# "ZOO ISLAND:"[1]

# LATCRIT THEORY, "DON PEPE"[2] AND SEÑORA PERALTA[3]

*GUADALUPE T. LUNA*†

## INTRODUCTION

The conference organizers have offered a rare, invaluable, and appreciated opportunity to meet with other Latina/Latino professors. I have been asked to comment on my scholarship while keeping in mind two points. Specifically, (a) "my vision" and (b) "whether LatCrit theory affects and enriches my scholarship." The first section offers a brief summary of that vision and the second section provides a short discussion of how LatCrit theory affects and enriches my work. I conclude with two examples drawn from my scholarship.

## PART I: A "VISION"

I join other scholars attempting to de-colonize laws that perpetuate our subordinate status within the world economy. Specifically, through my scholarship, I am attempting to document and analyze the condition of Chicana/os in law.[4] For too long law has

---

† Associate Professor of Law, Northern Illinois University. B.A., University of Minnesota; J.D., University of Minnesota. I thank Professor Dennis Valdez for his much appreciated and immeasurable assistance in ensuring completion of this piece. Many thanks also to Professors Kevin Johnson and George Martínez.

1. *See* TOMAS RIVERA, *Zoo Island, in* LA COSECHA: CUENTOS DE TOMAS RIVERA (Juan Olivares trans., 1988). In *Zoo Island*, Jose a fifteen year old farmworker wakes up "one day with a great desire to take a census" of the farmworker population working on an Iowa farm. *Id.* at 113. Not unlike Jose, this Conference assists immeasurably in providing a community for Latina and Latino professors too long excluded from the academy. Julian Olivares, in his introduction of the text asserts Zoo Island: "manifests the desire of the Chicanos to exist as a community. The census makes them feel important, *counted*. . ." *Id.* at 79. Enumerating farmworkers is difficult because of the timing of the census which in the past has taken place when the workers are away from their home states. As an alternative to the U.S. Census, see the efforts of the Tomas Rivera Center, Migrant Enumeration, Austin, Texas.

2. Luco v. United States, 64 U.S. 515 (1858).

3. Peralta v. United States, 70 U.S. 434 (1865).

4. The term Mexican references individuals of Mexican birth and descent; Mexican

racialized Chicanas/os, but denied it with adverse consequences for Chicana and Chicano communities. As an alternative, LatCrit theory offers some corrective measures. LatCrit theory, nonetheless, is not readily accessible to students in traditional curriculums. This is unfortunate because including the legal experience of outsiders would assist them in their positions of power as political actors, legislators, and others responsible for creating and interpreting law.[5]

In two of my primary teaching fields—property and agricultural law—students examine a vast realm of complex philosophical and analytical commentary. Yet the property jurisprudence of Chicanas/os remains primarily absent. The takings cases following the United States conquest of Mexico, for example, delineate governmental actions that betrayed constitutional dictates and long-established treaty law.[6] Biased interpreters of the law disenfranchised Chicanas and Chicanos from their property interests and successfully thwarted Chicana/o land tenure.[7] They set a pattern that continues with rural land tenure remaining essentially non-existent for Chicanas/os.[8] They also offer mystical representations of legal history with no place for Chicanas/os.

Similarly, the study of agricultural law omits the rich agricultural and farming practices that occurred before the conquest and are still presently employed.[9] Bio-regionalism and its attendant form of sustainable agriculture, for example, were common in areas of

---

nationals include citizens of Mexico; Chicana/Chicano refers to those residing in the U.S.; and Latina/Latino references Puerto Ricans, Cubans, and those from Central and South America. Terms are used interchangeably with "emphasis on self-designations." GENARO M. PADILLA, MY HISTORY, NOT YOURS (1993). For an alternative designator, see ANA CASTILLO, MASSACRE OF THE DREAMERS (1994) (discussing Xicanisma).

5. Guadalupe T. Luna, *Chicana/o Land Tenure in the Agrarian Domain: "On The Edge of A Naked Knife"*, 4 MICH. J. RACE & L. (forthcoming Spring 1998) [hereinafter *Chicana/o Land Tenure*] (examines premise in greater detail.)

