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IMMIGRATION AND LATINO IDENTITY

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The racial identity of people of color, including Latinas and Latinos, must be viewed from at least two vantage-points. First, we must consider identity formation at the *individual* level, namely how a person engages in the difficult process of constructing his or her personal identity.¹ Second, as critical Latino theory has begun to do for Latinos, racially subordinated people should analyze the construction of *group* identity.² This essay examines the relationship between immigration and Latino group identity.³

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1. See Leslie G. Espinoza, *Multi-Identity: Community and Culture*, 2 VA. J. SOC. POL'Y & L. 23 (1994) (analyzing need to investigate various identities of individual); Berta Esperanza Hernández-Truyol, *Borders (En)gendered: Normativities, Latinas, and a LatCrit Paradigm*, 72 N.Y.U. L. REV. 882 (1997) (examining multidimensionality of Latina/o identity); see also Ian F. Haney López, *The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice*, 29 HARV. C.R.-C.L. L. REV. 1, 46-53 (1994) (analyzing the role of individual choice in adoption of racial identity). Individual identity choice by Latinos is a vitally important topic about which I devote consideration in a book entitled HOW DID YOU GET TO BE MEXICAN? (Temple Univ. Press, forthcoming 1998) (analyzing experiences of person of mixed Anglo/Latino background). Similar identity struggles have been analyzed thoughtfully by, among others, RICHARD RODRIGUEZ, HUNGER OF MEMORY: THE EDUCATION OF RICHARD RODRIGUEZ (1982) (recounting identity issues of Mexican-Americans growing up in Sacramento); Margaret E. Montoya, *Máscaras, Trenzas, y Greñas: Un/masking the Self While Un/braiding Latina Stories and Legal Discourse*, 17 HARV. WOMEN'S L.J. 185 (1994) (analyzing identity issues facing Latinas at Harvard Law School); Yxta Maya Murray, *The Latino-American Crisis of Citizenship*, 31 U.C. DAVIS L. REV. 503 (1997) (explaining the identity choice of mixed Anglos/Latinas).

2. See, e.g., Francisco Valdes, *Foreword: Latina/o Ethnicities, Critical Race Theory, and Post-Identity Politics in Postmodern Legal Culture: From Practices to Possibilities*, 9 LA RAZA L.J. 1, 24-30 (1996). For important foundational readings in the LatCrit movement, see THE LATINA/O CONDITION: A CRITICAL READER (Richard Delgado & Jean Stefancic eds., N.Y.U. Press, forthcoming 1998) and Jean Stefancic, *Latino and Latina Critical Theory: An Annotated Bibliography*, 85 CAL. L. REV. 1509

Immigration continuously and constantly transforms the "Latino community." Due to the immigration of persons from Latin America, the Latino population in the United States is growing by leaps and bounds. A 1997 Census Bureau report projected that by the year 2005, because of immigration and high fertility rates, Latinos will surpass African-Americans as the largest minority group in the United States, constituting about one-fourth of the total U.S. population.⁴

The complexities of the immigration dynamic for Latinos are often ignored. With the development of a transnational labor force,⁵ migration occurs back-and-forth between the United States and Mexico.⁶ Many in the United States, however, focus exclusively on migration to this country.⁷ The fluidity impacts the building of group solidarity, thereby affecting the ability to sustain successful political action. In addition, intergenerational changes occur as Latin American immigrants have children who are U.S. citizens with different life experiences and different identities. Adding another layer of complexity, national origin allegiances, linked to the country of origin of Latino immigrants or their ancestors, at times have hindered the building of a pan-Latino identity.⁸ These com-

(1997), 10 LA RAZA L.J. 423 (1998).

3. See K. ANTHONY APPIAH & AMY GUTMANN, *COLOR CONSCIOUS: THE POLITICAL MORALITY OF RACE* 93 (1996) (distinguishing between individual and collective identities, though recognizing the relationship between the two); see also Kenneth L. Karst, *Myths of Identity: Individual and Group Portraits of Race and Sexual Orientation*, 43 UCLA L. REV. 263 (1995) (examining the construction of individual and group racial and sexual orientation identities). For an effort to balance the interests in group-based rights and individual self-determination with respect to identity, see Martha Minow, *Not Only for Myself: Identity, Politics, and Law*, 75 OR. L. REV. 647 (1996).

4. See Katharine Q. Seelye, *U.S. of Future: Grayer and More Hispanic*, N.Y. TIMES, Mar. 27, 1997, at B16. The Census report confirmed previous "projections indicat[ing] that early in the twenty-first century, Latinos will be the largest group of color in the United States." Deborah Ramirez, *Multicultural Empowerment: It's Not Just Black and White Anymore*, 47 STAN. L. REV. 957, 962 (1995) (footnote omitted).

5. See Rachel F. Moran, *Foreword—Demography and Distrust: The Latino Challenge to Civil Rights and Immigration Policy in the 1990s and Beyond*, 8 LA RAZA L.J. 1, 18-23 (1995) (analyzing transnational identity of many Latinos who immigrated to United States because of need for cheap labor); Enid Trucios-Haynes, *LatCrit Theory and International Civil and Political Rights: The Role of Transnational Identity and Migration*, 28 U. MIAMI INTER-AM. L. REV. 293 (1996-97) (discussing the significance of transnational identity of many Latinos).

6. See BELINDA I. REYES, PUBLIC POLICY INST. OF CAL., *DYNAMICS OF IMMIGRATION: RETURN MIGRATION TO WESTERN MEXICO* (1997) (studying return migration from United States to Mexico by Mexican nationals).

