

## A BRIEF HISTORY OF RACE AND THE U.S.-MEXICAN BORDER: TRACING THE TRAJECTORIES OF CONQUEST

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*The conquest of Mexico between 1846 and 1848 has largely disappeared from public consciousness as a significant historical event with contemporary consequences. Yet this conquest resulted in the annexation by the United States of approximately one-half of former Mexico, constituting most of the current southwestern United States. In this Article, I describe the roles that race and racism played in justifying the conquest, and I explore some of the current consequences of the conquest.*

One of the defining features of any conquest is the subordination of the conquered. The history of the conquered Mexicans of the Southwest demonstrates this purposeful subordination. Through careful redrafting of the Treaty of Guadalupe Hidalgo, the U.S. Congress reserved to itself discretion over when to admit the conquered territories as states. Congress waited until Mexicans were politically disempowered racial minorities within each territory before admitting the conquered territories as states with political representation. This happened earliest in the cases of Texas (annexed in 1845) and California, and latest in New Mexico, which was denied statehood until 1912.

The minimization of the political power of Mexicans as Mexicans emerges, then, as a prominent theme of the conquest. I believe this theme can be generalized to all Latino peoples subject to U.S. conquest. The minimization of the political power of Latinos continues today, in at least three areas. First, nearly four million U.S. citizens resident in Puerto Rico live without voting rights or political representation in the federal government, yet are subject to federal law, violating democratic theory. Second, the intentional, long-term exploitation of undocumented Latino immigrant labor maximizes agricultural profits while minimizing the potential political power of the immigrants. Lastly, attempts to curtail the use of Spanish through Official English laws and other restrictions symbolize the subordination of Spanish speakers and result in less access and use of the democratic process.

These are some of the "trajectories of conquest." The study of this history helps explain why Latino political power always seems less significant than population numbers and demographic projections suggest it should be.

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*"Since we are about to admit this Territory [New Mexico] as a state of the Union, the disposition of its citizens to retain their racial solidity, and in doing so to continue the teaching of their tongue, must be broken up."*

—Senate Committee on Territorial Affairs, Report No. 454

## INTRODUCTION

According to a Senate Committee report from 1910, the cohesion of Mexican, Spanish-speaking U.S. citizens of the New Mexican territory, and their ability to retain and pass on their Spanish language, must "be broken up."<sup>1</sup> The report states the interesting proposition that the territory's admission to statehood, and consequently its voting representation in Congress, necessarily meant the dissolution of Mexican American identity. Why was the Senate so concerned about the race and language of Mexican Americans? Why did admission to statehood mean breaking Mexican American identity? And what identity would replace the former Mexican identity of the territory?

Tentative answers to these questions appear from a study of the history of the border. In this Article, I present a brief history of the roles of race and racism in the creation of the U.S.-Mexican border. The entire southwestern United States, including part or all of Texas, California, New Mexico,

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1. COMM'N ON TERRITORIES, AN ACT ENABLING THE PEOPLE OF NEW MEXICO AND ARIZONA TO FORM A CONSTITUTION AND STATE GOVERNMENT, ETC., S. Rep. No. 61-454, at 26 (2d Sess. 1910).

Arizona, Nevada, Colorado, Utah, Wyoming, and Kansas were formerly northern Mexico.<sup>2</sup> The United States annexed Texas in 1845. Between 1846 and 1848, the United States conquered Mexico and took its northernmost lands, which became the other states mentioned above.

As I discuss in Part II, race shaped the creation of the border with Mexico in highly significant ways. Southern desire for the expansion of slave territory was crucial to the annexation of Texas and the subsequent disposition of the conquered territories.<sup>3</sup> Racism played an important role in purporting to justify the war of conquest against Mexico and in limiting the political power of Mexicans within the United States.<sup>4</sup> White supremacy was a central component of the ideology of Manifest Destiny, which justified the conquest of Mexico as a divine Anglo-Saxon racial right. The mixed races of Mexicans posed an affront to Anglo ideals of racial purity. Some white politicians believed the mixed races of Mexicans posed a grave threat to democracy itself. Ultimately, these racial factors played a decisive role in determining the amount and location of Mexican territory that the United States would keep as the spoils of war.

