Roy, *Not Again*, GUARDIAN, Sept. 27, 2002 (pointing out that empires invariably overreach and eventually implode).

87. MEMMI, COLONIZER, *supra* note 82, at 129, 149-52. On passivity and withdrawal as responses, see *id.* at 98-99, which points out that the colonial subject, being locked out of government and civil affairs, takes refuge in “the family.”

88. *Id.*; see also THE POSTCOLONIAL STUDIES READER, *supra* note 17, at 151-80 (collecting materials on the theory of nationalism as a form of resistance); ROY, CHECKBOOK, *supra* note 86, at 136 (applying these ideas to our time and to the current U.S. program of worldwide hegemony); SAID, CULTURE, *supra* note 41, at 209-67, 286-88 (elaborating extensively on a number of types of resistance, including contemporary academic anti-imperialistic dissent).

89. MEMMI, COLONIZER, *supra* note 82, at 151; MORIN, *supra* note 20, at 45-49 (detailing Mexicano resistance in the first half of the nineteenth century in the Southwestern United States and also the systematic means of oppression and marginalization used against Latinos/as in America since the nineteenth century); SAID, CULTURE, *supra* note 41, at xii, 209-67 (describing the varieties of resistance, including reclaiming culture, reclaiming lands, and

"And racialized subject, too?"

"Yes, we are all disfigured and doomed by servitude," Rodrigo said. "The only cure is to break the iron collar. For the anticolonialist, that meant sending the colonizer packing. For the domestic minority, it means asserting control over one's institutions and community. When we talk about Latinos, remind me to tell you about recent land revolt incidents coming out of the Southwest."<sup>90</sup>

"Inspiring stuff," I said. "I haven't run across that kind of writing for some time. Of course, Western history erases the story of black, Asian, and Latino resistance. It much prefers the role of the Anglo as savior."

### 3. The Study of Collaboration

"And I gather that the study of collaboration is the flip side of that?" When Rodrigo nodded, I continued: "I'm eager to hear what you have to say, because some of our own scholars have been tying themselves in knots trying to figure out whether Clarence Thomas, Randall Kennedy, Linda Chavez, Steve Carter, and Richard Rodriguez are genuine fellow travelers, with a few peculiar ideas, or hopeless reprobates and sellouts."<sup>91</sup>

Rodrigo took a moment to slice a morsel of his fast-disappearing steak, then looked up. "Postcolonial writing shows how colonial societies everywhere have featured a small group of native people—usually educated and moderate in their politics—whom the colonials recruit as clerks and overseers of the rest. In India, the

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reclaiming the past); *see also* Ludden, *supra* note 17, at 6-11 (describing how postcolonial writing frees the study of primitive rebellion from the categories of crime and backwardness).

90. *See, e.g.*, PEREA ET AL., *supra* note 26, at 288-98 (containing notes, description, and excerpts on this issue); U.S. GOV'T ACCOUNTABILITY OFFICE, THE TREATY OF GUADALUPE HIDALGO: FINDINGS AND POSSIBLE OPTIONS REGARDING LONGSTANDING COMMUNITY LAND GRANT CLAIMS IN NEW MEXICO 2-170 (2004) (examining whether "the United States either inappropriately acquired millions of acres of land for the public domain or else confirmed acreage to the wrong parties" after entering into the Treaty of Guadalupe Hidalgo, and concluding that, while there is no specific ground for legal relief, Congress may wish to take action for compelling policy reasons); *see also* SINGH, *supra* note 33, at 199, 212-24 (comparing black ghettos to Third World colonies and positing that the solution is to embrace, then subvert, that parallel, by violence, if necessary). On the "Taylor Ranch" controversy in Southern Colorado, *see infra* note 210 and accompanying text.

91. *E.g.*, Jerome McCristal Culp, Jr., *Voice, Perspective, Truth, and Justice: Race and the Mountain in the Legal Academy*, 38 LOY. L. REV. 61 (1992) (discussing the debate between more traditional black scholars and those who question the propriety of the perspective of color and instead believe in speaking in the "neutral voice of scholarship"); Angela Onwuachi-Willig, *Using the Master's "Tool" to Dismantle His House: Why Clarence Thomas Makes the Case for Affirmative Action*, 47 ARIZ. L. REV. 113 (2005) (contending that despite his criticism of affirmative action, Clarence Thomas' "nomination to and performance on the Court ironically make the case for forward-looking affirmative action").

British used educated Indians as civil servants, giving them minor roles in the government in return for their loyalty.<sup>92</sup> In the South, slaveowners selected docile, lighter skinned slaves to work in the big house as servants and kitchen workers.<sup>93</sup> They received better treatment, in return for which they were expected to inform the master of any impending rebellion or escape that the darker skinned field workers might be planning.”<sup>94</sup>

“I gather the study of postcolonial literature helps place this sort of thing in broader perspective?”

“It does. For example, Rudy Acuña writes of the rise of the broker class among Latinos.<sup>95</sup> These are European looking, college educated Latinos who go to work for Anglo corporations, government agencies, or NGOs. They make a living by interpreting the Latino community to their Anglo patrons, so that the patrons can curry the Latino vote or sell them products like cigarettes, alcohol, or luxury items they don’t need.”<sup>96</sup>

#### 4. The Role of Culture

When I nodded to show that I was familiar with this aspect of Acuña’s thought, Rodrigo continued: “It’s an important theme. And another—the role of popular culture—shows how movies, stories, songs, and myths all grease the wheels of neocolonial exploitation.”

92. On these Indian middlemen and civil servants, see MEMMI, *COLONIZER*, *supra* note 82, at 15-16, which asserts that “by choosing to place themselves in the colonizer’s service to protect his interests exclusively, they end up by adopting his ideology, even with regard to their own values and their own lives”; Byrne, *supra* note 11; see also ALLEN, *supra* note 20, at 10-11, 16, which discusses rajahs and their latter-day successors in the black and brown communities, including the conciliatory black preacher; PAREKH, *supra* note 36, at 25, which discusses collahoration in general. On Latino folk tales excoriating “los vendidos” (sell-outs), see NICK KANELLOS, *HERENCIA: THE ANTHOLOGY OF HISPANIC LITERATURE OF THE UNITED STATES* 6 (2002).

93. See ZINN, *supra* note 84, at 23-38 (noting “the creation of disunity among slaves by separating them into field slaves and more privileged house slaves”).

94. *Id.*

95. ACUÑA, *OCCUPIED AMERICA*, *supra* note 15, at 386-421 (discussing the increasing size and political relevance of the Chicano middle class from 1973 on and questioning how this focus on middle class injured Chicanos as a whole); see Delgado, *Rodrigo’s Roundelay*, *supra* note 3, at 57 (“[T]hese brokers use cultural information to help whites administer death. Or if that’s too uncharitable, profits.”).

96. Delgado, *Rodrigo’s Roundelay*, *supra* note 3, at 57-59; see also ALLEN, *supra* note 20, at 212 (“[The] black bourgeoisie is traditionally torn between militant nationalism and accommodationist integrationism.”); SINGH, *supra* note 33, at 72-84, 112-17, 164-73 (noting that some black leaders during the civil rights era went along with official policy and denied their colonial condition, embraced Cold War politics, and denounced left-wing black leaders); Delgado, *Rise and Fall*, *supra* note 22, at 377-81 (also noting that some leaders in the black community followed the U.S. government’s lead and ostracized figures like Paul Robeson, designating them as overly radical).

"How do they do that?" I asked. "I think I have some ideas, but would love to hear how your writers approach the problem."

"A host of them, including Spivak and Said, show how dominant culture paints the colonial society as intelligent, efficient, scientific, rational, and enlightened, while the natives emerge as dark, superstitious, and childlike.<sup>97</sup> Stories, movies, poetry, and children's tales reinforce this duality.<sup>98</sup> Rudyard Kipling's writings about the 'white man's burden' and his children's stories are prime examples."<sup>99</sup>

"Right," I said. "In our time, even progressive movies like 'Mississippi Burning' feature a white hero who saves the trembling, helpless blacks.<sup>100</sup> So, dominant discourse eases the European's conscience, while communicating to the indigenous person that he or she should feel lucky to be governed by such enlightened masters.<sup>101</sup> I have the impression a few critical race theorists point this out."

97. See PAREKH, *supra* note 36, at 40-41 (describing how the British, upon encountering Hindus were "puzzled by them as a people and bewildered, at times even offended, by some of their beliefs and practices"); ROY, CHECKBOOK, *supra* note 86, at 54 (describing Winston Churchill's views); SAID, CULTURE, *supra* note 41, at xii-xiii, 100, 162 ("[A]ll cultures tend to make representations of foreign cultures the better to master or in some way control them."); SAID, ORIENTALISM, *supra* note 43, at 26 ("So far as the Orient is concerned, standardization and cultural stereotyping have intensified the hold of nineteenth-century academic and imaginative demonology of 'the mysterious Orient.' "); Abdul R. JanMohamed, *The Economy of Manichean Economy*, in THE POSTCOLONIAL STUDIES READER, *supra* note 17, at 18 (positing that in colonialist literature, the world that lies beyond "civilization" is perceived as "uncontrollable, chaotic, unattainable, and ultimately evil"); Spivak, *Subaltern Studies*, *supra* note 41, at 13-14 (describing "strategic essentialism"—the imputation of a characteristic to a large group); see also JOHN-MICHAEL RIVERA, THE EMERGENCE OF MEXICAN AMERICA 2-4 (2006) (describing depiction of Latinos in the "American imaginary").

98. See SAID, CULTURE, *supra* note 41, at 6-9 (noting that it is not just stories and literature that do this, but biology, political science, and other bodies of thought, as well); *supra* notes 41-44 and accompanying text (providing examples of how dominant culture depicts society).

99. See, e.g., DAVID GILMOUR, THE LONG RECESSIONAL: THE IMPERIAL LIFE OF RUDYARD KIPLING ix-xi, 85-165 (2002) (describing Kipling's public role and attitude toward British empire and colonial rule); Rudyard Kipling, *The White Man's Burden: The United States and the Philippine Islands*, MCCLURE'S MAG., Feb. 1899 (exalting the virtues and encumbrances of imperialism); see also EDWARD SAID & DAVID BARSAMIAN, THE PEN AND THE SWORD 66 (1994) (discussing Kipling's writings).

100. MISSISSIPPI BURNING (MGM Studios 1988); see also SAID, CULTURE, *supra* note 41, at xiii-xiv (pointing out how "high culture" is almost always xenophobic and looks down on natives, and citing as examples Dickens, Carlyle, Ruskin, and Thackeray).

101. See, e.g., RIVERA, *supra* note 97, at 64-69 (discussing the portrayal of Mexico as an inferior and unjust nation which America benevolently civilized); RON TAKAKI, A DIFFERENT MIRROR: A HISTORY OF MULTICULTURAL AMERICA 21-50 (1993) (explaining how the English possessed a tremendous power to define the people and places they were conquering, with terms like "savage," "heathen," and (for the Irish) "uncivilized"); Chinua Achebe, *Colonialist Criticism*, in THE POSTCOLONIAL STUDIES READER, *supra* note 17, at 57, 59-60 (discussing the common colonialist criticism that the colonial subject is ungrateful); Homi K. Bhabha, *Signs Taken for Words*, in THE POSTCOLONIAL STUDIES READER, *supra* note 17, at 38 (discussing what the author calls "ambivalence of the presence of authority" in the cultural writings of English colonialism); see also, e.g., PEREA ET AL., *supra* note 26, at 64-69, 958 (discussing the power to define in the context of recent debate over census categories and slots for Latinos and the controversy over

“Yes, some do. Postcolonial writing merely shows how the pernicious images are no accident and how the shortage of actors and directors of color<sup>102</sup> contributes to a stratified society, with whites on top and everyone else below. It shows that this happens again and again. The dominant group’s culture may be vastly inferior to that of the group it subjugates, its main advantage lying in strength of numbers or superior weapons.<sup>103</sup> But its stories and narratives always portray it as the champion of knowledge, civilization, and even humanity, while the colonial people come across as crude and barbaric.”<sup>104</sup>

“In need of taming and the tender mercies of the colonial overlords,” I added.