7. When politicians present estimates of the Mexican immigrant population in the United States, they often fail to account for return migration to Mexico and thus overstate the immigrant population in this country. See Sam Dillon, *U.S.-Mexico Study Sees Exaggeration of Migration Data*, N.Y. TIMES, Aug. 31, 1997, at A1 (quoting demographer Frank D. Bean); see also Binational Study, *Migration Between the United States and Mexico* (1997) (pre-publication copy) (on file with author) (estimating the population of Mexican-born persons living in United States and studying U.S./Mexico migration).

8. See RODOLFO O. DE LA GARZA, ET AL., *LATINO VOICES* 39 (1992) (reporting

plexities, all directly or indirectly attributable to immigration, affect Latino group identity.

Put simply, the Latino community in the United States is far from static. Great changes in the demographics of Latinos occurred during the second half of the twentieth century. Dominant society, and Latinos themselves, have not fully grasped the implications of these demographic changes. The effect of these changes on group identity and intra-Latino relations warrants our consideration.

I. IMMIGRATION AND INTRA-LATINO CONFLICT

Immigration occasionally has contributed to *intergroup* and *intragroup* conflict.⁹ Conflict between Latinos and African-Americans has been studied¹⁰ and at various times has been sensationalized by the media. For example, in a well-known *Atlantic Monthly* article, Jack Miles contends that employers in Los Angeles prefer docile Mexican immigrants over African-Americans.¹¹ Similarly, heavy press coverage has focused on Cuban/African-American conflict in Miami¹² and African-American/Central-American tensions in the Washington, D.C. metropolitan area.¹³

While *intergroup* hostility receives attention, *intragroup* conflict between immigrants from Mexico and the established Mexican-American community in the United States is generally ignored. Such tension, however, is almost inevitable in light of the immigra-

that survey data revealed that Latinos were more likely to self-identify in national origin terms, such as Mexican-American, Chicano, Puerto Rican, or Cuban, than to use pan-ethnic identifiers such as Latino, Hispanic, or Spanish American); see also Max J. Castro, *Making Pan Latino: Latino Pan-Ethnicity and the Controversial Case of the Cubans*, 2 HARV. LATINO L. REV. 179 (1997) (analyzing place of Cuban-Americans, with their unique historical and immigration experience, in greater Latino community).

9. For a general analysis of conflicts of this sort, see Bill Ong Hing, *Beyond the Rhetoric of Assimilation and Cultural Pluralism: Addressing the Tension of Separatism and Conflict in an Immigration-Driven Multiracial Society*, 81 CAL. L. REV. 863 (1993) (analyzing the conflict caused by immigration and an increasingly multiracial society); Eric K. Yamamoto, *Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-Civil Rights America*, 95 MICH. L. REV. 821, 852-66 (1997) (reviewing conflicts between communities of color).

10. See generally BILL PIATT, BLACK AND BROWN IN AMERICA: THE CASE FOR COOPERATION (1997) (analyzing conflict between African-Americans and Latinos in the U.S. and advocating cooperation to achieve racial justice).

11. Jack Miles, *Blacks vs. Browns*, ATL. MONTHLY, Oct. 1992, at 41. For analysis of how the focus on African-American/Latino conflict plays into the hands of dominant society, see RODOLFO F. ACUÑA, ANYTHING BUT MEXICAN: CHICANOS IN CONTEMPORARY LOS ANGELES 127-31 (1996).

12. See Larry Rohter, *As Hispanic Presence Grows, So Does Black Anger*, N.Y. TIMES, June 20, 1993, at A2. See generally U.S. COMM'N ON CIVIL RIGHTS, RACIAL AND ETHNIC TENSIONS IN AMERICAN COMMUNITIES: POVERTY, INEQUALITY, AND DISCRIMINATION—VOLUME IV: THE MIAMI REPORT (1997) (analyzing race relations and interethnic conflict in Miami).

13. See James N. Baker with Clara Bingham, *Minority Against Minority*, NEWSWEEK, May 20, 1991, at 28.

tion and the on-going diversification of the Latino community.¹⁴ Moreover, the unequal distribution of legal rights among Latinos contributes to the tensions. Many laws, for example, distinguish between Latinos based on immigration status. Latino noncitizens can be deported while Latino citizens cannot. Similarly, Congress' 1996 welfare reform barred certain legal immigrants from participating in federal benefits programs,¹⁵ which disparately impacts Mexican immigrants who naturalize at lower rates than other immigrant groups.¹⁶

The Supreme Court has sanctioned legal distinctions made between Latino immigrants and citizens. In *Espinoza v. Farah Manufacturing Co.*,¹⁷ the Supreme Court held that Title VII of the Civil Rights Act of 1964 did not prohibit discrimination on the basis of alienage status, even though it barred discrimination based on race and national origin. In so doing, the Court affirmed dismissal of the claim of Cecilia Espinoza, a lawful permanent resident from Mexico married to a U.S. citizen. Similarly, in *Mathews v. Diaz*,¹⁸ a case brought by Cuban noncitizens lawfully in this country, the Supreme Court rejected an equal protection challenge to a federal law denying federal medical benefits to certain legal immigrants.