6. *See generally* United States v. Fremont, 25 F. Cas. 1214 (D.C.N.D. Cal. 1854) (No. 15,664).

7. *See generally* Pico. v. United States, 19 F. Cas. 593 (D.C. D. Cal. 1856) (No. 11,128).

8. *See generally* U.S. BUREAU OF THE CENSUS, 1992 CENSUS OF AGRICULTURE-UNITED STATES DATA, TENURE AND CHARACTERISTICS OF OPERATOR AND TYPE OF ORGANIZATION FOR ALL FARMS AND FARMS OPERATED BY BLACK AND OTHER RACES, 1992, 1987, AND 1982 (1995). The national total of 12.4 million is dominated by majority-status individuals. Yet, only 1.7 percent of the Latina(o) population comprising, 9 percent of the nation's population, are owner-operators of farming enterprises.

9. Spanish, Mexicans and the indigenous population introduced a number of products, fruits and vegetables—cotton, corn, beans, squash, tomatoes, chili peppers, avocados, chocolate, rodeos, bar-b-que, grapes, raisins, apricots, peaches, plums, oranges, lemons, wheat, barley, olives and figs—during the extant period. Farming methods and other aspects of the agricultural enterprise remain in use to the present. For example, irrigation water saving systems originating from the Mexican period remain in use, particularly where water resources are scarce. *See* Devon Peña & Jose Rivera, Historic Communities In The Upper Rio Grande (1995) (unpublished essay, on file with the author).

scarce natural resources.[10] Ensuing sustainable agricultural enterprises promoted efficient land use for area residents and *acequias* (irrigation systems) in New Mexico are still a source of irrigation for area enterprises.[11]

Inaccessibility to the Chicana/o experience in the study of law impacts future legislators and other interpreters of the law, for several reasons. First, students are not exposed to the rich, diverse origins of the country.[12] Second, inaccessibility of the Chicana/o legal experience defaults future lawyers to skewed interpretations of legal history and distorted jurisprudence that favors the experience of white hegemony.[13] Third, the absence of Chicanas/os in law ultimately relegates their status to the margins of legal inquiry. Within this construct opportunities for change are precluded or minimized, and a legal culture is created in which the voice of outsiders is resisted.

Because the aggregate of the above expedites major detrimental consequences to communities of color, my purpose is to try and challenge the ongoing race, class, and gender oppression existing within our relationship with law.

Next, I will discuss a theoretical framework around which the issues of concern can be framed.

## PART II: THE UNIVERSAL VERSUS THE PARTICULAR

Politicians and others benefiting from positions of power and authority are increasingly promoting race-baiting tactics, obscuring the country's legal history and its diverse, complex origins. This simultaneously subordinates people of color and our communities by disallowing the inclusion of outsiders and the opportunity that fosters and adheres to constitutional dictates.

The race-baiters deny and distort the specific conditions of a subordinate status by claiming a "universal ideal for all" which fails to acknowledge the complex experiences inherent to our communities of color. They struggle to conceal how law was used to racial-

10. Juan Estevan Arrellano, *La Querencia: La Raza Bioregionalism*, 72 N. M. HIST. REV. 32 (1997).

11. *See, e.g.*, John Van Ness & Christine Van Ness, *Introduction*, 19 J.W. 3 (1980).

12. For example, the historical foundation of property titles derives from the Spanish and Mexican period (community property).

13. *See, e.g.*, Pearson v. Post, 3 Cai.R. 175 (N.Y. Sup.Ct. 1805). On Latina/o invisibility in law see Kevin Johnson, *Los Olvidados: Images of the Immigrant, Political Power of Noncitizens, and Immigration Law and Enforcement*, 1993 B.Y.U. L. Rev. 1139 (1993); George Martinez, *The Legal Construction of Race: Mexican and Whiteness*, 2 HARV. LATINO L. REV. 321 (1997). Almost all law students begin their study of property law with the "wild animal stint." Berta Hernández-Truyol, *Borders (En)Gendered, Normativities, Latinas, and a LatCrit Paradigm*, 72 N.Y.U. L. Rev. 882 (1997) (characterizing Pearson v. Post).

ize and disallow Chicanas/os from equal application of constitutional obligations. Simultaneously, they create exclusive realities that place Chicanas/os outside the legal culture. A theoretical paradigm based on the world systems demonstrates how the ideology of the conqueror facilitates and sustains inequality systematically.[14] As articulated by Immanuel Wallerstein, assertions of the universal relates to humanity, but in contrast, race requires consideration of the specific.