“Indeed. And in the colonies, the education system worked in the same way. It taught native people that their destiny is to be ruled by whites.” Rodrigo paused briefly. “And it’s themes like these that I plan to develop in my casebook, showing how the predicament of domestic minorities has connections to worldwide patterns and forces. Do we have time for one or two more?”

I looked at my watch. “As many as you like. We have at least another hour. Did you say your party was downtown?”

When Rodrigo nodded, I said we could easily make it there in fifteen minutes, although I would have to stop at home first for Theresa, and urged him to continue.

## 5. Understanding the Psychology of Colonialism

“Another powerful set of ideas from postcolonial writing has to do with the psychology of the colonialist and his subject,” Rodrigo said.

“I’ve heard of Antonio Gramsci and his notions of hegemony,<sup>105</sup> and also of more recent writers like Price Cobbs and William Grier

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biracial children, and into what category they should fall). And, of course, current movies are rife with many of the same negative images that the postcolonial scholars point out. *See, e.g.,* MISSISSIPPI BURNING, *supra* note 100.

102. *See* PEREA ET AL., *supra* note 26, at 970-73 (discussing the dangers implicit in the use of racial stereotypes in film).

103. *See* JARED DIAMOND, GUNS, GERMS, AND STEEL: THE FATES OF HUMAN SOCIETIES 277-78, 358-59 (1997) (attributing European conquest of the Americas, for example, not to intellectual or spiritual superiority, but rather to disease and disparities in technology).

104. *See* Delgado & Stefancic, *Images, supra* note 44, at 1261-79 (discussing the depiction of “major minority subgroups of color” in popular culture); *see also* ARUNDHATI ROY, THE ORDINARY PERSON’S GUIDE TO EMPIRE 60 (2004) (noting the irony that the freest country in the world has the largest number of prisons and that Bangladeshi men have a higher probability of reaching age 65 than do African American men in Harlem).

105. *See* ANTONIO GRAMSCI, THE PRISON NOTEBOOKS (Quinton Hoare & Geoffrey Nowell Smith eds. & trans., 1971).

who write of 'black rage.'<sup>106</sup> Do postcolonial writers address some of the same things?"

"They do. And in ways that promise real insight into the predicament of domestic minorities. Jean-Paul Sartre, for example, writes that the colonialist debases the colonial subject and depicts him as uncivilized and in need of tutelage, in part to conceal his own mediocrity.<sup>107</sup> Memmi and others write that the oppressor must disparage indigenous people—for example as lazy, weak, thieving, impulsive, and ungrateful—in order to rationalize plundering their lands and resources.<sup>108</sup> Frantz Fanon, Jean-Paul Sartre, and Leela Gandhi<sup>109</sup> urge that the colonial subject decline recognition or flattery from the French or English oppressors, remembering that knowledge is domination and medicine torture.<sup>110</sup> Edward Said and David Barsamian argue that one should not care about the colonizer's praise or validation."<sup>111</sup>

"And doesn't Bhabha stress the importance of memory?"

"He does. A colonial subject can easily forget who he or she was before the colonials took over and began erasing everything.<sup>112</sup> Achebe, for example, writes that only the story can continue beyond the war and the warrior to 'save our progeny from blundering like blind beggars into the spikes of the cactus fence.'<sup>113</sup> Trinh Minh-Ha says that stories not only pass on history, but they also remind cultures of their past and of who they are. 'Every griotte who dies is a whole library that burns down,' she says. 'One who allows the written record to be erased can too easily forget that "it's never finished."'<sup>114</sup>

"I imagine that something similar happens to the colonial, too," I said.

"It does. Memmi, for example, shows how the colonial, who might have been a liberal back home, becomes, in the colony, a tyrant

106. PRICE COBBS & WILLIAM GRIER, *BLACK RAGE* (1968).

107. Sartre, *Introduction*, *supra* note 86, at xxvii; see MEMMI, *COLONIZER*, *supra* note 82, at 55, 61 (asserting that in the colony, the European leads an exalted life and pretends he is superior; but he knows that in the home country he would be a mediocre man).

108. MEMMI, *COLONIZER*, *supra* note 82, at 9, 67, 73-74, 79-85; *supra* notes 97-104 and accompanying text (discussing the role of culture).

109. LEELEA GANDHI, *POSTCOLONIAL THEORY: A CRITICAL INTRODUCTION* 19 (1988); Jean-Paul Sartre, *Introduction*, in FANON, *WRETCHED OF THE EARTH*, *supra* note 38, at 9, 23.

110. GANDHI, *supra* note 109, at 21; see ALLEN, *supra* note 20, at 52 (agreeing with Fanon that the oppressed should mock and "vomit" the colonial regime's values).

111. SAID & BARSAMIAN, *supra* note 99, at 151; see GANDHI, *supra* note 109.

112. See GANDHI, *supra* note 109, at 9 (discussing Bhabha on forgetting); SAID, *CULTURE*, *supra* note 41, at 209 (discussing the colonial subject's urgent need to "reclaim the past").

113. ACHEBE, *ANTHILLS*, *supra* note 55, at 124.

114. TRINH MINH-HA, *supra* note 58, at 148-49. See generally RIVERA, *supra* note 97, at 2-3, 165-76 (explaining the importance of recovering cultural documents and memories).

and a fascist who rationalizes discrimination and injustice.<sup>115</sup> In Joseph Conrad's novels, modern empire requires an ideal of service, redemption, and sacrifice.<sup>116</sup> The colonial occupier must convince himself that he is on a civilizing mission.<sup>117</sup> But of course that mission ends up oppressing and infantilizing the native population and depriving them of agency and culture."

"A powerful avenue," I said. "It promises to unite domestic struggles with what has been going on around the world. If U.S. minorities see their problems as continuous with those of their counterparts around the world, I see many possible gains, even cross-border coalitions."<sup>118</sup>

## II. IN WHICH RODRIGO SETS FORTH HIS EXPLANATION OF RACE AS TABOO: THE TRIPLE TABOO

"So you think my approach has merit?" Rodrigo asked.

"I do. It's precisely what the U.S. civil rights community needs now, a way of expanding our gaze to include broader bodies of experience. I can't wait for your casebook and some of those articles to come out. But I think you said you had a second part, about Latinos."

"I do. The second part of my thesis focuses on that group and puts forward a new theory of race as taboo. For Latinos, three main taboos operate together. So, it's a triple taboo."

"A nice alliterative phrase. I hope you plan to flesh it out. Is it part of your postcolonial analysis?"

"I will flesh it out. And, yes, it's part of my theory that Latinos are an internal colony within the territorial confines of the United States. It's my own modest contribution to the postcolonial literature, but it has roots in Fanon, Memmi, Said, and others."

"The notion of a taboo originated in anthropology, did it not?"

"Yes, the early anthropologists popularized it. They used it to describe belief systems they found in certain settings, for example, the South Sea Islands."<sup>119</sup>

115. MEMMI, *COLONIZER*, *supra* note 82, at 55. Recall, for example, William Gladstone, a liberal in England, who established British rule in India.

116. SAID & BARSAMIAN, *supra* note 99.

117. *Id.*; see also MEMMI, *COLONIZER*, *supra* note 82, at 75 (pointing out that the colonialist sees himself in exalted terms, as bringing light to the oppressed—being there to benefit not themselves, but others).

118. See GANDHI, *supra* note 109, at 9-22, 81-102 (noting that intellectuals of our time are easily drawn off into focusing on domestic racism and sexism instead of considering broad international patterns of oppression); ALBERT MEMMI, *DECOLONIZATION AND THE DECOLONIZED* x-xiv (2006) (same).

119. *E.g.*, HUTTON WEBSTER, *TABOO: A SOCIOLOGICAL STUDY* 3-39 (1943); Margaret Mead, *A Proposal*, *REDBOOK*, Apr. 1978, at 31; see also SIGMUND FREUD, *CIVILIZATION AND ITS*

"But taboos are functional, are they not—at least originally?"

"Right. The local wise men would tell their followers not to go to a certain region at a particular time of year, explaining that an evil spirit lived there. In fact, the region would be the home of malaria-infested mosquitoes that would swarm at that time. But the chiefs would not trust the villagers to remember the reason. So they told them the pond was taboo in the spring."

"And in similar fashion they promulgated food taboos, so that the followers would not die of food poisoning or eat dangerous plants, right?"<sup>120</sup>

"Yes," Rodrigo replied. "Now, many Jews adhere to food taboos—which they call 'keeping kosher'—that began with sanitary rationales.<sup>121</sup> Today, those rationales no longer hold because we have refrigeration. But they still maintain the system of taboos. It's part of their religion, their daily practice. They feel pious and observant when they follow them."

"I have a colleague who keeps kosher. When we go out for lunch, he's careful about what and where he eats. And are there other kinds of taboos?"

"Oh, yes. Many. Some have to do with sex, for example not marrying your sister or cousin. Or, for some, having sex with your wife during her menstrual period."<sup>122</sup>

"Many of the taboos seem to have to do with cleanliness and dirtiness, no?"<sup>123</sup>

"Right," Rodrigo replied. "If you want people to avoid something, you induce a feeling of disgust. You tell them it's slimy. Or dirty. Or bad for you. Then, they'll avoid it. It will be instinctive, something they do without even thinking about it, like recoiling from a snake."

"Before you go on too far, how exactly do you apply the idea of a taboo to the U.S.? You're not suggesting that white elites impose myths and taboos on ignorant minorities to get them to do their bidding, are you? That would not exactly be very empowering, or true for that matter."

"Far from it," Rodrigo said. "It's white folks who coin the taboos as a control device for each other. We're just the objects of them. To

DISCONTENT 41 (Joan Riviere trans., 1982) (discussing the origin of taboo); SIGMUND FREUD, *TOTEM AND TABOO* (1913) (using this concept to explain neurotic behavior in Western patients); Martha Nussbaum, *Danger to Human Dignity: The Revival of Disgust and Shame in the Law*, *CHRON. HIGHER EDUC.*, Aug. 6, 2004, at B6.

120. WEBSTER, *supra* note 119, at 322-65.

121. THE NEW STANDARD JEWISH ENCYCLOPEDIA 546 (7th ed. 1992).

122. *Id.* at 849 (explaining this taboo amongst Jews).

123. See *Leviticus* 11-16 (describing Jewish laws of purity and cleanliness).



free ourselves from their pernicious sway, we need to point out how they work and how they came into being.”

“I’m all ears. What exactly are the taboos you have in mind?”

*A. In Which Rodrigo Explains His Example of the Latino Triple Taboo*

“Each group is subject to a different set of taboos. And they change over time as the dominant society needs to extract something different from the group. For blacks, one set of taboos operates. Sexual, mainly, for what white society wants above all is for blacks not to intermarry with their women.”<sup>124</sup>

“The other way around is fine.”

“Right,” Rodrigo said. “When white men get together with black women, it’s winked at.<sup>125</sup> And for Asians, it’s a radically different taboo. Asians are said to be sexless, the men anyway.<sup>126</sup> Anglos don’t want their daughters getting together with them because they want the Asian men to keep their minds on their work, producing scientific inventions, practicing pharmacy and optometry, and keeping our computers running smoothly. So, the dominant stereotype of the Asian male is sexless: Nerdy. No body hair. Thick glasses. Good at math and science. Bad at sports. Not someone you’d want your daughter going out with.”<sup>127</sup>

“And for Latinos, a different taboo operates?”

“Yes, three of them, which in turn operate within a triple system that includes blacks and Asians.”

“A nice symmetry,” I said. “But what are the three Latino taboos, and how did they come about?” Before he could answer, the waiter materialized at our tableside and asked whether we’d like some coffee or dessert.

Rodrigo looked at me inquiringly. “We’d like to see the dessert menu, please.” Then, when the waiter placed the menus in front of us and started clearing our dinner dishes, Rodrigo said, “We’ve got plenty of time. And I see they have sorbet and flan, both of which I think you like.”