In considering tensions between groups, we should look at how society, as well as the law, treats them. Both affect the formation of Latino group identity. Status competition may pit Latino sub-groups against one another. Laws may reinforce the social distinctions made by the groups. Latinos should recognize the arbitrariness of treating immigrants and citizens differently under the law. Like the imaginary geographical line that the United States government de-

14. See Kevin R. Johnson, *Civil Rights and Immigration: Challenges for the Latino Community in the Twenty-First Century*, 8 LA RAZA L.J. 42, 67-72 (1995) [hereinafter Johnson, *Civil Rights and Immigration*]. Though focusing on intra-Latino conflict in this article, I acknowledge the need for Latinas/os to capitalize on commonality in order to facilitate positive political change. See Ediberto Roman, *Common Ground: Perspectives on Latino-Latina Diversity*, 2 HARV. LATINO L. REV. 478 (1997). As I have emphasized elsewhere, Latina/os must recognize diversity while building a community based on common interests and concerns. See Kevin R. Johnson, *Some Thoughts on the Future of Latino Legal Scholarship*, 2 HARV. LATINO L. REV. 101, 105, 117-38 (1997) [hereinafter Johnson, *Latino Legal Scholarship*].

15. See Connie Chang, Comment, *Immigrants Under the New Welfare Law: A Call for Uniformity, A Call For Justice*, 45 UCLA L. REV. 205 (1997) (analyzing legal challenges to the denial of public benefits to lawful permanent residents under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (codified as amended in scattered sections of 2, 5, 7, 8, 10, 11, 13, 15, 20, 21, 25, 26, 28, 29, 31, and 42 U.S.C.)).

16. See U.S. Dep't of Justice, *Annual Report*, 1995 STAT. Y.B. I.N.S. 137 (Mar. 1997) (Table M) (showing naturalization rates by country of birth for immigrants admitted in fiscal year 1977 with Mexican citizens at 22.2%, well below the 45.9% average for all immigrants).

17. 414 U.S. 86 (1973).

18. 426 U.S. 67 (1976).

clares as "the border" between the United States and Mexico, this discrimination serves as a metaphoric border between people of Latin American ancestry. It divides a community with members who have much in common, including dominant society's classification of the entire group as "foreigners" to the United States.

A. *Intra-Latino Conflict In Los Angeles*

Consider the impact of immigration on the Latino community in Los Angeles. Central American immigration has resulted in the much-publicized tensions between Central Americans, Koreans, and African-Americans in South Central Los Angeles.¹⁹ *Intra-Latino* conflict, specifically the conflict between Mexican immigrants and Mexican-Americans in East Los Angeles, has received far less attention. The animosity between these groups can only be understood in light of the larger historical context and, more importantly, the status of Mexican-Americans in this nation's social hierarchy.

1. *Hostility Between Mexican-Americans and Mexican Immigrants*

Divisions exist in the Mexican-American community on the issue of immigration.²⁰ To state the obvious, not all (and perhaps not many) Mexican-Americans favor open borders with Mexico. Indeed, about 25% of Latino voters, all citizens who are more-or-less integrated into the political community, supported California's now infamous Proposition 187 which bars undocumented persons from receiving public benefits.²¹ Such restrictionist sentiments make it

19. See Johnson, *Civil Rights and Immigration*, *supra* note 14, at 64-65; see also TOMÁS RIVERA POLICY INSTITUTE & NAT'L ASS'N OF LATINO ELECTED AND APPOINTED OFFICIALS EDUCATIONAL FUND, *CONSTRUCTING THE LOS ANGELES AREA LATINO MOSAIC* (1997) (presenting demographic data on Guatemalan and Salvadoran immigrants in Los Angeles). Part of the tension is economic in nature. Bill Hing, however, rebuts the assertion that African-Americans lose jobs to immigrants. See BILL ONG HING, *TO BE AN AMERICAN: CULTURAL PLURALISM AND THE RHETORIC OF ASSIMILATION* 44-145 (1997) (reviewing various claims that immigrants have negative economic impacts on the nation). The animosity toward Latino immigrants in South Central Los Angeles is ironic in light of the fact that, in the late 1980s and 1990s, the bottom fell out of the greater Los Angeles real estate market, except in South Central Los Angeles where Latino immigrant demand for housing stabilized prices. See Jesus Sanchez, *Living the Dream: While the Real Estate Market Around Most of the Southland is Suffering, Latino Immigrants are Snapping Up Houses in South Los Angeles and Prices are Stable*, L.A. TIMES, Sept. 24, 1995, at D1.

20. See PETER SKERRY, *MEXICAN AMERICANS: THE AMBIVALENT MINORITY* 300-08 (1993) (reviewing poll data indicating some restrictionist sentiment among Mexican-Americans and claiming that activists are out of touch with constituency on the issue of immigration). See generally DAVID G. GUTIÉRREZ, *WALLS AND MIRRORS: MEXICAN AMERICANS, MEXICAN IMMIGRANTS, AND THE POLITICS OF ETHNICITY* (1995) (analyzing the history of restrictionist sentiment among Mexican-Americans toward immigration from Mexico and the impact of Mexican immigration on the Mexican-American community in the United States).

21. See Kevin R. Johnson, *An Essay on Immigration Politics, Popular Democracy*,

uncertain where undocumented Mexican immigrants fit into the broader Latino community. This uncertainty has historically been a difficult issue for Chicano activists.²² For example, in attempting to organize farmworkers, César Chávez and the United Farm Workers struggled to establish a principled position on undocumented Mexican immigrants because, while agricultural growers hired them to break strikes, undocumented Mexican immigrants formed the core of the union's membership.²³

Many Mexican-Americans, who as a group are racialized by Anglo society,²⁴ desire to restrict immigration because of the distinctions that they make between themselves and Mexican immigrants. A prominent example of this phenomenon can be seen in East Los Angeles, a well-established Mexican-American community that was the site of Chicano activism in the 1960s, which has experienced a steady stream of Mexican immigrants during the last part of this century.²⁵ This immigration has been accompanied by the growth of anti-immigrant sentiment among Mexican-Americans in the area. Some have claimed Mexican immigrants are too poor, that too many live in the same home (causing property values to decline), and that the increase in Spanish-speaking children in the schools im-

and California's Proposition 187: The Political Relevance and Legal Irrelevance of Race, 70 WASH. L. REV. 629, 658-59 (1995) (reviewing exit poll data). A court enjoined implementation of the initiative. See *League of United Latin American Citizens v. Wilson*, 908 F. Supp. 755 (C.D. Cal. 1995).