Attacks against affirmative action can illustrate how hegemonic dominant law misrepresents the reality and social condition of subordinate groups in the country. The underlying foundation for restrictionist legislation purports the "unfairness" caused by government preferences based on race and gender. Its backers justify their ideology on grounds that support the universal without regard to the specific.[15] Governmental actors abolishing affirmative action, assert "diversity is not essential to education."[16] Those holding law hostage to their own perspectives manipulate claims of universal treatment.[17] Manipulated ideology in turn creates new cultural realities with harmful consequences for our communities. This approach deems the "impact of racism insignificant and obscures its complex and exhausting nature."[18]

As a further illustration, a vast array of public law—characterized as the Doctrine of Agricultural Exceptionalism—privileges the agricultural sector and demonstrates the impact of the ideology of those setting the agricultural agenda.[19] Public law exemptions demonstrate the selective nature of their claims to universal treatment

14. The basis of the paradigm is set forth in Immanuel Wallerstein, *Culture As the Ideological Battleground of the Modern World-System*, *in* GLOBAL CULTURE, NATIONALISM, GLOBALIZATION AND MODERNITY (Mike Featherstone ed., 1990).

15. *See id.*

16. *See* Laura Mecoy, *Wilson Assails Clinton Stand on Racial Issues, He Calls for Equal Opportunity, Not Affirmative Action*, SAN DIEGO UNION-TRIB., June 23, 1997, at A3.

17. *See* Joe Gelman, *A Closer Inspection of Connerly's 209 Role*, L.A. DAILY NEWS, Aug. 3, 1997, at V1. (stating that Ward Connerly, a regent for the University of California and an anti-affirmative action proponent, is "the nation's leading spokesperson against racial and gender preferences" and "has found himself in this position by assuming the leadership of the California Civil Rights Initiative, or what later became known as Proposition 209" ).

18. *See generally* Trina Grillo & Stephanie M. Wildman, *Obscuring the Importance of Race: The Implication of Making Comparisons Between Racism and Sexism (or Other Isms)*, 1991 DUKE L.J. 397. In other words, enrollments of people of color have decreased and are directly tied to the elimination of affirmative action. *See generally* Karen Brandon, *In California, Minority Enrollments Falling At Leading Law Schools, Dropoff Tied To State Universities' Elimination of Affirmative Action*, CHI. TRIB., July 6, 1997, at A8.

19. *See* ERNESTO GALARZA, MERCHANTS OF LABOR, THE MEXICAN BRACERO STORY 106 (1964) (referencing Carey McWilliam's "Great Exception" characterization of the agricultural sector which provides that the exceptions afforded the sector offend the "basic tenets of free enterprise").

and qualifying requirements for public benefits and under what terms.[20] Reference, for example, the self-policing aspect of agricultural committees where committee members who are also agricultural employees vote on subsidy awards to themselves.[21] This aspect of Agricultural Exceptionalism demonstrates Immanuel Wallerstein's assertions that the universal encompasses the treatment of humanity, but race, by way of contrast requires consideration of the specific.

Compare the social and economic conditions of Chicanas/os employed in the rural sector which have long been excluded from beneficial public law. Nonetheless, Chicanas/os have long enriched the agricultural sector by providing labor that expedites food production in the country and increases the sector's wealth.[22] Immanuel Wallerstein provides that considerations of both the universal and the specific contain inherent contradictions that must be examined. Nonetheless, exceptions from labor laws awarded the sector demonstrate the selective nature of universal treatment and creates an attendant subsidy with painful consequences for innumerable agricultural workers[23]—a vast array of public law directly ensuring its status as one of the largest and wealthiest in the country.[24] By contrast, public law directly impacts the rural poor by way of welfare cuts and disallows farmworkers the right to organize for improved working conditions.[25] This manipulation of public law demonstrates a particularly acute example of conquest ideology, laws designed to ensure workers' impoverishment, and making evident a clear case of disparate treatment.[26]