After we placed our orders—a flan with caramelized topping for Rodrigo and an abstemious raspberry sorbet for me—Rodrigo continued.

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124. See *Loving v. Virginia*, 388 U.S. 1, 4-7 (1967) (describing Virginia’s anti-miscegenation laws).

125. See, e.g., WILLIAMS, *supra* note 67, at 17, 154.

126. John M. Kang, *Deconstructing the Ideology of White Aesthetics*, 2 MICH. J. RACE & L. 283, 345, 347-51 (1997).

127. See *id.* at 345, 347-49 (describing the stereotypical effeminate Asian male).

## 1. Origin of the Latino Taboos

"Do you remember, Professor, how we mentioned that dominant society wanted something different from each group, so that their racialization varied?"

"I do. We may have discussed this theory of differential racialization once before.<sup>128</sup> Basically, Anglos wanted blacks for their labor. From the Indians, they wanted their land. The Indians would not perform forced labor. Proud, good at fighting, and with an intimate knowledge of the terrain, they would fight to the death rather than submit to the lash. From the Asians, as we mentioned, they wanted, first, labor to build the railroads and mines, then, years later, technical assistance in white collar jobs and offices. Which brings us to Latinos."

"From them," Rodrigo said, "the early Anglos wanted land. Primarily the rich lands of California and the Southwest, but a little later, the island of Puerto Rico. For this purpose, they coined the stereotype of the lazy Mexican. This myth suited the Anglos' purposes because it justified taking a rich land away from people who were not making good use of it."<sup>129</sup>

"In fact, the early Latinos were hardy settlers who had been, in many ways, more resourceful and enterprising than the Pilgrims who came to New England nearly a century later. They had well-functioning settlements with advanced agriculture, communal water rights, and local, democratic government. Some of them treated the Indians badly, but others, like Father Bartolome de las Casas, championed their cause."<sup>130</sup>

"You really know that history, Professor," Rodrigo said. "And you undoubtedly know that the Anglos declared a pretextual war on Mexico in the mid-nineteenth century, in which the U.S. Army, responding to a border dispute over two rivers, marched all the way to Mexico City, where it dictated surrender terms under which Mexico ceded almost one-half of its territory."<sup>131</sup>

"Including what is now the entire U.S. Southwest."

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128. For a discussion of the theory of differential racialization, see Delgado, *Revisionism*, *supra* note 1, at 823-36; see also MICHAEL OMI & HOWARD WINANT, *RACIAL FORMATION IN THE UNITED STATES* 53-76 (2d ed. 1994).

129. MORIN, *supra* note 20, at 18-20; Delgado & Stefancic, *Images*, *supra* note 44, at 1273-75; STEVEN BENDER, *GREASERS AND GRINGOS: LATINOS, LAW, AND THE AMERICAN IMAGINATION* 2 (2003); RIVERA, *supra* note 97, at 51-56, 63, 130-31.

130. See ACUÑA, *OCCUPIED AMERICA*, *supra* note 15, at 35-40, 124-26 (describing relations between Mexican colonizers and Native Americans).

131. *Id.* at 40-52; PEREA ET AL., *supra* note 26, at 253.

“Indeed. The Mexicans who remained in the newly conquered territory had one year to decide whether to accept American citizenship or to travel south to the redrawn border. Most chose to remain, because that is where their lands were and where many of them had been living for generations.”<sup>132</sup>

“The Treaty of Guadalupe Hidalgo supposedly guaranteed them their lands,”<sup>133</sup> I said.

“True, but in a process familiar to Indian historians, those guarantees ended up meaning very little. Sharp Anglo lawyers, aggressive squatters, and crooked land registration officials cheated the Mexicans of their ancestral lands. In short order, much of the new region changed hands—a land grab of enormous dimensions. As we mentioned, the total amount stolen approached the land mass of Alexander the Great’s empire.”<sup>134</sup>

“And is this where the taboo comes in?”

“Right. The new lands, now in Anglo hands, needed farm workers. Thousands to work the vast expanses of western farm and ranch land. Just as California, Arizona, and many other states today rely on migrant workers to cultivate the fields and harvest the crops, the early ranchers and farmers did, too. In most cases these would be the lands’ former owners, the Mexicans.”

“So you have Anglo owners and Mexican field workers,” I said.

*a. Ramon, Susie, and a Moonlit Night*

“And so imagine the scene,” Rodrigo said. “As in plantation society, you would have an Anglo family living in the big house. The Mexican crew would work in the fields and spend the nights in temporary shacks somewhere nearby. But these would be free people. Most of them would be male, many of them young. Some would be transient and would move with the crops. Others would settle down in semi-permanent quarters on the farm or a nearby town.”

“I think I know what you are going to say. Society needed a taboo to keep everybody apart?”

“It did. Imagine that it’s a moonlit night. Susie, the daughter of the farm family, is out for an after-dinner walk in the orchard. She comes across a seventeen-year-old fieldhand named Ramon. Bronzed from the sun and strong from outdoor work, Ramon is also a bright lad. Neither slave nor peon, merely exploited and underpaid, he has

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132. ACUÑA, OCCUPIED AMERICA, *supra* note 15, at 56-57.

133. Treaty of Guadalupe Hidalgo, U.S.-Mex., Feb. 2, 1848, 18 Stat. 492; *see* ACUÑA, OCCUPIED AMERICA, *supra* note 15, at 56-57.

134. *See supra* note 26 and accompanying text.

dreams and ambitions. He speaks English. He can sing and play the guitar. He knows how to fix things and how to make plants grow.”

“And so Susie and he strike up a friendship?”

“Yes. And that’s what the mother and father most fear—Susie running away with a Mexican farmhand. They are both good looking and about the same age. They have a lot in common. Both are repressed. Susie hates the farm. Ramon hungers for something better. They form a bond.”

“And this is where the taboo comes in?”

“Yes. Multiply that situation by a thousand. You have early Anglos and their families working in close proximity to young, strapping Mexicans. This could easily lead to intimacy of two types: not only the romantic kind between the young daughters of the ruling family and the male farm workers, but also camaraderie between the Anglo supervisors and the Mexican farmhands. They are all about the same age. They have the same objectives—a healthy crop. They both understand and love nature and plants. Yet farm labor requires intense exploitation: Stoop labor. The short hoe. Broiling sun. Long hours. Low pay.”<sup>135</sup>

“And so Anglo society coins a taboo,” I said. “I can imagine what’s in it. It would have to be pretty disparaging.”

“And it is. The taboo, as I mentioned, is triple. Its main components are three—dirt, sexuality, and jabber—attachment to a mysterious and unfathomable language. There are a few other components, but those are the main ones.”<sup>136</sup>

## 2. How the Taboos Function

“I’d like to hear about all three,” I said. “I gather you think they work together?”

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135. On the conditions of farm labor, and a recent chapter of resistance to those conditions, see, e.g., SUSAN FERRIS & RICARDO SANDOVAL, *THE FIGHT IN THE FIELDS: CESAR CHAVEZ AND THE FARMWORKERS MOVEMENT* (Diana Hembree ed., 1997); JACQUES E. LEVY, *CESAR CHAVEZ: AUTOBIOGRAPHY OF LA CAUSA* (1975); PETER MATTHIESSEN, *SAL SI PUEDES: CESAR CHAVEZ AND THE NEW AMERICAN REVOLUTION* (1969); Guadalupe Luna, *An Infinite Distance*, 1 U. PA. J. LABOR & EMP. L. 487 (1998).

136. I assumed that Rodrigo meant, among others, weirdness, stupidity, and lack of dignity, all components of a stereotype that changed and evolved over time. For example, loss of dignity was essential in periods when the group was demanding political rights and sovereignty. It would have been ridiculous to grant full citizenship rights to a group given to wearing silly hats, playing music, and partying all the time. Compare, for example, the stereotype of the exotic Arab in SAID, *ORIENTALISM*, *supra* note 43 with *infra* Part II.A.2 (suggesting that Latinos are dirty and stupid). Similarly, laziness was essential to forcing the division of communal lands and transferring them to Anglo hands; once they were divested of their lands, laziness was no longer useful, because the now-landless farmers were essential to perform stoop labor for Anglo farmowners.

"They do. Each of them—filth, hypersexuality, and jabber—separates dominant society from the Latino. And once in place, this separation would happen naturally. An Anglo wouldn't have to think about it every time. And the Anglos could apply the taboo to groups, like Dominicans, that were not from Mexico. They didn't have to differentiate."

"I see what you mean," I said. "An overseer at a farm or ranch ordinarily might position himself about five or ten feet away from a worker. He's safe. Although the worker is potentially filthy, contagion and smell wouldn't travel that far. Still, the overseer wouldn't get any closer—close enough, for example, for the two to shake hands after completing a stage of the work."

"And young Susie," I continued, "who knows in the back of her mind that Ramon is a potential sex maniac, might engage in repressed conversation with him on a moonlit night, but would make sure she has a ready escape route in case he gets too amorous. But what about jabber?"

"Jabber operates at a different level," Rodrigo replied. "Local authorities, including school boards, needed to do something with all those Mexican kids too young to work in the fields. The belief that they are a backward, superstitious people who will hang onto their culture and language justifies treating them that way in a host of settings. In school, for example, California authorities until fairly recently rationalized separate classrooms and schools for little Mexican kids on the ground that they needed special training because of their language deficiencies.<sup>137</sup> And at worksites, it rationalized a kind of language-based hierarchy. Expert Latino fruit pickers, for example, could serve as low-level middlemen and foremen, but never as crew chiefs. They could occupy minor supervisory roles because their knowledge of Spanish enabled them to give orders and discuss problems with the other workers. But their supposed inability to speak English—actually many spoke it quite well—excluded them from consideration as crew chiefs because the chiefs needed, from time to time, to converse with the outside world—with officials such as the county agricultural agent or the clerk at a local fertilizer store."

"It seems to me that it also justifies suspicion," I added. "If a group is constantly jabbering away in a foreign language, it might be planning some form of resistance, maybe a strike for higher wages."

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137. See *Mendez v. Westminster Sch. Dist.*, 64 F. Supp. 544, 547-48 (S.D. Cal. 1946) (ordering the desegregation of various Orange County school districts), *aff'd*, 161 F.2d 774 (9th Cir. 1947); *Hernandez v. Driscoll Consol. Indep. Sch. Dist.*, 2 Race Rel. L. Rep. 329, 329-44 (S.D. Tex. 1957) (finding that grouping students according to ancestry was arbitrary and unreasonable); see also RIVERA, *supra* note 97, at 62 (noting that Anglos held Latinos' use of a supposedly inferior language to justify marginalizing Latinos in the public sphere).

“Right. The planters were already uneasy about the exploitive conditions they imposed on their workers. Just as slaveowners in the South slept uneasily because they feared a slave rebellion, white landowners in the Southwest also feared the Mexican farmhands who might covet something better.<sup>138</sup> Their speaking to each other in a foreign language fed this fear and justified harsh laws excluding farm workers from unionization or coverage for workplace injuries. Later, it justified English-only laws and workplace rules that operated harshly against all Spanish speakers, not just Mexicans or Puerto Ricans.”

### 3. Evidence that the Taboos Persist and are in Full Force Today

“That all has the ring of truth,” I said. “Taboos like the ones you mentioned would enable Anglo overlords to assure that their supervisors, daughters, and friends kept their distance from the fieldhands. They would permit oppressive labor conditions to continue indefinitely. But what evidence do you have that these taboos remain in force today? I have never spent time in the fields and orchards of the Southwest, or any of the cities in the Midwest, Northeast, and South, for that matter, where large Latino immigrant populations have been forming. Maybe those taboos are just historical curiosities.”

“I don’t think so. I’ve been gathering mountains of evidence. Do we have time?”

I looked at my watch, told Rodrigo we had over half an hour, and motioned to the waiter, who quickly caught my eye.

“Would you gentlemen like some coffee or decaf?”