22. See Johnson, *supra* note 14, at 83-89.

23. See *id.* at 85 n.213 (describing tension). The United Farm Workers apparently once patrolled the U.S.-Mexico border in Arizona to prevent undocumented Mexican immigrants from entering the country. See RICHARD GRISWOLD DEL CASTILLO & RICHARD A. GARCIA, *CÉSAR CHÁVEZ: A TRIUMPH OF SPIRIT* 166-67 (1995).

24. See Luis Angel Toro, *A People Distinct From Others: Race and Identity in Federal Indian Law and the Hispanic Classification in OMB Directive No. 15*, 26 TEX. TECH L. REV. 1219, 1245-51 (1995) (summarizing the racialization of Mexican-Americans in the U.S.). See generally MICHAEL OMI & HOWARD WINANT, *RACIAL FORMATION IN THE UNITED STATES: FROM THE 1960S TO THE 1980S* (1986) (analyzing generally social forces resulting in construction of races).

25. See Sonia Nazario, *Natives, Newcomers at Odds in East L.A.*, L.A. TIMES, Mar. 4, 1996, at A1; see also Johnson, *Latino Legal Scholarship*, *supra* note 14, at 107-08 & n.21 (analyzing how East Los Angeles generally is invisible in public discourse, except when the media reports about crime and racial conflict). Similar tensions between new immigrants from Mexico and the established Mexican-American community have been reported in Phoenix, Arizona. See Robbie Sherwood, *Civil Rights Violations Charged*, ARIZ. REP., Aug. 19, 1997, at E1 (discussing such tensions in a Phoenix suburb); Julie Amparano & Mark Shaffer, *When Cultures Collide*, ARIZ. REP., Apr. 13, 1997, at A1 (describing these sorts of tensions); see also Julio Laboy, *Mix of Hispanic Cultures is Source of Workplace Tension, Study Finds*, WALL ST. J., Mar. 26, 1997, at C4 (reporting that Central American immigrants claim that Mexicans discriminate against them in the workplace).

Indeed, David Gutiérrez, the author of an important book analyzing the impact of Mexican immigration on Mexican-Americans in the United States, became interested in the subject because of his experiences growing up in East Los Angeles. He saw firsthand the "almost comical love/hate relationships between U.S.-born Mexican Americans and more recent immigrants from Mexico." GUTIÉRREZ, *supra* note 20, at 2.

pedes the education of non-Spanish-speaking children. Some Mexican-Americans, whose parents were barred from speaking Spanish when they were in school,²⁶ have changed Catholic churches so that they can attend masses conducted in English, not Spanish. One young Mexican-American's explanation of the differences between Mexican-Americans and Mexican immigrants in another southwestern city sheds some light on the tensions in East Los Angeles: "[I]t's not that we hate them or anything. . . . It's just that we don't have anything in common with them. I don't speak Spanish. I don't listen to their music. *We just come from different worlds.*"²⁷

Sentiments like these have had a palpable impact on Latino lives. Mexican-Americans reportedly have threatened to call the Immigration and Naturalization Service on Mexican immigrants, whom they, at times, refer to as "wetbacks." Mike Contreras, a second generation Mexican-American, admits to yelling "'turn down that wetback music'" to any newcomer blaring *ranchera* (Mexican country) music.²⁸ Some Mexican-Americans speak of Mexican immigrants over-consuming public benefits and express fear about losing jobs to cheap immigrant labor. At the same time that dominant society accuses Mexican-Americans of not assimilating into the mainstream,²⁹ some Mexican-Americans claim that the new Mexican immigrants fail to assimilate.

Mexican immigrants, not surprisingly, tell very different stories. The immigrants say, "Mexican-Americans think they are 'superior' to us. We are willing to work hard while 'Americans' are not." The immigrants criticize Mexican-Americans for speaking poor Spanish, for being traitors to their heritage, and having coddled childhoods; in effect, they are "*pochos*."³⁰ One Mexican immigrant in Los Angeles claimed to have developed friendships with Anglos

26. See Montoya, *supra* note 1, at 189-90 (discussing the punishment of students in public schools for speaking Spanish). For an important analysis of the modern English-only movement and its impact on Latino identity, see Steven W. Bender, *Direct Democracy and Distrust: The Relationship Between Language Law Rhetoric and the Language Vigilantism Experience*, 2 HARV. LATINO L. REV. 145 (1997); Christopher David Ruiz Cameron, *How the García Cousins Lost Their Accents: Understanding the Language of Title VII Decisions Approving English-Only Rules as the Product of Racial Dualism, Latino Invisibility, and Legal Indeterminacy*, 85 CAL. L. REV. 1347 (1997), 10 LA RAZA L.J. 261 (1998); see also Francisco Valdes, *Foreward: Under Construction—LatCrit Consciousness, Community, and Theory*, 85 CAL. L. REV. 1087, 1127-32, 10 LA RAZA L.J. 1, 41-46 (1998) (analyzing whether Spanish language is an essential element of Latino/a identity).