---

20. *See, e.g.*, National Labor Relations Act, 29 U.S.C. § 152(b) (1983). *See also* Suzanne Gamboa, *Garment Industry Comes Under State Investigation*, HOUS. CHRON, Feb. 3, 1991. at A5 (discussing *La Mujer Obrera* and the efforts to organize women working in the maquiladoras).

21. Committee members determine which individual farming enterprises qualify for agricultural subsides. *See, e.g.*, 7 C.F.R. §§ 7.1-.38 (1995). *See also*, Greg Gordon, *Farm Program Criticized for Self-Policing Policy*, STAR. TRIB., June 29, 1995, at B1.

22. Chicana/os exist primarily as laborers lacking land tenure and employed within the sector as farm laborers or in agro-maquilas (food processors). *See* U.S. DEP'T CENSUS, THE HISPANIC POPULATION OF THE U.S. SOUTHWEST BORDERLAND, C3:196: P23/17 (1992).

23. *See generally* REPORT OF THE COMMISSION ON AGRICULTURAL WORKERS (1992); WILLIAM K. BARGER & ERNESTO M. REZA, THE FARM LABOR MOVEMENT IN THE MIDWEST (1994) (documenting the social and economic conditions of agricultural workers outside the legal venue).

24. *See* U.S. GEN. ACCOUNTING OFFICE, GAO/RCED-95-104FS, U.S.AGRIC: STATUS OF THE FARM SECTOR 6-7 (1995).

25. Compare with the Agricultural Act of 1949, 7 U.S.C. § 1421 (1988) benefiting the income of farmers. For an example of how law is used to curtail unionization efforts at the state level, s*ee generally*, Medrano v. Allee, 347 F. Supp. 605 (1972), *modified*, 94 S.Ct. 2191 (1974).

26. *See, e.g.*, Polly Ross Hughes, *Welfare Reform May Devastate Impoverished Hidalgo County*, HOUS. CHRON., Aug. 17, 1996, at A1. *See also* Diane Jennings, *Surviving On Hope*, DALLAS MORNING NEWS, June 30, 1996, at A43.

In challenging the hegemonic legal ideology which espouses to the universal, we arrive to the study of law with a simultaneous focus on the specific with references to race, class, gender, and sex perspectives. LatCrit theory is a tool that enables us to improve the conditions of our communities. With others, I consider it of utility in building a cogent and appropriate paradigm recognizing ongoing features of law that contribute to a colonized past and that seeks to remain codified with holdings ensuring Chicanas/os hold a colonized status in the United States.[27]

Emboldened by LatCrit theory, my scholarship focuses on the historical foundation of this country's legal history. It seeks to untangle the long chains of causation deriving from the conquest period that continue to impact our Chicana/o communities and to adjoin a more distant past with the present.[28] To do nothing disallows a valuable opportunity to reject the default model predicated on European dominance.

The following cases provide specifics derived from my scholarship.

### A. *Chicanas/os and The Universal*

Prior to the conquest, Mexicanas/os resided on and facilitated estates and agricultural enterprises of varying sizes.[29] They built ranches, farms, and orchards, roads and irrigation projects, and several engaged in trade with foreign markets. After the conquest, an international treaty and constitutional directives obligated the United States, in its contractual arrangement with Mexico, to protect and honor the fee holder interests of its newly acquired citizens.[30] Instead, Chicana/os were treated as colonized people, with law used to

---

27. *See generally* MARIO BARRERA, RACE AND CLASS IN THE SOUTHWEST, A THEORY OF RACIAL INEQUALITY (1979) (for literature outside the legal venue).

28. *See Agricultural Underdogs and International Agreements: The Legal Context of Agricultural Workers Within the Rural Economy*, 26 N.M. L. REV. 9 (1996); *Chicana/o Land Tenure*, *supra* note 5; *Chicanas, Land Grant Adjudication and the Treaty of Guadalupe Hidalgo: This Land Belongs to Me*, 3 HARV. LATINO L. REV. (forthcoming Fall 1998) [hereinafter *Chicanas*].