Rodrigo nodded vigorously and asked if they had cappuccino. The waiter said yes, of course, after which I asked if they could make it with decaffeinated beans. “No problem,” he said, and departed. I noticed that he spoke with a slight Spanish accent and wondered if he might be an immigrant, documented or otherwise.

“Nice fellow,” Rodrigo said. “Where were we?”

“You were going to outline your evidence for the three taboos. I assume you can’t prove some sort of a founding meeting of chief taboo articulators?”

“Of course not,” Rodrigo said, a little sharply. “The elite leadership would not need to meet. The taboos would develop through an invisible, tacit process and a thousand conversations. A little like TV stereotypes, say, the Latina maid or black doorman. No group of Hollywood or broadcast executives sat down and said to each other,

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138. ZINN, *supra* note 84, at 23-28; Herbert Aptheker, *Negro Slave Revolts in the United States*, 1526-1860, in *ESSAYS IN THE HISTORY OF THE AMERICAN NEGRO* 10 (1973); cf. ROSENBAUM, *supra* note 83, at 91-99 (discussing Mexicano resistance in the Southwest).

‘What kind of role would be good for Latinas to play? How about maids and domestic workers?’”

“So yours is not a conspiracy theory.”

“Not at all. It’s entirely descriptive. It shows how culture operates and how the ideas a society develops about Indians, blacks, and Latinos are not accidents, but serve useful functions. With Latinos, they rationalize economic exploitation, mainly in the form of unfair labor practices. Today that means, among other things, keeping a large, floating population of Latino workers who are illegal and undocumented, just like colonial subjects, and a ready supply of cheap, easily exploited labor.”

“I find that plausible. But what kinds of evidence do you have?”

“Several,” Rodrigo replied. “I’ve dug up a lot from popular sources—stories, plays, movies, and other narratives circulating in the dominant society. But also from *corridos*, *actos*, skits, *cantares*, laments, and other tales of the Mexican people, which showed their perception of how the Anglos thought of, and acted toward, them.”

“A little bit like the slave narratives,”<sup>139</sup> I pointed out.

“Precisely. Both bodies of literature, the slave narratives for blacks and the *corridos* for Latinos, performed much the same function. Each recorded what the colonized people thought of their condition, of their work life, their hopes and dreams, and especially what they thought of their masters and their masters of them.”

The waiter showed up, cups, saucers, and silver pots full of rich-smelling coffee in hand. “Enjoy,” he said, “and let me know when you’re ready for the check.”

“We will,” I said. Then, to Rodrigo: “Please go ahead. This is all very useful. I can use this if I teach that new class. It looks like a great way to organize the material.”

“I can run through this fairly quickly. As I mentioned, the Latino taboo consists of filth, hypersexuality, jabber, and a few others. Its purpose is to make sure that Anglos don’t get too close. Close enough to supervise and give orders, but not enough to feel real kinship, real camaraderie, as might happen if Anglos and Mexicans worked side by side, at some hard job.”

“Or in little Susie’s case, close enough that she might feel sexual attraction toward seventeen-year-old Ramon with his deep tan, strong body, and interesting dreams,” I added.

“Exactly. And, in the case of jabber, the taboo justifies suspicion and close supervision.”

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139. See PEREA ET AL., *supra* note 26, at 105-07, 112-14 (reprinting excerpts from various slave narratives).

"It occurs to me that your taboo theory taps into a powerful social science insight that I teach every year, namely the social contact hypothesis."<sup>140</sup>

"I teach that, too."

"So we each know that many social scientists hold that the best way to counteract prejudice is to arrange for people of different types and skin colors to work together in pursuit of common goals. Sports or the military are good examples. Or going to grade school with kids of other races."<sup>141</sup>

"Right," I said. "The hypothesis, which formed the basis for institutional desegregation beginning in the sixties, holds that racism is a kind of mistake or cognitive error. The racist individual internalizes the notion that persons of a different race, say blacks, are unlike his group, say whites. They are untrustworthy, stupid, sexually lascivious, lazy, and criminal. They want to spend all day listening to loud music and hanging out with their friends on street corners, hassling white passersby, and so on."

"And so, by placing young people of different races together on a sports team or in a third grade classroom, they learn that people of different ethnicities are much like them—some good, some bad. Some like loud music, others hate it."<sup>142</sup>

"And that's how the taboo acquires its diabolical efficacy," I said. "Someone who fears a member of another race or thinks they will smell bad or will want to have sex with you without your consent will not get close enough to have the easygoing conversations that the social contact hypothesis requires. Relationships will remain formal and impersonal. They will enable the pre-existing hierarchy, white over brown, to remain intact forever, with little strain or pressure."

"I have lots of data on the three components, if you are interested."

"I certainly am. Why don't you start?"

*a. Filth*

"Have you heard the phrase, 'dirty Mexican'?" Rodrigo began.

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140. See, e.g., GORDON ALLPORT, *THE NATURE OF PREJUDICE* 261-81 (1954); Richard Delgado et al., *Fairness and Formality: Minimizing the Risk of Prejudice in Alternative Dispute Resolution*, 1985 WIS. L. REV. 1359, 1385-86 [hereinafter Delgado et al., *Fairness and Formality*] (discussing social contact as a strategy to reduce prejudice).

141. Delgado et al., *Fairness and Formality*, *supra* note 140.

142. *Id.*



I made a face. "Of course. Everyone has. It's the most common, and unfair, of the stereotypes. You hear it everywhere, almost as an epithet."<sup>143</sup>

"It is unfair," Rodrigo said. "But a thousand plots, stories, and cultural references drive it home.<sup>144</sup> It's also untrue. But you see it everywhere. Steven Bender's book says it—and its close relative, the 'greaser'—is one of the most common of the Latino stereotypes.<sup>145</sup> Even relatively modern movies and stories reinforce it.<sup>146</sup> Historians say they find it in practically every era.<sup>147</sup> Mexicans particularly are invested with this awful image, which includes at least the following ingredients: filthy, unshaven, never bathes, lacking in personal hygiene, and likely to give you a communicable disease. A number of legal opinions actually deemed Mexicans a nuisance. They proceeded under that theory, as though the very presence of a handful of brown-faced people was certain to bring noise, disorder, and stench to a neighborhood."<sup>148</sup>

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143. See BENDER, *supra* note 129, at xiv, 12, 115, 116, 144 (suggesting Latinos as dirty); *id.* at 8, 133 (suggesting Latinos as stupid); RIVERA, *supra* note 97, at 11, 12, 20, 51-56, 63, 130-31 (providing various examples); *cf.* Bob Moser, *The Battle of Georgiaformia*, INTELLIGENCE REP. (Southern Poverty Law Center), Winter 2004, at 423, 444-48 (describing anti-immigrant attitudes in northern Georgia).

144. *E.g.*, (among many), ARNOLDO DELEON, *THEY CALLED THEM GREASERS* 17 (1983); OSCAR LEWIS, *FIVE FAMILIES* (1959) (depicting Mexican families as primitive and pathological); JOHN STEINBECK, *TORTILLA FLAT* (1935) (same); Arnolde DeLeon, *Initial Contact, Niggers, Redskins, and Greasers*, in *THE LATINO CONDITION: A CRITICAL READER* 158, 158-63 (Richard Delgado & Jean Stefancic eds., 1998); *LOSING IT* (Embassy Pictures 1983); *ONE EYED JACKS* (Twin Peaks 1961); PAT BOONE, *SPEEDY GONZALES* (MCA Records 1962).

145. BENDER, *supra* note 129, at 114-53; *see also* CECIL ROBINSON, *WITH THE EARS OF STRANGERS: THE MEXICAN IN AMERICAN LITERATURE* 36-37 (1963).

146. *E.g.*, BENDER, *supra* note 129, at xiii, 184-92. Compare this attribution with SAID, *CULTURE*, *supra* note 41, at 267-82 (depicting the Islamic word similarly, including the "fetid" Casbah—the opposite of the clean Western city).

147. See Rufus Sage, *Degenerate Inhabitants of New Mexico*, in 2 RUFUS B. SAGE, *HIS LETTERS AND PAPERS, 1836-47*, at 82-87 (LeRoy R. Hafen & Ann W. Hafen eds., 1956), *reprinted in* DAVID J. WEBER, *FOREIGNERS IN THEIR NATIVE LAND* 71-75 (1973) (an 1840s description of Mexicans); WEBER, *FOREIGNERS*, *supra*, at 1, 60, 83, 145, 149, 151-52, 258-64 (describing the dirty or "greaser" stereotype); *cf.* DAVID ROEDIGER, *WORKING TOWARD WHITENESS* 54 (2005) (describing immigrants as invested with this stereotype).

148. *Worm v. Wood*, 223 S.W. 1016, 1018 (Tex. Civ. App. 1920) (stating that housing built for occupation by negroes and Mexicans would greatly injure and practically destroy the "social conditions of a neighborhood"); *Harty v. Guerra*, 269 S.W. 1064 (Tex. Civ. App. 1915); *see* WEBER, *supra* note 147, at 153 (describing Mexican homes or settlements considered nuisances by surrounding Anglo communities); *see also* *People ex rel. Gallo v. Acuña*, 929 P.2d 596 (Cal. 1997) (upholding injunction against groups of Latino teenagers who habitually gathered in a city neighborhood, disturbing the neighbors, on ground that this constituted a public nuisance); *Lopez v. Seccombe*, 71 F. Supp. 769 (S.D. Cal. 1944) (Mexican Americans won access to public swimming pool over City of San Bernardino's objection that they were unclean and of bad morals).

"I read somewhere that early school authorities would separate Latino and Anglo children for this reason," I said. "In addition to rationalizing that separate education would benefit the Latino kids because of their linguistic difficulties, authorities would separate them in school because the Anglo parents would insist on it for hygienic reasons. Parents thought their kids would catch diseases or contract cooties or fleas."<sup>149</sup>

"And of course the Mexican kids would, in fact, come to school in raggedy clothes, because a farm worker's wages would hardly allow the family to shop at Abercrombie and Fitch during a back-to-school sale."

I recalled, idly, how Rodrigo had dressed sharply ever since I had known him. It must have galled him to think of generations of promising young Latino children growing up with a double handicap—unable to dress as stylishly as their Anglo counterparts, and, as a result, thought of as culturally or innately inferior, dirty, and prone to wallow in disease and filth.

Rodrigo continued: "A handbook, entitled 'Your Maid from Mexico' provides guidance for wealthy Anglo families wishing to hire a Mexican maid.<sup>150</sup> But it also provides rules for maids. Two-thirds of them have to do with being clean—using a toothbrush and deodorant, for example.<sup>151</sup> And not touching the guests at a dinner party.<sup>152</sup>

"And in today's anti-immigrant climate, you see evidence of the same thing. Immigration opponents cite, without any statistics whatsoever, the drain on emergency rooms, medical clinics, and other resources in regions with high rates of undocumented Latino

149. See DELEON, *GREASERS*, *supra* note 144, at 21, 28 (describing early Texans' perceptions of Mexican children as filthy and lice-infested); SARAH DEUTSCH, *NO SEPARATE REFUGE* 140 (1987); GILBERT G. GONZALES, *CHICANO EDUCATION IN THE ERA OF SEGREGATION* 20-22, 24-25, 37, 44 (1990) (describing attitudes towards Mexican students); Juan F. Perea, *Buscando América: Why Integration and Equal Protection Fail to Protect Latinos*, 117 *HARV. L. REV.* 1420, 1442 (2004) (arguing that in the 1960s many Anglo parents and teachers saw Mexican-American children as dirty and diseased); Peter Yoxall, *The Minuteman Project, Gone in a Minute or Here to Stay? The Origin, History, and Future of Citizen Activism on the United States-Mexico Border*, 37 *U. MIAMI INTER-AM. L. REV.* 517, 531-32 (2006) (quoting modern vigilante groups' beliefs regarding immigrants' diseases and filthiness); *cf.* PEREA ET AL., *supra* note 26, at 307 (discussing discrimination in access to swimming pools and public parks); Richard Delgado & Jean Stefancic, *Home-Grown Racism: Colorado's Historic Embrace—and Denial—of Equal Opportunity in Higher Education*, 70 *U. COLO. L. REV.* 703, 771 (1999) (quoting a 1975 pamphlet from the Colorado Department of Education that discussed the reasons for Mexican-American schoolchildren's "lack of motivation").