27. See Amparano & Shaffer, *supra* note 25 (emphasis added) (quoting a Mexican-American high school student in Phoenix, Arizona).

28. See Nazario, *supra* note 25 (quoting Contreras).

29. See, e.g., PETER BRIMELOW, *ALIEN NATION* 272-74 (1995).

30. See Richard Delgado, *Rodrigo's Fourteenth Chronicle: American Apocalypse*, 32 HARV. C.R.-C.L. L. REV. 275, 299 & n.115 (1997) (mentioning that "*pocho*" is slang for a person of Mexican ancestry "who does not speak Spanish and has lost touch with his or her roots").

and African-Americans rather than Mexican-Americans who denigrated Mexican immigrants as “wetbacks” and “beaners.”³¹

As this demonstrates, Mexican-Americans and Mexican immigrants at some level have different group identities and speak with different “voices.”³² This comes as no surprise considering the two groups’ different experiences and social positions in the United States. Besides differences in class and immigration status, many new Mexican immigrants in the 1990s have more indigenous features and dark complexions that render them less able to assimilate than fair-complexioned Latinos.

The drawing of distinctions between Mexican-Americans and Mexican immigrants is nothing new or unique to East Los Angeles. For example, Mary Helen Ponce in her childhood autobiography *Hoyt Street* told of growing up in a Mexican-American community in a post-World War II Los Angeles suburb. Her brothers and sisters called their extended family who immigrated from Mexico “Los Whats” because when they came to this country the only English they knew was “what?,” though they quickly learned to speak English.³³

Similarly, in the film *Lone Star*, Mercedes Cruz, a Mexican-American living in a Texas border town, heartlessly calls up “*La Migra*” (the Immigration & Naturalization Service) to report undocumented Mexicans crossing her land.³⁴ She scolds Mexican workers in her restaurant for speaking Spanish and tells them that they should speak English in America. Near the end of the movie, we learn through a flashback that Cruz herself crossed the border without papers. Her true colors ultimately become apparent when she helps a young undocumented Mexican woman in dire need.

My own grandmother, a Mexican-American, occasionally referred to undocumented Mexicans as “Julios” or “wetbacks.”³⁵ For

31. See Nazario, *supra* note 25, at A1.

32. See Aida Hurtado, Patricia Gurin & Timothy Peng, *Social Identities—A Framework for Studying the Adaptations of Immigrants and Ethnic: The Adaptations of Mexicans in the United States*, 41 SOC. PROBS. 129 (1994) (studying different social identities of Mexican immigrants and Chicanos in United States); cf. Alex M. Johnson, Jr., *The New Voice of Color*, 100 YALE L.J. 2007 (1991) (contending that minority scholars speak with distinctive voice of color).

33. MARY HELEN PONCE, *HOYT STREET: AN AUTOBIOGRAPHY* 9 (1993).

34. See Janet Maslin, *Sleepy Texas Town With an Epic Story*, N.Y. TIMES, June 21, 1996, at C1 (describing the general movie plot). For an analysis of the many nuances of this rich movie, see Margaret E. Montoya, *Lines of Demarcation in a Town Called Frontera: A Review of John Sayles' Movie Lone Star*, 27 N.M. L. REV. 223 (1997) and Elvia R. Arriola, *LatCrit Theory, International Human Rights, Popular Culture and the Faces of Despair in INS Raids*, 28 U. MIAMI INTER-AM. L. REV. 245, 248-53, 260 (1996-97).

35. See also GUTIÉRREZ, *supra* note 20, at 3 (stating that “it was not at all unusual to hear my grandfather (whose father immigrated to the United States from the Yúcatan at the turn of the century) lambasting wetbacks”).

her, it was important to clearly distinguish between herself and undocumented Mexicans for class and status reasons. A mythical Spanish past constituted part of her effort to assimilate into the mainstream.³⁶ She and my mother identified themselves as Spanish, French, and just about "anything but Mexican."³⁷

2. Causes of the Conflict

Tensions between Mexican-Americans and Mexican immigrants are rooted in class and social status. Class differences between the established Mexican-American and Mexican immigrant communities are exacerbated by the poor rural roots of many Mexican immigrants.

Moreover, the tension in part reflects Mexican-American adoption of dominant society's racial attitudes and values. Despite claims to the contrary, all immigrant groups assimilate to some degree, even if dominant society refuses to extend them full membership in society.³⁸ Some assimilation inevitably results from extended immersion in a different culture. Part of immigrant efforts to assimilate may include the adoption of the dominant society's racism. Unfortunately, this is the case for some Latinos.

As one observer noted, "[d]iscrimination and racist behavior generally are [processes] by which one racial group seeks to produce esteem for itself by lowering the status of the other group. . . . Status comes about by disparaging others, by asserting and reinforcing a claim to superior social rank."³⁹ This sort of status-seeking is particularly acute for immigrants:

[N]ewly arrived immigrants unable to speak the dominant language have often lost whatever status they enjoyed in their homeland, while their reason for having left is often to gain a higher status than was possible in their homeland. During this time of high status mobility, many immigrants engage in high levels of discrimination. Status competition explains the tension that often exists between different minority groups as each new group seeks to establish its place in the social hierarchy.⁴⁰

36. See Kevin R. Johnson, "Melting Pot" or "Ring of Fire"?: Assimilation and the Mexican-American Experience, 85 CAL. L. REV. 1259, 1274 (1997), 10 LA RAZA L.J. 173, 188 (1998) (explaining his mother's and grandmother's efforts to adopt a Spanish rather than Mexican-American identity).