In this Article, I explore a theme inextricably tied to conquest: the denial of political power to conquered people. It may seem obvious that the denial of political power inheres in conquest. After all, conquered people rarely have a say in matters of their own conquest. It is less obvious how, in a democracy, the denial of political power is reproduced in subsequent generations. Sociologist Robert Blauner, in work well extended and developed by Mario Barrera,<sup>5</sup> described three conditions associated with colonized minorities in the United States:

The first condition . . . is that of forced entry into the larger society or metropolitan domain. The second is subjection to various forms of unfree labor that greatly restrict the physical and social mobility of the group and its participation in the political arena. The third is a cultural policy of the colonizer that constrains, transforms, or destroys original values, orientations, and ways of life.<sup>6</sup>

I am unsure whether the concept of the "colonized minority" fully elaborates the transgenerational and cultural processes of conquest. For example,

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2. See FOREIGNERS IN THEIR NATIVE LAND 140 (David J. Weber ed., 1973).

3. See MARIO BARRERA, RACE AND CLASS IN THE SOUTHWEST: A THEORY OF RACIAL INEQUALITY 7–18 (1979) for a helpful summary of the many motivations behind the conquest of Mexico.

4. See REGINALD HORSMAN, RACE AND MANIFEST DESTINY: THE ORIGINS OF AMERICAN RACIAL ANGLO-SAXONISM 208–48 (1981).

5. See Mario Barrera, *A Theory of Racial Inequality*, in LATINOS AND EDUCATION: A CRITICAL READER 3 (Antonia Darder et al. eds., 1997). See generally BARRERA, *supra* note 3.

6. See ROBERT BLAUNER, RACIAL OPPRESSION IN AMERICA 53 (1972).

while colonization seems closely related to conquest, colonization refers to temporary seizures of land and displacements as well as to permanent seizures. Temporary cooptation of land and culture allows for some (altered) restoration of original norms. On the other hand, the permanent seizure of land requires processes for the transfer of the land to its new owners.<sup>7</sup> If a conquest seeks the permanent displacement of the original culture, then the conquering power must have processes for inhibiting the survival of the original and its transmission to future generations.<sup>8</sup> Conquest, as I use it, refers to the more or less permanent seizure of land and usurpation of culture, as in the U.S. conquests of Indians and Mexico.

Nevertheless, Blauner's three conditions form a useful framework within which to consider the conquest and subsequent subordination of Mexican and Mexican American people in the United States. Blauner's conditions also help to explain the current legacies of this conquest affecting many Latinos as well as Mexicans. I will use each condition as a kind of *leitmotif*, repeating its words as an introduction to sections of the text that illustrate the condition.

In Part IV, I discuss some of the current legacies of conquest. First, the unremedied colonial situation of Puerto Rico demonstrates the purposeful denial of meaningful political power to Puerto Ricans by the United States, a situation with direct links to the strategies used before to deny political power to Mexicans. Second, the longstanding and continuing exploitation of undocumented immigrant Mexican and Latino labor perpetuates an impoverished class of laborers who lack political participation and representation. Lastly, societal campaigns for Official English and English-only rules in the workplace seek to undermine the linguistic heritage of Latinos and to limit the economic and political power of Spanish-speaking Latinos.

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7. For research discussing the nature of the transfers of Mexican lands to U.S. owners, see RICHARD GRISWOLD DEL CASTILLO, *THE TREATY OF GUADALUPE HIDALGO: A LEGACY OF CONFLICT* (1990); JUAN F. PEREA ET. AL., *RACE AND RACES: CASES AND RESOURCES FOR A DIVERSE AMERICA* 260-91 (2000); Christopher David Ruiz Cameron, *Reflections on the End of the History Academy's Dominance of Scholarship on the Treaty of Guadalupe Hidalgo*, in *THE LEGACY OF THE MEXICAN & SPANISH-AMERICAN WARS: LEGAL, LITERARY, AND HISTORICAL PERSPECTIVES* 1 (Gary D. Keller & Cordelia Candelaria eds., 2000); Guadalupe T. Luna, *Chicana/Chicano Land Tenure in the Agrarian Domain: On the Edge of a "Naked Knife,"* 4 MICH. J. RACE & L. 39 (1998).