150. GLADYS HAWKINS ET AL., *YOUR MAID FROM MEXICO* (1959). For a discussion of this handbook, see PEARL IDELLA ELLIS, *AMERICANIZATION THROUGH HOMEMAKING* 47-49, 64 (1929); MARY ROMERO, *MAID IN THE U.S.A.* 87 (1992); see also GONZALES, *supra* note 149, at 46, 49-57.

151. HAWKINS ET AL., *supra* note 150, at 2, 4-5.

152. *Id.* at 52.

immigration.<sup>153</sup> This taps into the belief that Latinos are always getting sick and are prone to suffer diseases, accidents, and injuries.<sup>154</sup> In fact, they are easily the country's youngest and healthiest racial group, and they visit doctors and emergency wards in lower proportions than anybody else.<sup>155</sup> First we invest them with an unfair stigma, then we use it against them."

"A double bind," I commiserated. "And the heart-wrenching thing about it is that the stereotype comes about, in part, because of unfair and unsanitary living conditions that society imposes on the immigrants. If your migrant labor camp does not have running water or indoor toilets, as many do not, you will relieve yourself in the fields, behind a tree somewhere. If your camp lacks showers or hot water, you will not look, or maybe be, as clean as some Anglo family living in a suburban house with three bathrooms, each with a hot shower. If your mother has to wash your clothes in a river, they may not look as nice as the clothes of a schoolchild whose mother has a washer and dryer right in the kitchen."

"The taboo creates its own conditions of reinforcement, so that in time it comes to seem true, the way things are," Rodrigo concluded. "After a while, you see virtually every nativist writer—Pat Buchanan, Peter Skerry, Victor Davis Hanson, Peter Brimelow, and Samuel Huntington—casually referring to the same things, as though they were well known truths.<sup>156</sup> The environmental justice movement points out that sewage treatment plants and toxic dump sites are

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153. See, e.g., PETER BRIMELOW, *ALIEN NATION: COMMON SENSE ABOUT AMERICAN'S IMMIGRATION DISASTER* 35, 113, 186-87 (1995) (discussing fraud, pollution and environmental impact); PATRICK BUCHANAN, *STATE OF EMERGENCY: THE THIRD WORLD INVASION AND CONQUEST OF AMERICA* 29-31 (2006) (discussing disease); VICTOR DAVIS HANSON, *MEXIFORNIA: A STATE OF BECOMING* (2003) (doing "dirty work" and discussing the impact of population increase, disease, government programs, hospitals and prisons); SAMUEL HUNTINGTON, *WHO ARE WE? THE CHALLENGES TO AMERICA'S NATIONAL IDENTITY* 216, 221-56 (2004) (on the high cultural and economic costs of immigration); PETER SKERRY, *MEXICAN AMERICANS: THE AMBIVALENT MINORITY* 372 (1993) (discussing the fiscal impact of immigration); Phyllis Schlafly, *American Citizenship is Precious*, PHYLLIS SCHLAFLY REP., Nov. 2005, at 4 (discussing crime, education, health care and housing subsidies); John W. Whitehead, *A Ticking Time Bomb: Diseases that Cross American Borders*, RUTHERFORD INST., Dec. 13, 2004, [www.rutherford.org](http://www.rutherford.org) (search "Ticking Time Bomb") (discussing illegal smuggling, prostitution and disease).

154. See Yoxall, *supra* note 149 (citing anti-immigration groups' fear of diseased immigrants).

155. See Belinda I. Reyes, *Latinos in California*, in *LATINOS AND PUBLIC POLICY IN CALIFORNIA* 18, 21 (David Lopez & Andres Jimenez eds., 2003) (describing the group as having the smallest portion on welfare and the highest rate of participation in the labor force).

156. E.g., BRIMELOW, *supra* note 153, at xvii (performing "dirty jobs"), 35, 113, 186-87 (endangering public health); see also Peter Beinart, *Going Native*, NEW REP., Nov. 6, 2006, at 6 (referring to TV personality Lou Dobbs' depiction of Latino immigrants as bearers of "leprosy and malaria"); *supra* note 154 and accompanying text (discussing Latino immigration).

disproportionately located in minority neighborhoods—and nobody bats an eye.<sup>157</sup> But are we ready to move on to the next component?”

“I am,” I answered. “I gather that it’s sexuality.”

“It is. It and filth work together. I’m sure, Professor, that you’ve known white people who are uncomfortable around blacks. They don’t like to sit next to them on buses . . .”<sup>158</sup>

“I see this all the time,” I said. “You can get on a bus or train. The only vacant seat is next to a well-dressed, middle-aged black commuter. There can even be a few people standing. None of them wants to take that seat.”

“I’ve seen the same thing. One time, I had just got back to the States after all those years in Italy. I was riding a bus around Manhattan and noticed an empty seat. When I pointed it out to an elderly rider, he shook his head and said he was getting off soon. The seat was next to a black executive, I gathered from his well-tailored suit.”

“And did the rider get off at the next stop?”

“No. I don’t think he got off at all, and I rode the bus for several miles. I ended up taking the seat myself.”

Rodrigo continued: “And I’m sure you know a certain type of person, usually from the South, who won’t shake the hand of a black person or will do so only reluctantly.”<sup>159</sup>

“I have a colleague like that,” I said. “He’ll take my hand for just a quick, perfunctory squeeze, then pull his own away like a scalded cat. I don’t know whether he does this for everybody or just me. I thought maybe he has a germ phobia.”

“More likely, it’s a man-of-color phobia.” Rodrigo grimaced slightly. “Do you know about the writing of Joel Kovel?”

“I do. He’s a famous contemporary social scientist who coined a psychodynamic theory of race. It’s quite original and not at all flattering, especially to whites. He holds that many white people have embedded, deep in their psyches, devastating associations with blackness and black skin.”<sup>160</sup>

“Indeed. It’s of course impossible to prove or disprove a psychoanalytically based theory. But Kovel’s theory does seem to work, at least on an explanatory level. He says some white folks equate black and brown skin with dirt and feces. They shy away from

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157. See, e.g., LUKE COLE & SHEILA FOSTER, FROM THE GROUND UP: ENVIRONMENTAL RACISM AND THE RISE OF THE ENVIRONMENTAL RACISM MOVEMENT 4, 54-57 (2000). Could it be because narratives of filth make the locations seem logical and appropriate?

158. See generally JOEL KOVEL, WHITE RACISM: A PSYCHO-HISTORY (1970) (describing this psychoanalytic theory of racism).

159. *Id.* at 54, 95-96, 180 (describing aversive, dominative, and other varieties of racism).

160. See *id.* at 51-92 (describing this association).

it, unconsciously, and are never comfortable with one of us. They can't see us as persons, just as symbols of something they have been taught since childhood not to play with. We're taboo. Don't go there."

"And you were saying that a similar dynamic operates in the case of Mexican sexuality?"

### b. *Hypersexuality*

"Yes," Rodrigo replied. "Bender catalogs this stereotype as well.<sup>161</sup> He finds several versions of it: the sex-maniac Latino male lusting after white women, the ultimate prize; and the softer-edged soulful Latino lover, romantic and ready to break into song and serenade the Anglo princess on his guitar or take her dancing in the moonlight. For their part, Latina women are the lustful objects of Anglo men's desires."<sup>162</sup>

"Neither type is one you would want to take seriously, or take on as a partner in business. You certainly wouldn't want the men romancing your daughter."

"And so, like the dirty stereotype, it operates to put a distance between Anglos and Latinos, particularly Mexican men, such as the ones you would find around a migrant labor camp or community."

"Or find in town on an errand. Or in grade school," I added. "I gather that's your point."

"It is. And a steady stream of movie plots, stories, TV comedies, and other tales build on the hypersexual Latino or Latina.<sup>163</sup> They both prove the existence of the underlying taboo and reinforce it constantly, so that it doesn't weaken over time. And when Anglos have things well in hand, a second image, related to the first, takes its place."

161. BENDER, *supra* note 129, at 70-71, 118, 251 n.20 (citing examples of representation of the hypersexual Latina); see RIVERA, *supra* note 97, at 82-109 (describing popular images of Mexican American womanhood); Delgado & Stefancic, *Images*, *supra* note 44, at 1273-75 (noting the stereotype of the greaser out to seduce or rape Anglo women).

162. *E.g.*, TOMAS ALMAGUER, RACIAL FAULT LINES: THE HISTORICAL ORIGINS OF WHITE SUPREMACY IN CALIFORNIA 61-62 (1994); BENDER, *supra* note 129, at 70-74; REGINALD HORSMAN, RACE AND MANIFEST DESTINY: THE ORIGINS OF RACIAL ANGLO-SAXONISM 233 (1981); STEINBECK, *supra* note 144, at 153-54; Delgado & Stefancic, *Images*, *supra* note 44, at 1274-75. On the persistence of the inhibition against interracial romance and sex, see, e.g., Suzanne C. Miller et al., *Perceived Reactions to Interracial Romantic Relationships*, 7 GROUP PROCESSES-INTERGROUP REL. 354 (2004).

163. See BENDER, *supra* note 129, at 70-74, 118, 251 n.20 (discussing the overtly sexual portrayal of Latinos in Anglo culture); ELLIS, *supra* note 150, at 49 (noting that Mexican girls mature early and become highly interested in sex); LEWIS, *supra* note 144, at 87 (describing the frequent sexual advances of character Rosa's husband); STEINBECK, *supra* note 144, at 153-54 (discussing the voluptuous and passionate nature of character Dolores Engracia Ramirez); Delgado & Stefancic, *Images*, *supra* note 44, at 1273-75 (describing Mexican stereotypes in American culture).

"Which one is that?"

"Oh, it's the hapless, huddled figure who could not possibly be a sexual competitor. John-Michael Rivera writes that Anglos wanted Mexicans deferential, so they discouraged them from looking you in the eye. They taught them to walk in a shuffling gait and to wear loose clothes that allow no sharp definition of the body line. The sombrero, unlike the Texan ten gallon hat, sat low on the head, limiting the user's horizon, particularly his view up."<sup>164</sup>

"Telling." I shook my head. "And these sexual taboos, do you see evidence of them operating today, as you did for filth?"

"Everywhere. Writings by nativist writers such as Peter Brimelow,<sup>165</sup> Pat Buchanan,<sup>166</sup> Sam Huntington,<sup>167</sup> Tom Tancredo,<sup>168</sup> and Victor Davis Hanson<sup>169</sup> all call attention to the fast-breeding Latino immigrant. They warn of the swamping of superior Anglo genes by those of the swarthy Latinos and blacks."<sup>170</sup>

"And in the current immigration debate," I said, "proponents of restrictive policies evoke the specter of a 'flood of immigrants' and our schools and institutions awash in all those new bodies.<sup>171</sup> Some mean-spirited groups such as the Federation for American Immigration Reform cite cases, which nobody can prove or disprove, of immigrant Mexican women who sneak across the border while pregnant in order

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164. See RIVERA, *supra* note 97, at 110-34, 160-61 (describing the construction of Mexican manhood).

165. See BRIMELOW, *supra* note 153, at 43-57 (discussing immigration's contribution to U.S. population growth).

166. BUCHANAN, *supra* note 153, at 38-40; PATRICK BUCHANAN, *THE DEATH OF THE WEST: HOW DYING POPULATIONS AND IMMIGRANT INVASIONS IMPERIL OUR COUNTRY AND CIVILIZATION* 136 (2002).

167. HUNTINGTON, *supra* note 153, at 224, 227.

168. Congressman Tom Tancredo, Representing the 6th District of Colorado (official website), [http://tancredo.house.gov/issue\\_details.aspx?IID=7](http://tancredo.house.gov/issue_details.aspx?IID=7) (last visited Sept. 1, 2007) (detailing this concern).