29. *See generally* RODOLFO ACUÑA, OCCUPIED AMERICA 20 (3d ed. 1988) The conflict between the two countries resulted in the acquisition of Mexican territory "two and a half times as large as France" and in its aggregate nearly doubled the size of the country. For an account of Chicanas/os in the Midwest, see Dennis N. Valdes, *The New Northern Borderlands: An Overview of Midwestern Chicano History*, 2 PERSP. IN MEXICAN AM. STUD. 1 (1989); Dennis N. Valdes, *Betabeleros: The Formation of an Agricultural Proletariat in the Midwest, 1897-1930*, 30 LAB. HIST. 53 (1989) (presenting the historical Chicana/o presence in the Midwest).

30. The Treaty of Guadalupe Hidalgo conferred citizenship status on this class. Art. VIII of the Treaty guarantees to protect their property. Native Americans were deemed Mexican citizens and were also protected by the Treaty's mandate. TREATY OF PEACE, FRIENDSHIP, LIMITS AND SETTLEMENT, FEB. 2, 1848, U.S.-MEX., ART VIII, 18 STAT. (2) 502 [hereinafter TREATY OF GUADALUPE HIDALGO].

racialize their status.[31] Case law demonstrates how the law was used to disenfranchise and alienate them from their property interests.

Litigation interpreting the Treaty of Guadalupe Hidalgo,[32] shows how Anglo-jurisprudence racialized and, thereafter, caused Chicanas/os to yield to highly discriminatory laws. A long chain of evidence demonstrates that, after the conquest, they sustained irretrievable legal consequences which directly ensured the loss of their property. Challenges by land speculators, squatters, and homesteaders seeking Chicana/o lands turned property owned by Chicanas/os into public property. By the use of law on the basis of the universal, they reduced the treaty to a "mockery of written agreements" which ultimately turned "solemn obligations into writing exercises."[33] Inapplication of constitutional dictates essentially served to further distinguish and separate Chicanas/os from universal application of the law, in essence maintaining features of a colonized population.

### B. *"Don Pepe" and Señora Peralta*

The following two cases examine the relationship between Anglo-jurisprudence and its treatment of Chicanas/os in defense of their property.[34]

#### 1. "Don Pepe:" *Luco v. The United States*

In *Luco v. The United States,* Jose de la Rosa claimed ownership to a tract of land in California known as Ulpinas.[35] The case hinged on whether a seal on the granting documents was fraudulent. The Court's characterization of the grantee refers to him as 'Don Pepe,' the "household Jester of General Vallejo" "living with the profusion and bounty of semi-barbaric pomp. . ." At the same time the Court provides that

> though not actually a servant, yet a dependant of General Vallejo, residing in Sonoma, gaining a precarious livelihood by making and mending clothes and tin ware, acting as alcalde, printer, gardener, surveyor, music teacher, and attending to a grocery and billiard table for Vallejo.

---

31. Courts regard the class as conquered people. *See, e.g.*, Beard v. Federy, 70 U.S. 478 (1865) ("After our conquest of California. . .").

32. *See* TREATY OF GUADALUPE HIDALGO. Executed in the City of Guadalupe Hidalgo, February 2, 1848, its ratification took place in Queretaro, Mexico, May 30, 1848, and proclamation made July 4, 1848. *See* Hunter Miller, *Documents 122-150: 1846-1852* TREATIES AND OTHER INTERNATIONAL ACTS OF THE UNITED STATES OF AMERICA (1937). Congress declared war on the Republic of Mexico, on May 11, 1846.

33. Dickey v. Philadelphia Minit-Man Corp., 377 Pa. 549, 560 (Penn. 1954) (Mussano, J. dissenting) (interpreting contractual language of a lease).