37. I borrow the phrase from ACUÑA, *supra* note 11.

38. See Johnson, *supra* note 36, at 1281-86 (analyzing Latino assimilation and socially-imposed limits on Mexican-American assimilation); see also Hing, *supra* note 9, at 877 (observing that, although Latinos often are accused as not assimilating, Spanish-speaking immigrants generally learn English).

39. Richard H. McAdams, *Cooperation and Conflict: The Economics of Group Status Production and Race Discrimination*, 108 HARV. L. REV. 1003, 1044 (1995).

40. *Id.* at 1055-56 (footnotes omitted).

As Gunnar Myrdal observed, "[t]he development of prejudice against Negroes [is] usually one of [the] first lessons in Americanization for [new immigrants residing in the North]. Because they are of low status, they like to have a group like the Negroes to which they can be superior."⁴¹

Hostility between Mexican immigrants and Mexican-Americans reflects competition for the scarce resource of social status.⁴² As one political scientist explained, "[w]hat happens is the assimilated people feel embarrassed by the poverty and rural ways of the immigrants. Mexican-Americans want to fit into the American culture and do not want to be associated with immigrants."⁴³ Mexican-Americans in essence seek placement at a higher rung of the social ladder than Mexican immigrants. In attempting to attain that goal, they distinguish between themselves and Mexican immigrants in ways remarkably similar to how Anglos distinguish between themselves and Mexican-Americans.⁴⁴ This suggests that in certain circumstances Mexican-Americans may side with dominant society, not other racially subordinated peoples.⁴⁵

Mexican-Americans should be conscious of the causes of their conflict with Mexican immigrants. Division between people of Mexican ancestry perpetuates the status quo. Rather than fight amongst themselves, Latinos should fight racial subordination of Latinos, as well as of all people. Racism doesn't recognize the distinctions between Mexican-Americans and Mexican immigrants. To dominant society, a "foreigner" is a "foreigner."⁴⁶

41. GUNNAR MYRDAL, *THE AMERICAN DILEMMA* 603 (1944); see also JOE R. FEAGIN, *RACIAL AND ETHNIC RELATIONS* 376 (1978) ("Open and violent interethnic conflict has been a crucial current in American history. Earlier immigrant groups have regularly attempted to subordinate later groups.").

42. See J.M. Balkin, *The Constitution of Status*, 106 *YALE L.J.* 2313, 2321 (1997) (summarizing the dynamics of status competition between social groups). Similar conflict helps explain the heated tension between Latinos and Anglos in the controversy over bilingual education. See Rachel F. Moran, *Bilingual Education as a Status Conflict* 75 *CAL. L. REV.* 321 (1987). Status conflict goes far in explaining interethnic conflict of many different types, ranging from the history of Irish/African-American conflict in Boston to the more recent Korean American/African-American conflict in South Central Los Angeles.

43. See Amparano & Shaffer, *supra* note 25, at A1 (quoting Louis DeSipio, political science professor at University of Illinois).

44. See Arriola, *supra* note 34, at 252 (discussing immigrants' internalization of dominant society's values).

45. See Delgado, *supra* note 30, at 298-99 (articulating similar concerns).

46. See Johnson, *Latino Legal Scholarship*, *supra* note 14, at 117-29 (analyzing the significance of Latino-as-foreigner phenomenon to Latino experience in U.S.); see also *infra* text accompanying notes 55-65 (analyzing the significance of society's classification of Latinos as a monolithic group).

B. *Latinos, Immigration, Affirmative Action*

As we have seen, the law makes distinctions between Latinos, especially between citizens and noncitizens. Another sort of possible *intragroup* conflict concerns the largely unexplored question of Latino immigrant eligibility for affirmative action programs.⁴⁷ To state the question in concrete terms: Should a fifth generation Mexican-American from East Los Angeles be treated the same as a Mexican immigrant in affirmative action programs used in university admissions? Is there a difference between an immigrant who was a well-to-do elite in his native country and a U.S. citizen from more modest means? My experience serving on the admissions committee at U.C. Davis is that, all else being equal, it is easier to convince other committee members to admit the immigrant than the citizen. Immigrant success stories tug at the heartstrings, while homegrown misery seems far less compelling.

For the most part, difficult questions like these have gone unexplored. Paul Brest, Peter Schuck, and others suggest that Latino immigrants might not deserve the benefits of affirmative action.⁴⁸ Christopher Edley, however, has taken the position that Black immigrants should be included in affirmative action programs because of racism against African-Americans in the United States.⁴⁹ Latino legal commentators have not weighed in on the debate.

The answer to this difficult question must rest in part on the underlying rationale for affirmative action in education.⁵⁰ If the goal is

47. Of course, this discussion assumes the future existence of affirmative action, which is not currently the case in the Fifth Circuit's jurisdiction or the University of California system. See *Hopwood v. Texas*, 78 F.3d 932 (5th Cir.) (holding that affirmative action by the University of Texas in law school admissions violated the Fourteenth Amendment), *cert. denied sub nom.*, 116 S. Ct. 2580 (1996); Jeffrey B. Wolff, *Affirmative Action in College and Graduate School Admissions*, 50 SMU L. REV. 627, 654-57 (1997) (summarizing the events surrounding the decision by the Regents of the University of California to abolish affirmative action in student admissions).

I acknowledge that affirmative action is not without flaws. For the argument that affirmative action proponents should consider broader challenges to selection processes in education, see Susan Sturm & Lani Guinier, *Rethinking the Process of Classification and Evaluation: The Future of Affirmative Action: Reclaiming the Innovative Ideal*, 84 CAL. L. REV. 953 (1996).