169. HANSON, *supra* note 153, at 10-12, 38; see also MICHELE MALKIN, *INVASION* xv, 8, 31 (2002) (explaining some perceived negative effects of Mexican immigration).

170. *E.g.*, BRIMELOW, *supra* note 153, at 43-57, 88, 116-17, 273-74 (arguing that immigration and "intermarriage" is causing an increase in overall population and a shift in the American "ethnic balance") (citing RICHARD J. HERRNSTEIN & CHARLES MURRAY, *THE BELL CURVE: INTELLIGENCE AND CLASS STUDIES IN AMERICAN LIFE* 341-68, 549 (1994)); BEN J. WATTENBERG, *BIRTH DEARTH*, 112-15 (1987) (explaining the potential impact of increasing immigrant birth rates in the United States). On the origin of this "race-IQ" connection, see, e.g., Richard Delgado, *Can Science Be Inopportune? Constitutional Validity of Governmental Restrictions on Race-IQ Research*, 31 *UCLA L. REV.* 128, 131-44 (1983), which describes the history and current status of the "race-IQ" controversy.

171. See, e.g., BUCHANAN, *supra* note 153, at 7-50 (describing the effects of increasing Mexican immigration and speculating about the perceived negative consequences that such immigration will cause in the future); Federation for American Immigration Reform (official website), <http://www.fairus.org> (last visited Sept. 1, 2007) (discussing the increasing foreign-born population in the United States).

to give birth in a San Diego parking lot so that the baby will be an American citizen.<sup>172</sup> Once one member of a family is a citizen, these nativists warn, the others will ride piggyback on Junior to gain the benefits of American citizenship themselves. You see this fear of Latino sexuality and reproduction everywhere.”

We were both quiet for a moment, while the waiter came to ask if we would like refills of our coffee. We both nodded, and he disappeared to fetch the pot.

“Are you ready for your third component?” I asked. “It had to do with language, did it not?”

### c. *Jabber*

“Yes, it’s jabber,” Rodrigo replied. “This one holds that the Latinos operate in a different discourse world from ours.<sup>173</sup> Their very language reinforces their exoticism. It sounds funny, with all those trills and rollings of the tongue. Good old-fashioned Americans cannot, of course, speak it, and it’s unreasonable to suppose that we should learn it, as opposed to requiring the Mexicans to stop speaking it and use only English.<sup>174</sup> But not only that, their weird language provides a cover for them to make jokes at our expense and leer at our women.”<sup>175</sup>

172. See, e.g., Federation for American Immigration Reform, *Anchor Babies: The Children of Illegal Aliens*, [http://www.fairus.org/site/PageServer?pagename=iic\\_immigrationissuecenters4608](http://www.fairus.org/site/PageServer?pagename=iic_immigrationissuecenters4608) (last visited Oct. 17, 2007); Irene Riordan Struthers, Opinion, *Riordan’s Comments*, L.A. TIMES, Sept. 5, 1993, at M-4 (claiming that immigrant mothers “sneak across the border and give birth” in order to obtain educational and health care benefits).

173. See, e.g., BENDER, *supra* note 129, at 102-03 (discussing perception of Latinos as inassimilable Spanish speakers); BUCHANAN, *supra* note 153, at 83 (describing the potential effects of Spanish-speakers not learning English); HUNTINGTON, *supra* note 153, at 158-70, 221-56, 316-24 (noting that Mexican immigrants cluster together, do not assimilate, and retain the Spanish language even through two or three generations—all to the detriment of Anglo-Saxon culture and values); RIVERA, *supra* note 97, at 62 (discussing the perception of Mexicans as a racially inferior group of people speaking an “inferior language”); Perea, *Buscando América*, *supra* note 149, at 1441 (explaining the past and present segregation of Mexican-American children in schools); see also ROEDIGER, *supra* note 147, at 52-53 (noting that immigrants often are invested with this image of being a different, un-American race).

174. See, e.g., BRIMELOW, *supra* note 153, at 88-89, 206-07, 209-10 (arguing that the failure of Spanish-speaking immigrants to learn English will have harmful effects on the United States in the future); GONZALES, *supra* note 149, at 30-37, 41-44 (discussing language, assimilation, and the “Americanization” of Mexican-American children); U.S. English, Inc., (official website), <http://www.us-english.org/inc/official/survey/nationa.asp> (last visited Sept. 1, 2007) (advocating making English the official language of the United States); see also BENDER, *supra* note 129, at 93 (describing the failures of U.S. courts to recognize or remedy discrimination against Spanish-speakers).

175. See BENDER, *supra* note 129, at 91-92 (discussing the adoption of English-language laws by state legislatures and the implementation of pro-English agendas by private citizens); Kathleen Monje, *Suit Accuses Tavern Owner of Bias against Spanish-Speakers*, OREGONIAN, Oct. 12, 1990, at D1 (describing a situation in which a bartender allegedly forced patrons to leave her establishment because they were speaking Spanish).

"Although Spanish is a world language with a literature that includes Cervantes, Lope de Vega, and other writers who rival Shakespeare and Byron," I said, "narratives and stereotypes put the Spanish speaker on the same plane as a group of uncivilized cannibals sitting around a boiling pot, discussing how to cook the well-meaning Western missionary. Not only that, they come so attached to their strange language that they are unwilling to learn English.<sup>176</sup> They even expect us to provide ballots in Spanish so that they can vote in our elections without taking the trouble to learn our language and read campaign material written in it.<sup>177</sup> Most unfair of them."

"It's not just an irony," Rodrigo said. "It takes on real historical force. For example, few civil rights scholars know that Latinos were lynched in the Southwest."<sup>178</sup>

"They were?"

"Yes, in large numbers, and for many of the same reasons that blacks were—for acting uppity, for romancing Anglo women, and for harboring aspirations to get ahead."

"What do you mean by large numbers? I assume you mean more than one or two."

"Between four and five hundred.<sup>179</sup> That's about one-tenth the number of blacks who were lynched, but the number of Latinos in the country was much smaller, so the proportion is very similar."

"That's amazing. I had no idea."

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176. See HUNTINGTON, *supra* note 153, at xvi, 18-19 (claiming that immigration and bilingualism are resulting in a loss of the "American identity," noting, for example, the pressures to use Spanish as well as English on government forms, reports, and signs); ARTHUR SCHLESINGER, *THE DISUNITING OF AMERICA* 113 (1998) (arguing that bilingualism does not work in America and should not be institutionalized in American schools).

177. See HUNTINGTON, *supra* note 153, at xvi, 18-19 (describing the pressures to use Spanish as well as English on government forms, reports, and signs); see also Juan Perea, *Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English*, 77 MINN. L. REV. 269, 328-33, 335-49 (1992) (discussing language requirements for U.S. citizenship and examining the proponents of making English the official language of the United States).

178. See, e.g., ACUÑA, *OCCUPIED AMERICA*, *supra* note 15, at 66, 77, 147-48, 155 (describing how a great number of Latinos were lynched and murdered in the American Southwest in the nineteenth century); William D. Carrigan & Clive Webb, *The Lynching of Persons of Mexican Origin or Descent in the United States, 1848 to 1928*, 37 J. SOC. HIST. 411, 413 (2003) (arguing that historians often overlook violence against persons of Mexican descent that occurred in the United States in the nineteenth and early twentieth centuries); Rodolfo Acuña, *Crocodyle Tears, Lynching of Mexicans*, HISPANICVISTA.COM, June 20, 2005 [http://www.Hispanicvista.com/HVC/Opinion/Guest\\_Columns/062005Acuna.htm](http://www.Hispanicvista.com/HVC/Opinion/Guest_Columns/062005Acuna.htm) (describing the lynching of Mexicans in the United States in the nineteenth century).

179. See, e.g., ACUÑA, *OCCUPIED AMERICA*, *supra* note 15, at 66, 77, 147-48, 155 (describing the lynching of Latinos in the American Southwest in the nineteenth century); William D. Carrington & Clive Webb, "A Dangerous Experiment," 80 N.M. HIST. REV. 265, 268 (2005) (citing the number of Latinos lynched as 597); Carrigan & Webb, *supra* note 178, at 412-13.



“Nor do most people, and the reason is that the main accounts of these lynchings appeared in community newspapers, which were in Spanish. Until Rudy Acuña and other Spanish-speaking historians researched these accounts, hardly anyone knew how pervasive lynching of Mexican Americans in the Southwest was.”<sup>180</sup>

“And that may be one reason why Anglos, intentionally or not, suppress Spanish speaking among the Latino community and don’t want the kids growing up speaking that language,” I added. “It makes their own history too available to them and increases the chance that they might revolt against the established order.<sup>181</sup> It makes sense.”

“Not just that,” Rodrigo said. “Reducing the ability of the second generation of Latino immigrant kids to speak Spanish creates a divide between generations, in which the young cannot communicate with their elders. Many Latino histories, stories, legends, and tales . . .”

“Such as those in the *corridos* that you mentioned earlier.”<sup>182</sup>

“Indeed. Those and others. Many of those tales are oral and have no written record. They are in danger of being lost if generations cannot communicate with each other. This may be one reason that the second generation of Latino kids exhibits such a high dropout rate.<sup>183</sup> They learn English so that the majority culture with its stereotypes, TV plots with Latino villains, and other depictions that teach self-hatred, is wide open to them. A sensitive Latino child who does not speak Spanish has no defense against this vast cultural brainwash. Language represents continuity, struggle, and ultimately, self-preservation.”<sup>184</sup>

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180. See ACUÑA, OCCUPIED AMERICA, *supra* note 15, at 66, 77, 147-48, 155; see also WALTER VAN TILLBURG CLARK, THE OX-BOW INCIDENT 47-48, 153-189 (Modern Library 2001) (1940) (depicting the lynching of three innocent men, including one of Mexican descent, in the American West in 1885).

181. Compare PEREA ET AL., *supra* note 26, at 862, 937-38 (describing the role of U.S. “Indian schools” which attempted to erase Native American Indian children’s identification with their own culture), and Cassidy, *supra* note 59, at 132-77 (explaining how Australian and Canadian governments placed aboriginal children in institutions to force assimilation), with BRIMELOW, *supra* note 153, at 219, 273 (discussing the widespread retention of the Spanish language and lack of assimilation by Hispanic immigrants to the United States), and HUNTINGTON, *supra* note 153, at 18-19, 159 (arguing that bilingualism is bad policy, apt to encourage separatist thinking by Latinos).

182. See RIVERA, *supra* note 97, at 135-64 (explaining the important role played by poems and *corridos* in defining Mexican-American history and identity); *supra* notes 78-79 and accompanying text (discussing the negative effects felt by Latinos when they are unable to retain their knowledge of the Spanish language).

183. See PORTES & RUMBAUT, *supra* note 39, at 277-80 (arguing that forced assimilation of Mexican-American children leads to significant educational disadvantages).

184. See *supra* Part I.B.1 (describing the role of language and culture in postcolonial thought).

"I've read of contemporary attempts to interrupt a thread of Latino storytelling and cultural continuity," I said. "I bet you've seen these cases, too."

Rodrigo looked curious, so I went on: "In Lebanon, Tennessee, a small town whose Latino population had swelled recently, a judge in a custody hearing ordered a Latina mother, Felipa Berrera, to speak English to her eleven-year-old daughter or run the risk of losing any connection—legally, morally, and physically—with her forever. Other cases treat mothers who teach their children Spanish as guilty of child abuse."<sup>185</sup>

Rodrigo said, "I remember that case. The mother's native language is Mixtec, and she came from a poor area in central Mexico. Her predicament was more acute than might meet the eye. Once in the United States, Mixtecs rely heavily on their children, not just as babysitters, but as interpreters. Taking away Bererra's child not only traumatizes her as a mother, it also takes away her ability to communicate with the Anglo-speaking world."<sup>186</sup>

"Just as Ngugi and some of the postcolonials you mentioned earlier write," I added.<sup>187</sup> "It reminds me, too, of those record companies who discourage Latino recording artists from performing their music in Spanish. A *New York Times* article I was reading described one artist's capitulation to this regime as a case of 'having arrived.'<sup>188</sup> The article would have done better to describe it as a case of linguistic colonialism, pure and simple."