34. The first is adopted from *Chicana/o Land Tenure, supra* note 5.

35. Luco v. United States, 64 U.S. 515 (1859).

In the same opinion the court considers the interest of settlers:

> There is an interest which in this and many other California cases cannot be overlooked—the interest of bona fide settlers. The Government of the United States contests these cases for the benefit ultimately of that class. It acquires territory, not that it may become and remain a vast land owner, but that the acquired territory may be thrown open to its citizens, for their occupation in moderate quantity, in aid of a public policy. . .
>
> The rights of such men must be not only respected, but protected by a just Government. They are the people who have carried our laws, institutions, and all that make up an empire, into the wilderness, and subdued it to the purposes of civilization; who, to reach this spot where they were bidden by law, have tempted the dangers of two oceans, or traversed vast spaces of desert, cut off from their old homes by savage mountains and barbarious tribes. They are entitled to regard and protection.

Here there is no equal application of the law. In the instant case, a talented individual, who worked seven jobs that required a range of talent and skill was disparaged as a jester.

Yet the Court accepts Anglo-Americans, as a class, as "bona fide" and acknowledges to be operating on their behalf as the universal claimants to "our laws, institutions" and "empire" while specifically excluding a "jester" from the American universe. The Court's concerns demonstrate how law is held hostage to the cultural biases of its imperialist interpreters.

Although the court was convinced that the claim was a forgery it nonetheless, recognized "the minute differences between the spaces of parts of the objections on the impressions, or of differences in the relative angles of two of three of the letters of the inscription." Notwithstanding various witnesses attesting to the purported ownership by Don Jose de la Rosa, the court relied on the actions of John Fremont, a known instigator of the Conquest, and disallowed De La Rosa's seal by comparing it with Fremont's seals on a non-Mexican document. Not even the testimony that could have been offered by the granting officers and other Mexican officials was permitted and thus, not allowed to save the grantee's claim.[36]

Other examples included land held by women.

36. The signature of Pio Pico governor of California was also alleged as fraudulent. Yet he was not called to attest to the validity of his signature. *Id.*

2. Señora Peralta: *Peralta v. The United States*[37]

The rights of the women as they existed before the conquest were also preserved by the Treaty of Guadalupe Hidalgo.[38] Whether through marriage, inheritance, or donative grants, Spanish and Mexican law acknowledged the legal right of women to petition and receive land grants in Mexico's northern frontier.

On appeal to the Supreme Court in 1865, *Peralta v. The United States* offers an example of women seeking to defend their property. In the instant case, Maria de Valencia, along with her siblings, sought a patent on property they had inherited from their mother Teodora Peralta. Señora Peralta held claim to the property in California from an 1845 grant.

On or about 1843, Señora Teodora Peralta, in conformance with the 1828 Colonization Law, and the laws in force in the Mexican Republic, had moved onto a tract in Alta, California. In 1845, according to the law of the Republic, Teodora Peralta petitioned for the tract and sought ownership status.[39] Señora Peralta "belonged, it was said, to a well-known and good family, and was a native of the region, with a perfectly fair character."[40] In conformance with Mexican law, Teodora submitted a petition to complete the process. In 1845 she:

> petitioned the alcalde of San Rafael to obtain a report from the neighbors or *colindantes* of the tract which she desired to solicit from the government, in order that the report might accompany her petition to the governor for a grant of the land.[41]

The narrative from her appeal confirms that Mrs. Peralta followed the dictates of Mexican law. Her granting documents which she received from the Mexican government established her "expediente"[42] and comprised the essential elements of her claim of possession. The confirmation process culminated with Governor Pio Pico granting Señora Peralta the tract. At this point she was discharged from further action and her claim ensured to her ownership status.

---

37. Peralta v. United States, 70 U.S. 434 (1865).

38. The instant case is examined in greater detail in *Chicanas*, *supra* note 28 (discussing the litigation experience of women defending their property interests).

39. 70 U.S. at 434-435.

40. *Id.* at 435.

41. *Id.* The purpose of the petition was to provide notice to the government of Mexico, but also to ensure that the land was vacant and no adverse claims existed that would preclude ownership status.