48. See Paul Brest & Miranda Oshige, *Affirmative Action for Whom?*, 47 STAN. L. REV. 855, 890 (1995) (expressing uncertainty about affirmative action for Latinos); Peter H. Schuck, *Alien Ruminations*, 105 YALE L.J. 1963, 2000-04 (1996) (book review) (suggesting that immigrants generally should not be eligible for affirmative action because they have not suffered historical discrimination that African-Americans have); see also ROY HOWARD BECK, *THE CASE AGAINST IMMIGRATION* 190 (1991) (decrying that African-Americans are displaced by immigrants in job market through affirmative action); RICHARD D. KAHLBERG, *THE REMEDY* 74-80, 114 (1996) (contending that inequities result when immigrants use affirmative action designed to remedy discrimination against African-Americans); MICHAEL LIND, *THE NEXT AMERICAN NATION* 116, 131 (1995) (stating that Latinos and immigrants should not be eligible for affirmative action).

49. See CHRISTOPHER EDLEY, JR., *NOT ALL BLACK AND WHITE* 174 (1996).

50. See Brest & Oshige, *supra* note 48, at 862-72 (reviewing various rationales for

to achieve a diverse student body, then Latino immigrants should be eligible because they add diversity, as that concept traditionally has been understood.⁵¹ A variation of this rationale is the role model theory, which posits that minorities in positions of authority will serve as positive role models for other minorities.⁵² Latino immigrants may well serve this function, assuming that Latino citizens see themselves as part of the same social group as Latino immigrants.

Suppose, however, that the primary rationale for affirmative action is to remedy past discrimination.⁵³ The ancestors of Latino immigrants were not enslaved (like African-Americans) and did not suffer a long history of segregation and other forms of discrimination (like Mexican-Americans, Puerto Ricans, and other Latinos) in this country. However, they may have suffered the impacts of xenophobia in the United States as well as harms in their native lands due to U.S. foreign policy.⁵⁴ Affirmative action might offset some of the disadvantages imposed on them by such wrongs.

This essay takes no position on the important question of immigrant eligibility for affirmative action. However, the issue needs to be addressed. If Latinos fail to analyze the intricacies of affirmative action and the *intragroup* tensions that a close analysis reveals, we can be sure that others with different perspectives and aims will.

C. Summary

Intragroup tensions between persons of Mexican ancestry have legal and non-legal implications. Latino insights and perspectives are needed for evaluating these issues, which will have an important impact on the Latino community. Latino group identity, as well as the lives of individual Latinos, will be affected.

II. LATINO TRANSFORMATION THROUGH IMMIGRATION

The shifting sands of Latino group identity pose difficult challenges. Despite Latino diversity, there are some commonalities to the Latino experience in the United States. Language, culture, re-

affirmative action in education).

51. See *Regents of Univ. of California v. Bakke*, 438 U.S. 265, 311-14 (1978) (Powell, J.) (explaining how diverse student body enhances academic environment). Some criticize the diversity rationale as "slippery." See Jim Chen, *Diversity and Damnation*, 43 UCLA L. REV. 1839, 1861 (1996).

52. See Adeno Addis, *Role Models and the Politics of Recognition*, 144 U. PA. L. REV. 1377 (1996) (critically examining role model rationale for affirmative action).

53. See Brest & Oshige, *supra* note 48, at 865-67; see generally Richard Delgado, *Why Universities Are Morally Obligated to Strive for Diversity: Restoring the Remedial Rationale for Affirmative Action*, 68 U. COLO. L. REV. 1165 (1997).

54. See CHARLES R. LAWRENCE III & MARI J. MATSUDA, *WE WON'T GO BACK: MAKING THE CASE FOR AFFIRMATIVE ACTION* 262-63 (1997).

ligion, and physical appearance (to some degree) are common among many, though not all, Latinos.

Importantly, the perceptions of the outside world, which often fail to recognize Latino diversity by homogenizing all "Hispanics,"⁵⁵ are important to group identity. Amy Gutmann has recognized for African-Americans "the *involuntary nature* of group identity."⁵⁶ Similarly, society has assigned Mexican-Americans, especially in the Southwest, a racialized group identity.⁵⁷ This ties into the broader Latino-as-foreigner phenomenon—that Latinos are treated as foreigners to the United States no matter how long they or their ancestors have lived in this country—discussed extensively at the First Annual LatCrit conference.⁵⁸

The law at various times has recognized society's treatment of Latinos as a group. For example, in *Hernandez v. Texas*,⁵⁹ the Supreme Court, in holding that the systematic exclusion of Mexican-Americans from juries violated the equal protection clause, observed that

[t]he petitioner's initial burden in substantiating his charge of group discrimination was to prove that persons of Mexican descent constitute a separate class . . . distinct from "whites." One method by which this may be demonstrated is by showing the attitude of the community. Here the testimony of responsible officials and citizens contained the admission that residents of the community distinguished between "white" and "Mexican." The participation of persons of Mexican descent in business and community groups was shown to be slight. Until very recent times, children of Mexican descent were required to attend segregated

55. See SUZANNE OBOLER, *ETHNIC LABELS, LATINO LIVES* xiii (1995) (noting the homogenizing effect of the "Hispanic" label).