"It would have," Rodrigo said. "But speaking of the postcolonials, do you remember how Rudy Acuña suffered criticism at the hands of fellow academics for framing the Latino condition that way?"

"You mean as an internal colony?"<sup>189</sup>

185. Shaila Dewan, *Two Families, Two Cultures and the Girl Between Them*, N.Y. TIMES, May 12, 2005, at A1; see also ROY, CHECKBOOK, *supra* note 86, at 89 (noting that Indian call centers degrade an ancient civilization by training workers to conceal their Indian accent, affect an American drawl, and make "American" chit-chat, such as "Gee, what a hot day"); ARUNDHATI ROY, POWER POLITICS 83-84 (2d ed. 2002) (same); Diane Jennings, *Amarillo Mother to Speak English to Daughter: Not Doing So is "Abusing" Child, Judge Rules in Custody Case*, DALLAS MORNING NEWS, Aug. 29, 1995, at 1A (describing a Texas case in which a judge said that a mother was committing abuse by not teaching her child English).

186. Dewan, *supra* note 185.

187. See *supra* notes 54-59 and accompanying text (describing postcolonial theory and the effects of losing one's native language).

188. See Kelefa Sanneh, *Speaking to Young Latinos in a Language They Understand*, N.Y. TIMES, Apr. 14, 2005, at E3 (explaining how many popular radio stations are promoting English-speaking Latino recording artists).

189. See *supra* notes 17-19 and accompanying text.

“Right. It just occurred to me that a large body of evidence weighs in his favor, namely that Latino people themselves see their situation that way. Not all, of course, but many do.”

“You mean in literature, oral traditions, that sort of thing?”

“Exactly. On the other side of the world, postcolonial writers build on popular traditions. Writers here could do the same.”

“Intriguing,” I said. “A few black writers, such as Robert Allen, have adopted a postcolonial framework in writing about the black situation.<sup>190</sup> Black Panthers, particularly Eldridge Cleaver, too.<sup>191</sup> And Native American literature, both oral and written, addresses these ideas as well.<sup>192</sup> But I’d love to hear about your Latinos.”

#### 4. How Latino Folk Culture Reflects the Community’s Self-Perception as a Colonized Nation

“Hundreds of *corridos*, *actos*, *cantares*, and laments—called *decimas*—complain of swaggering, ruthless Anglo developers who cheated the Mexicans out of their ancestral lands, and of white teachers and authority figures who insult them and treat them poorly.<sup>193</sup> *Corridos* tell of brutal Texas Rangers who shoot them for no good reason and white men who treat their women as sex objects and their men with disrespect.<sup>194</sup> Americo Paredes, who taught at Texas, published several collections of this literature.”<sup>195</sup>

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190. See ALLEN, *supra* note 20, at 1 (“Black America is an oppressed nation, a semicolony of the United States . . .”).

191. See, e.g., CLEAVER, *supra* note 23, at 65-137 (describing the injustice and hardships experienced by African-Americans due to years of discrimination and unfair treatment); Delgado, *Rise and Fall*, *supra* note 22 (discussing the response of the FBI and the U.S. government to the Black Panther Party).

192. See, e.g., *supra* notes 28-30 and accompanying text (explaining the postcolonial perspective of Native American history).

193. See KANELLOS, *supra* note 92, at 6-10, 16-21 (explaining how works by Hispanic authors reveal feelings of resentment toward Anglos due to persecution, discrimination, and poor treatment); AMERICO PAREDES, *A TEXAS-MEXICAN CANCIONERO* xvii-xviii, xxvi-xxxii (Univ. of Tex. Press 1995) (1976) (describing poems and works written as a response to “hostile Anglo culture”); RIVERA, *supra* note 97, at 135-64 (noting that many Mexican-American poems deal with themes of poor treatment and exclusion by Anglos); see also Katherine S. Mangan, *White Hat, Black Tales: A Texas Scholar Digs into the Dark Truths about the Role of the Texas Rangers in Early 20th-Century Border Wars*, CHRON. HIGHER EDUC., Aug. 5, 2005, at A11 (noting that tales of the Texas Rangers’ brutality are hidden to Anglos). On El Teatro Campesino, and its relation to the *carpa* (tent theatre) tradition, which consisted of traveling shows of skits, lampoons, and social satire, see YOLANDA BROYLES-GONZALES, *EL TEATRO CAMPESINO: THEATER IN THE CHICANO MOVEMENT* 48 (1994), which explains the traditional nature and origins of such performances; Jorge Huerta, *When Sleeping Giants Awaken: Chicano Theatre in the 1960s*, 43 THEATRE SURV. 1, 25-26 (2002), which describes the origins of the performances.

194. See, e.g., KANELLOS, *supra* note 92, at 106-30 (discussing turmoil on the Texas-Mexican border—“Roots of Resistance”); JOSÉ LIMON, *MEXICAN BALLADS, CHICANO POEMS* 24-25 (1992) (noting *corridos* about Gregorio Cortez and Texas Rangers and border men); PAREDES, *supra*

"Didn't a recent movie build on one of his themes?"

"Yes. *The Ballad of Gregorio Cortez*.<sup>196</sup> It tells the story of a legendary Mexican-American outlaw who bravely defended his rights and challenged injustice at the hands of Texas authorities. Other tales and songs describe Mexican Americans' struggle to preserve their identity and affirm their rights as human beings. They tell of feisty heroes who refused 'to take it lying down,' but fought back against injustice and oppression.<sup>197</sup> One group, known as the 'border corridos,' celebrates heroes who risk their lives *defendiendo su derecho*—defending their rights."<sup>198</sup>

"These certainly sound like some of the postcolonial themes you mentioned earlier from the other side of the world."

"Yes. And the people sang these songs at events, such as weddings, and at work when no Anglos were listening. Oh, and before I forget—some of the *corridos* describe *sin verguenza*, or shameless Anglo thieves and cattle rustlers."

"Exactly the opposite of the way Latinos were constructed in the Anglo imagination, as devious, thieving, shoot-you-in-the-back types."<sup>199</sup>

"The literature does open one's eyes. One theme reappears frequently: how Anglo Americans claimed to be *cristianos* and approached you with an overwhelming sense of moral superiority. They established a system of law that was supposed to protect

note 193, at 29, 32-37, 43 (describing the brutal actions of Texas Rangers); AMERICO PAREDES, *FOLKLORE AND CULTURE ON THE TEXAS-MEXICAN BORDER* 29 (1993) (mentioning a *corrido* which details the actions of Texas Rangers); AMERICO PAREDES, *WITH HIS PISTOL IN HIS HAND* xvii, 30-33 (6th prtg. 1986) (recounting the brutality of Texas Rangers).

195. See REBECCA THATCHER MURCIA, AMERICO PAREDES 8, 24 (2003) (describing the reaction of the Anglo world, including publishers, to Paredes' criticism of the Texas Rangers as little more than brutal, Mexican-hating thugs). Anglo society, of course, had constructed them as larger-than-life heroes. Paredes was the first to uncover how they colluded with unscrupulous squatters to drive Mexican Americans off their lands in Texas, and "shot first and asked questions later." He also wrote about how they could not catch Gregorio Cortez after chasing him hundreds of miles across central and southern Texas. *Id. passim*. See also PAREDES, *supra* note 193, at 31 (describing Gregorio Cortez' flight from Texan authorities). An historian, Paredes studied the *actos*, *corridos*, and *decimas*—ten-line stanzas—of the Texas Mexican-American community, some of which his own family had sung for generations. MURCIA, *supra*, at 24-27.

196. (MGM Studios 1982); see also LIMON, *supra* note 194, at 17 (explaining the heroic depiction of Cortez); PAREDES, *supra* note 193, at 31, 66 (noting a *corrido* about Gregorio Cortez); RIVERA, *supra* note 97, at 137-39 (describing the historical impact of Cortez).

197. *E.g.*, PAREDES, *supra* note 193, at xviii, 59 (describing songs about Mexican-American experiences with Anglo "conquerors" and American settlers in the mid-eighteenth century).

198. *Id.*; see also KANELLOS, *supra* note 92, at 130-75.

199. Compare Delgado & Stefancic, *Images*, *supra* note 44, at 1273-75 (describing cultural images of thieving Mexicans), with PAREDES, *supra* note 193, at 21 (describing *corridos* of Anglo-American raiders and cattle thieves), and *id.* at 32, 35, 66, 69-70, 90 (describing Anglos as cowardly and unwilling to fight when a Mexican stood up for his rights).

everyone's rights. Yet they ended up acting worse than the Comanches."<sup>200</sup>

"Do any of the ballads mention lynching?" I asked. "You mentioned this earlier."

"Some of them do."<sup>201</sup> They also describe many uprisings, such as the one resulting from El Plan de Diego and a resulting Anglo crackdown, another that occurred when Gregorio Cortes was finally arrested, and several that protested lynchings.<sup>202</sup> One famous *corrido*, entitled *Los Sediciosos*, celebrates a 1915 uprising in which a large group of angry Mexicans battled a force of Anglos to avenge a host of indignities.<sup>203</sup> Others celebrate Joaquin Murieta, a Robin Hood type figure who stole from the rich and gave to the poor.<sup>204</sup> Modern-day ballads celebrate *braceros*, or fence-crossing, undocumented aliens who make it across the border, or even drug dealers who thumb their noses at Anglo authority figures."<sup>205</sup>

"What about the themes you mentioned—filth, hypersexuality, and jabber?"

"They appear, too, sometimes accompanied by wonderment and a sense of irony. For example, one complains that Anglos consider Mexicans dirty, when it is they who desecrate the earth and pollute

200. See PAREDES, *supra* note 193, at 21-30 (detailing the theme of Anglo hypocrisy).

201. See *id.* at 30-31 (noting that reports about lynchings of Mexicans in Texas caused anti-American riots in Mexico City in the early twentieth century).

202. See PAREDES, *supra* note 193, at 31-33 (detailing the actions of Gregorio Cortez); RIVERA, *supra* note 97, at 144, 146, 155-56 (describing uprisings and armed resistance); *supra* notes 193-95 and accompanying text (describing Anglo mistreatment of Latinos and the uprisings that followed).

203. PAREDES, *supra* note 193, at 32-33; RIVERA, *supra* note 97, at 145-46.

204. *E.g.*, KANELLOS, *supra* note 92, at 7 (noting border ballads about "social rebels" such as Joaquin Murieta); see also Royal Chicano Air Force Homepage, <http://www.chilipie.com/rcaf/> (last visited Sept. 1, 2007) (describing repertory and history of an indigenous group of Chicano artists, novelists, and satirists).

205. See MARIA HERRERA SOBEK, *THE BRACERO EXPERIENCE: ELITLORE VERSUS FOLKLORE* 77 (1979) (recounting the *corrido* *La Triste Situacion* [*The Sad Situation*], in which border-crossing Mexicans, desperate for work, suffer apprehension by the authorities, and are transferred to jail where they are fed hot water and oatmeal); *id.* at 99-101 (describing *El Corrido de los Mojados* [*The Tale of the Wetbacks*], which notes a similar tale of misfortune); *id.* at 112-13 (recounting *Lamento de un Bracero* [*Bracero's Lament*], in which a *bracero* rancher is taken prisoner). The lyrics of these songs underscore the plight of the Latino:

The light skinned men are very wicked, they take advantage of the occasion,  
And all the Mexicans are treated without compassion . . .  
Goodbye, beloved countrymen, we are being deported  
But we are not bandits, we came to work.