42. Spanish word for case file or record. The papers were gathered together and formed the record ("expediente") of her petition. *See generally*, United States v. Cambuston, 25 F. Cas. 266, 267 (N.D. Cal. 1859) (No. 14,713). ("[t]hese papers stitched together, forme[d] the e[x]pediente").

According to the Treaty of Guadalupe Hidalgo, Señora Peralta's property rights were "inviolably protected"[43] and obligated the country to "a universal ideal" backed by the constitution as a foundation to her rights as a fee holder. Nonetheless, the government of the United States imposed on her the obligation to demonstrate the "validity" of her property interest, in contradiction of the explicit terms of Article VIII of the Treaty of Guadalupe Hidalgo.[44]

In presenting all claims of ownership status of existing ranchos and other tracts, determining bodies and courts declared that the mere possession of documents by claimants, without accompanying reference to those documents in Mexican archives, was insufficient to establish ownership status. To the detriment of Señora Peralta, the Mexican archives contained no record or trace of her petition. According to the Supreme Court, the Board of Land Commissioners determining the "validity" of Señora Peralta's claim admitted that her proof of occupancy and cultivation were satisfactory.[45] Nonetheless, in holding against Señora Peralta, the Board held that, "if the parties had used the proper diligence in procuring the issue of the grant and judicial measurement and formal possession, there might have been no difficulty in the case. . ."[46] In other words, "[i]n the absence of the issue of the grant, and a segregation of the land, they could do nothing but reject the claim."[47]

With the invasion by the United States imminent, the country was in a state of turmoil during the grantees' occupancy of California.[48] Moreover, it is well established that American officials de-

---

43. TREATY OF GUADALUPE HIDALGO, *supra* note 30, at Article VIII.

44. *See generally* TREATIES AND OTHER INTERNATIONAL ACTS OF THE UNITED STATES OF AMERICA 262-67 (Henry Miller ed., 1937); In contradiction to the goals of the Mexican Republic, the United States thereafter promulgated a series of major land acts. California Land Act of 1851, Ch. 41, 9 Stat. 631 (1851); Act of Mar. 8, 1891, Ch. 539, 26 Stat 854 (1891), Mar. 8, 1891 (Colorado, Arizona, New Mexico). The land acts required two levels of presentation from individuals holding property. The first required presentations of claims to the adjudicatory bodies to establish the validity of Mexican tracts. *See, e.g.*, California Land Act §§8-10. Upon a showing of definitive proof, the United States awarded the recipient a patent. *Id.* at §13. Failure to submit claims within a two year period defaulted the property to the public domain. *Id.* To qualify for a patent, each set of land grant laws further obligated grantees to present surveys of the claimed property. *Id.*; Act of Mar. 8, 1891 §6. During the survey stage, the United States rejected Mexican directed surveys and required its own agents to draw maps of the property. *See* California Land Act of 1851. In submitting to United States surveys grantees confronted a number of collateral attacks from a wide array of individuals seeking access to the country's public lands. *See* Luna, *Chicana/o Land Tenure*, *supra* note 5.

45. 70 U.S. at 436

46. *Id.*

47. *Id.*

48. Historians have long established academic inquiry over the conquest of the annexed territory. Further, United States v. Rocha, 76 U.S. 639 (1860) provides: "The confusion and disorder that existed, in respect to the Spanish and Mexican archives at the close of the war, when the Mexican authorities hastily left the country, has been shown

stroyed evidence of granting documents,[49] discarded granting documents,[50] or held documents where interested parties with ill-motives could access them and disallowed access to Mexican grantees.[51] Natural disasters, such as the one in San Francisco in 1851, also affected the ability of grantees to procure their granting documents.[52] Finally, competing homestead and agricultural legislation increased the actions of Euro-Americans seeking Mexican property and kept grantees under intense pressure in defending their property against "jumpers" and settlers.[53] Yet courts disallowed the arguments of Mexican landholders and imposed elusive standards re-written to accommodate the claims of non-Mexican landowners.[54] Examining the specifics of Chicana/o land tenure and their litigation experiences shows how the law privileges and establishes paradigms that perpetuate inequality and disparate treatment.