56. APPIAH & GUTMANN, *supra* note 3, at 168 (emphasis added).

57. For some recent examples, see *Cordova v. State Farm Ins. Co.*, 124 F.3d 1145, 1147 (9th Cir. 1997) (addressing Title VII case in which defendant's employee referred to another employee as a "dumb Mexican"); *California Dept. of Corrections v. State Personnel Bd.*, 59 Cal. App. 4th 131, 137 (1997) (deciding a wrongful termination case in which an Anglo correctional officer upset over the promotion of a Hispanic woman told her that "I am tired of this Hispanic shit; us white guys are tired of being looked over" and later shook her by the shirt lapel). See also *Rivera v. Domino's Pizza, Inc.* 1996 U.S. Dist. LEXIS 1351, at *3-4 (E.D. Pa. Feb. 9, 1996) (denying an employer's summary judgment motion in which a Puerto Rican employee was called a "Mexican tamale," a "dumb Puerto Rican and a dumb Mexican").

58. See Johnson, *Latino Legal Scholarship*, *supra* note 14, at 117-29. For the proceedings of the conference, see Symposium, *LatCrit Theory: Naming and Launching a New Discourse of Critical Legal Scholarship*, 2 HARV. LATINO L. REV. 1 (1997).

59. 347 U.S. 475 (1954); see also George A. Martínez, *The Legal Construction of Race: Mexican-Americans and Whiteness*, 2 HARV. LATINO L. REV. 321, 332 (1997) (analyzing *Hernandez* and the treatment of Mexican-Americans under law as "White" to their disadvantage). For a thoughtful analysis of the importance of *Hernandez* in the study of how Mexican-Americans have been treated as a distinct race, see Ian F. Haney López, *Race, Ethnicity, and Erasure: The Saliency of Race to LatCrit Theory*, 85 CAL. L. REV. 1143 (1997), 10 LA RAZA L.J. 1343 (1998).

schools for the first four grades. At least one restaurant in town prominently displayed a sign announcing "No Mexicans Served." On the courthouse grounds at the time of the hearing, there were two men's toilets, one unmarked, and the other marked "Colored Men" and "Hombres Aquí" ("Men Here").⁶⁰

As *Hernandez* illustrates, the formation of a group identity is affected by the putative group's treatment by dominant society. The signs said "No Mexicans Served," not "No Undocumented Mexicans Served" or "No Mexican Immigrants" served. Put differently, as Professor George Martínez demonstrated in his review of the Mexican-American litigation experience, dominant Anglo society has imposed an identity on both Mexican-Americans and Mexican immigrants as outsiders to the national community.⁶¹ This common mistreatment may forge group cohesion among Latinos so that they may fight a common enemy and agitate for group rights.⁶²

In focusing on common ground, Latinos must not forget how immigration is transforming the Latino community. Community leaders seeking to promote social change must be attuned to the changes. New civil rights issues emerge with immigration. For example, to avoid repetition of events like those that occurred in May 1992 in South Central Los Angeles that deeply affected a new and growing Central American population, Latino activist groups must do a better job of representing the interests of the entire Latino community.⁶³ Similarly, California has seen increasing immigration of Mixtecs, indigenous peoples from Mexico, who speak a language other than Spanish.⁶⁴ Spurned by other Mexican immigrants, the Mixtecs face modes of exploitation different from Mexican-Americans and other Mexican immigrants. Finally, there has been significant Mexican migration to the Midwest in recent years.⁶⁵ A growing number of Midwestern Mexican immigrants are employed in lines of work, such as meat packing, different from the agricul-

60. *Hernandez*, 347 U.S. at 479-80 (footnote omitted).

61. See George A. Martínez, *Legal Indeterminacy, Judicial Discretion and the Mexican-American Litigation Experience: 1930-1980*, 27 U.C. DAVIS L. REV. 555 (1994) (analyzing how society treated Mexican-Americans as a group in litigation over public accommodations, land grants, restrictive covenants, racial slurs, and education).

62. See Natsu Taylor Saito, *Beyond Civil Rights: Considering "Third Generation" International Human Rights Law in the United States*, 28 U. MIAMI INTER-AM. L. REV. 387 (1996-97) (analyzing development of group rights among racial minorities in United States).

63. See MANUEL PASTOR, JR., ET AL., *LATINOS AND THE LOS ANGELES UPRISING* 15-19, 61-65 (1993).

64. See generally CAROL ZABIN ET AL., *A NEW CYCLE OF POVERTY: MIXTEC MIGRANTS IN CALIFORNIA AGRICULTURE* (Cal. Inst. Rural Studies 1993) (studying the plight of Mixtecs in California agriculture).

65. See ROBERT APONTE & MARCELO SILES, *LATINOS IN THE HEARTLAND: THE BROWNING OF THE MIDWEST* (1994) (Julian Samora Research Inst., Research Report No. 5).

tural work that many Mexican immigrants have traditionally found in the Southwest. These Midwestern Mexican immigrants almost inevitably will face different issues, problems, and challenges than Mexican-Americans in other regions. Latino leaders must be vigilant of these sorts of demographic shifts if they want to promote positive social change.

III. CONCLUSION

Latinos must begin the process of interrogating Latino group identity.⁶⁶ In so doing, the impacts of immigration and the dynamic impact that it has on the Latino community and Latino group identity must be explored. One area worthy of attention is the adoption of dominant society's racial sensibilities, which are reflected in Mexican-American/Mexican immigrant conflict. Competition for status in a deeply stratified society has pernicious effects, namely dividing Latinos. The legal distinctions made between Latino citizens and noncitizens, including those that affirmative action programs might make, may cause tension between Latino sub-groups. Besides analyzing these issues, we should try to build on Latino commonalities and avoid fragmentation of various Latino sub-groups in the fight for social justice.

66. See Mary Coombs, *Interrogating Identity*, 11 BERKELEY WOMEN'S L.J. 222 (1996) (contending that complexities of identity construction should be critically examined).