LOS HERMANOS BAÑUELOS, *El Deportado*, Pt. 1-2, on *CORRIDOS & TRAGEDIAS DE LA FRONTERA* (Arhoolie Records 1994); see also ELIJAH WALD, *NARCOCORRIDO: A JOURNEY INTO THE MUSIC OF DRUGS, GUNS AND GUERRILLAS* 42-65, 267-71 (2001) (recounting derring-do among the drug trade).

the streams.<sup>206</sup> Later, community newspapers such as *El Clamor* presented an image of taste and refinement to counter the Yankee image of a group of stupid, coarse barbarians and 'greasers.'<sup>207</sup>

"Telling," I said. "And a little sad that they should even feel they had to. But I think you also mentioned struggles over land rights."

### 5. Latter-day Struggles over Land

"Oh, right, I did," Rodrigo said. "You don't let me get away with a thing, Professor. I really like the way you push me. Yes, this is another area that shows Latinos' consciousness that they are a colonized people and the ways in which they are pushing back."

"You mentioned that this is a common theme in the—what do you call them, *corridos* and *cantares*?"

"Your pronunciation is good, Professor. Your memory, too. Yes, it is one of the commonest themes—the way that greedy Anglo poachers, abetted by crafty lawyers and crooked land registration agents, cheated the Mexicans of their ancestral holdings, guaranteed by the Treaty of Guadalupe Hidalgo."<sup>208</sup>

"And that indignation hasn't gone away, I think you said."

"Not at all. It lives in the memory of the families, perhaps in part because of *corridos* and countless recountings. Reies López Tijerina tapped those memories in his New Mexico land revolt during the 1970s.<sup>209</sup> Mexican small farmers sued to regain access to ancestral

206. Interview with Anonymous in Truckee, Cal. (n.d.).

207. See KANELLOS, *supra* note 92, at 7-8 (describing the emergence of such newspapers and their attempts to present an image of refinement and education).

208. Treaty of Guadalupe Hidalgo, *supra* note 133; see ACUÑA, OCCUPIED AMERICA, *supra* note 15, at 53-56, 369 (discussing the Treaty of Guadalupe Hidalgo); MALCOLM EBRIGHT, LAND GRANTS AND LAWSUITS IN NORTHERN NEW MEXICO 34, 38-39, 45-50 (1994) (discussing the treaty and land claims that followed). Anglos, of course, tell the same stories, but from the opposite direction. See, e.g., Stephen Crane, *A Man and Some Others*, 53 CENTURY MAG. 601, 601-07 (1897) (relating a story in which a Mexican confronts an Anglo cowboy and asks him to leave his land, or else, at which point the nameless Mexican hrute kills Bill when he proudly refuses to leave); see also RIVERA, *supra* note 97, at 75 (discussing this narrative). In 1915, El Plan de San Diego, a south Texas radical reform movement to free Mexican land from Anglo capitalism—by violent overthrow if necessary—led to two dozen battles and raids before U.S. forces put it down. The Mexican insurgents, fully aware of their danger, called themselves "*Los Sediciosos*" and aimed to avenge a half-century of repression and restore lost lands. Their exploits, including burning railroad buildings, destroying bridges and Anglo-owned ranches, cutting telegraph lines, and freeing branded cattle, live on in cultural memory. See the *corrido Los Sediciosos* in PAREDES, *supra* note 193, at 72-73, for a description of this group of insurgents.

209. See ACUÑA, OCCUPIED AMERICA, *supra* note 15, at 333, 361, 368-71 (discussing Reies López Tijerina and his crusades against unjust land allocation).

grazing land in southern Colorado in the 'Taylor Ranch' litigation.<sup>210</sup> And just the other day, the Government Accountability Office released a report, prepared at the request of two western governors, that whitewashed the sordid history of land grant adjudication in the Southwest, but went on to list options that Congress could pursue to rectify the many injustices and hard feelings left over from that period."<sup>211</sup>

We paused when the waiter appeared, holding a tray with our check in a neat blue leather folder.

"Speaking of fairness, let's split it," Rodrigo suggested.

"No, let me pay," I said. "I've learned a lot from our conversation. It's going to help me teach that class next year. And besides, I make more money than you. I hope that doesn't make me a colonial oppressor."

Rodrigo smiled and threw up his hands in surrender. As I filled out the credit card statement, I said, "We greatly enjoyed our meals."

The waiter said, "*Muchisimas gracias*. I'll pass that on to the chef. You two must be professors, right?"

"We are," Rodrigo said. "He teaches at the law school down the block. I'm at the one the next state over."

"I like your outfit," he said. "Do you play or sing?"

"I do, actually," Rodrigo replied, modestly. "I'm taking guitar lessons right now."

"We have music Friday and Saturday nights," the waiter said. "Bring your guitar some time and join in."

"I may just do that, the next time I'm in town. Thanks for the invitation."

Rodrigo sneaked a quick look at his watch and said, "Oops."

I looked at mine, then said: "Time to go. Theresa expects me in twenty minutes." Then, after a short pause to catch my breath, I said, "Rodrigo, I have followed your career for nearly fifteen years. We have discussed the decline of the West, affirmative action, love, law and economics, and a host of other topics. I have seen you earn your LL.M., graduate, marry, and go through many adventures . . ."

"And misadventures," he added quickly. "I'm sure you remember, Professor, my two deportations and that kidnapping."

"Those and more. But today's, I think, is your most powerful insight of all. It unites discourse theory and the materialist wing of

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210. See David Curtin, *Home Again, But It's Changed After 45 Years*, DENVER POST, Aug. 8, 2005, at A1 (describing the "Taylor Ranch" litigation, which gave descendants of Mexican settlers land-use rights to ancestral grazing land in Colorado).

211. See U.S. GOV'T ACCOUNTABILITY OFFICE, *supra* note 90, at 167-68 (noting that one possible option is simply to return U.S. government-owned land under the control of the Forest Service to the descendants of the Mexican settlers).

critical race theory. But it also promises to connect two important bodies of antistatutory writing that have developed separately and, in most cases, with little awareness of each other. It may get race scholars and activists in the United States talking with their counterparts overseas. It may bring together international human rights law and domestic civil rights law in a powerful synthesis. But how will you popularize this? You can't just write a casebook or law review article. If you can't find a way of bringing it to the people, it will remain a mere theory."

"I've actually given this some thought, Professor. Do you remember how Paul Butler popularized his work on jury nullification?"<sup>212</sup>

"Didn't he go on talk shows and black radio?"

"He did."

"And?"

"Well," Rodrigo blushed. "I've taken to composing rap."<sup>213</sup>

"Oh, yes, I think you sent me a reprint of your first effort. Not bad."

"And I'm thinking of trying my hand at a *corrido*."

"What about your academic friends who have no interest in rap or *corridos*? What can they do?"

"They can show the material roots of the taboo—and its periodic relaxations and manifestations of feigned friendship. They can show how the occasional breakthroughs of Latino civil rights, like *Hernandez v. Texas*,<sup>214</sup> come about not so much from Anglo generosity or conscience, but from Anglo self-interest or political necessity. They can show how racism directed at Latinos today has long historical roots. And, like you, Professor, they can broaden their civil rights courses beyond the black-white binary to include the fortunes of more groups than blacks alone."

"As you have done."

"Yes. But for me it came easy. As you know, I'm multiracial. I look black but my father's roots are in the Caribbean, and he and his family spoke perfect Spanish."

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212. See Delgado, *Remonstrance*, *supra* note 1, at 278 (describing Paul Butler's use of radio and television to popularize his thoughts on jury nullification).

213. See Richard Delgado, *Si Se Puede, But Who Gets the Gravy?*, 11 MICH. J. RACE & L. 9, 9-20 (2006) (introducing the concept of "Critical Rap Theory").

214. 347 U.S. 475, 476-82 (1954); see Delgado, *Rodrigo's Roundelay*, *supra* note 3, at 25-65 (describing how the case influenced Rodrigo's "interest-convergence hypothesis").



## CONCLUSION

Minutes later, as we rode separate taxis—Rodrigo to his celebration party downtown, I to Theresa's townhouse to pick her up and change clothes—I reflected on what we had said. His discussion of postcolonial theory struck me as particularly promising.

I recalled how revisionist historians such as Peter Irons and Henry Reynolds, both white, had laid the basis for Japanese reparations and Australia's recent *Mabo* decision, which repudiated the doctrine of *terra nullius* under which Australian settlers stole thousands of square miles of indigenous lands a century ago.<sup>215</sup> Would Rodrigo's call for a postcolonial analysis of the American racial predicament lead to breakthroughs of comparable magnitude? Might it even lead to coalitions with liberation movements overseas?<sup>216</sup> Or would his pungent analyses of the majoritarian mindset cut too close to home, make mainstream scholars uncomfortable, and be ignored?<sup>217</sup>

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215. *Mabo v. Queensland II* (1992) 175 C.L.R. 1; see Nick Squires, *Historic Court Ruling Returns Desert Homeland to Aborigines*, S. CHINA MORNING POST, July 2, 2005, at 8 (noting the return of thousands of square kilometers of Australian land to indigenous inhabitants); *The Day Our History was Retold*, CANBERRA TIMES (AUSTL.), July 16, 2005, at A2 (describing the impact of the court's decision and the rejection of *terra nullius*).

216. I thought of Indian revolts in Oaxaca, Zapatistas in Mexico, peasant movements throughout Latin America, and Indian villagers uniting in opposition to mega-dams. See ARUNDHATI ROY, *THE COST OF LIVING 10-81* (Modern Library 1999) (1992) (describing opposition to the building of a controversial dam on the Narmada river in India). Additionally, I thought of the host of postcolonial writers Rodrigo mentioned who are searching for new ways to frame third world struggles. *E.g.*, SINGH, *supra* note 33, at 174-211 (noting problems faced by African-Americans in contemporary, "postcolonial" America); James V. Fenelon & Thomas D. Hale, *Indigenous Struggles over Autonomy, Land, and Community*, in *LATINOS AND THE WORLD SYSTEM* 107-22 (Ramon Grosfoguel et al. eds., 2006) (explaining the continuing struggles of indigenous peoples); *supra* text accompanying note 23 (comparing police actions dealings with minorities to those of colonial powers). I thought of the protests that broke out, in this country and elsewhere, against the World Trade Organization ("WTO") and International Monetary Fund ("IMF") for their part in advancing Western hegemony at the expense of farmers and ordinary people in the developing world. See A'an Suryana, *Farmers Struggle against WTO, IMF*, DJAKARTA POST, Apr. 3, 2002, available at <http://www.tradeobservatory.org/headlines.cfm?refID=17346>. Rodrigo's highlighting of the continuity between all these struggles and domestic racism offered, I thought, a fruitful way to bring the two bodies of antisubordination theory together and enrich both. In particular, I thought that Rodrigo's insight that domestic racism allows the public more readily to accept imperialistic policies overseas and wars of aggression—because those who bear their brunt are invariably black or brown—possessed real explanatory power. At a minimum, it supplied a starting point for conversations between U.S. civil rights scholars and their overseas counterparts.

217. In particular, could they deem his notion, of racism against Latinos as taking the form of a triple taboo, itself taboo—too unflattering for majoritarian scholars to contemplate? See, *e.g.*, Richard Delgado, *White Interests and Civil Rights Realism: Rodrigo's Bittersweet Epiphany*, 101 MICH. L. REV. 1201, 1207-24 (2003) (observing that using the "R" word is now anathema in certain circles and that the new purpose of civil rights law is to protect whites and their feelings, not the wellbeing and freedom of blacks, Latinos, and women); see also ANN STOLER, *HAUNTED*

It certainly stood to energize U.S. civil rights scholars, whose writing, I thought, had been producing fewer and fewer breakthroughs and less and less innovation.

In particular, I was intrigued by his discussion of race-as-taboo and thought his application of it to Latinos promised a fruitful way of understanding that group's tortured history.

I looked forward to seeing his casebook develop and to using it in my own classes. But my reverie was interrupted when the taxi driver announced, a little sharply, "We're here, Professor. This is the address you wanted, right?"

As I paid him and walked up the steps to Theresa's condo, I thought how fortunate I was to have a protégé like Rodrigo and how reassuring it felt to learn that many young scholars of color—many Rodrigos—were graduating from law school, serving clerkships, applying for faculty positions, and waiting to make their marks on the world.

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