## CONCLUSION

Disparate treatment in law based on the ideology of the universal and stemming from the conquest continues to the present period. Examples range, *inter alia*, from recycled restrictionist immigration laws,[55] anti-affirmative action measures,[56] English only laws,[57] and welfare reform.[58] Much of the legislation derives its origins directly

---

in several cases before this court; and some indulgence is due to an honest claimant as to the order and time in which to produce his evidence." *Id.* at 647.

49. *See, e.g.*, United States v. Pendell, 185 U.S. 189 (1902) providing:
[I]n the year 1846, while the original documents of title were in existence in the town of Paso del Norte. . .the place was occupied by the military forces of the United States, and the original documents of title and the official registry where they were recorded were destroyed by the American forces. . ." *Id.* at 190.

50. United States v. Chaves provides an example of claimants asserting that the state's governor ordered land grant documents be sold or thrown away. 159 U.S. 452, 462-63 (1895).

51. John Fremont "pathfinder of the West" and long recognized for his involvement in the uprising against the Mexico Republic, while he was a foreign national residing in California Alta, retained custody of land grant materials. Immediately after the conquest he alleged he lost several in the "mountains."

52. *See generally* Fuentes v. United States, 63 U.S. 443, 451 (1859) (referring to the "great fire of the 3d and 4th May, 1851," which the plaintiffs claimed destroyed land grant books and other documents vital to their case.)

53. *See* Donald J. Pisini, *Squatter Law in California*, 25 W. HIST. Q. 285 (1994) (addressing the politics of squatter sovereignty.)

54. Compare Señora Peralta's claim with that of John Fremont. United States v. Fremont, 25 F. Cas. 1214, 1215 (N.D. Cal. 1854) (No. 15,664).

55. Illegal Immigration Reform and Immigration Responsibility Act, Pub. L. No. 104-208, §1101, 110 Stat. 3009, 546 (1996).

56. *See, e.g.*, Hopwood v. State of Texas, 78 F.3d 932 (1996); California's voter approved Proposition 209 (1996) (Civil Rights Initiative); Carol Ness, *Jackson Plans Big Civil Rights March August 28th to Tackle Proposition 209*, S.F. EXAMINER, Aug. 11, 1997, at A1.

57. *See generally* Yniguez v. Arizonans for Official English, 119 F.3d 795 (9th Cir. 1997), *remanded with instructions to dismiss* 117 S.Ct. 105 (1997).

58. Personal Responsibility and Work Opportunity Reconciliation Act, Pub. L. NO.

from politicians and legislative actors who address the public through the use of racial images and stereotypes that are derogatory towards Mexicans and those of Mexican descent.[59] Excluding the historical period expedites a culture in which the politics of fragmentation and divisiveness is promoted and as an alternative, LatCrit offers a reliable and more precise representation of legal history in the United States.

Race-baiters use code words in an attempt to de-emphasize their racial-divide tactics[60] and in light of the present restrictionist construct, LatCrit theory provides innumerable opportunities to expose their actions and provide a link to the past. It allows us to reclaim our legal history and makes evident the widely diverse and complex origins of the country. Its value extends to considerations of the tension and contradictions between both the universal and the specific. It also grants opportunities for future lawmakers and interpreters of law that, to the present, have been harmed by the omission of the country's rich diverse origins from the study of law.

104-193, 110 Stat. 2105 (1996).

59. *See* Nancy Cervantes et al., *Hate Unleashed: Los Angeles In The Aftermath of Proposition 187*, 17 CHICANO-LATINO L. REV. 1 (1995); Michael J. Nuñez, *Violence At Our Border: Rights and Status of Immigrant Victims of Hate Crimes And Violence Along The Border Between The United States and Mexico*, 43 HASTINGS L. J. 1573 (1992).

60. *See generally* John Harwood, *Counting Ballots, Parties Mull Agenda in High-Stakes Battle For Hispanic Voters*, WALL ST. J. Apr. 22, 1997, at 1 ("wedge issues"). *See also* Charles Lawrence III, *Forward Ace, Multiculturalism, and the Jurisprudence of Transformation*, 47 STAN. L. REV. 819 (1995) (discussing a broader interpretation of the use of code words).