8. The quotation given at the beginning of this article, urging the "breaking up" of the solidity of Mexican Americans and the end of the teaching of Spanish is one example of the desire for permanent cultural obliteration. See *supra* introductory epigraph and text accompanying note 1.

## I. EXPANSIONIST DESIRE FOR MEXICO

The manifestation of expansionist desires for Mexican lands began early. Acting through important national figures, the United States persistently sought to obtain Mexican territory. In 1767, even prior to U.S. nationhood, Benjamin Franklin apparently expressed desire for Mexican lands.<sup>9</sup> After the Louisiana purchase, Thomas Jefferson sought, unsuccessfully, to claim the Rio Grande as the southern boundary of Louisiana. Then in 1826, President John Quincy Adams offered \$1 million for Texas, then a northern province of Mexico. Mexico rejected the offer.<sup>10</sup> Subsequently, President Andrew Jackson, an early advocate of Texas's annexation, attempted to purchase Texas for as much as \$5 million.<sup>11</sup>

When Texas won its independence in 1835, Mexico protested vigorously and repeatedly the United States' ambitions to annex Texas and incorporate it as a state.<sup>12</sup> Also in 1835, President Andrew Jackson offered to buy San Francisco Bay from Mexico.<sup>13</sup> In 1845, President James K. Polk sent an emissary to try to persuade Californians to follow Texas's example and to secede from Mexico. Polk also sent his representative, John Slidell, to Mexico City in an attempt to purchase California and New Mexico for between \$15 and \$40 million.<sup>14</sup> Mexico refused to sell its territory and refused even to deal with Slidell.<sup>15</sup>

What could not be had by purchase was taken by force. Polk sent a military force into an area understood to be Mexican, the border area between the Nueces and Rio Grande Rivers, in order to provoke hostilities.<sup>16</sup> Shortly thereafter, Polk got what he wanted. American troops were attacked and killed by Mexican soldiers in the border area under Mexican sovereignty.<sup>17</sup> Polk, however, alleged that "Mexico has passed the boundary of the United States, has invaded our territory and shed American blood upon the American

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9. RODOLFO ACUÑA, *OCCUPIED AMERICA: A HISTORY OF CHICANOS* 6 (3d ed. 1988).

10. RODOLFO ACUÑA, *OCCUPIED AMERICA: THE CHICANO'S STRUGGLE TOWARD LIBERATION* 11 (1972).

11. *Id.* at 12.

12. WARD MCAFEE & J. CORDELL ROBINSON, 1 *ORIGINS OF THE MEXICAN WAR: A DOCUMENTARY SOURCE BOOK*, at vi (1982).

13. *FOREIGNERS IN THEIR NATIVE LAND*, *supra* note 2, at 94.

14. *Id.* at 95; JAMES K. POLK, *THE DIARY OF A PRESIDENT, 1845-1849: COVERING THE MEXICAN WAR, THE ACQUISITION OF OREGON, AND THE CONQUEST OF CALIFORNIA AND THE SOUTHWEST* 10 (Allan Nevins ed., 1952).

15. *FOREIGNERS IN THEIR NATIVE LAND*, *supra* note 2, at 95.

16. *Id.*; JOHN H. SCHROEDER, *MR. POLK'S WAR: AMERICAN OPPOSITION AND DISSENT, 1846-1848*, at 17 (1973).

17. *FOREIGNERS IN THEIR NATIVE LAND*, *supra* note 2, at 95.

soil."<sup>18</sup> Rather than asking for a formal declaration of war, Polk promptly requested from Congress an unusual resolution recognizing that a state of war already existed "by the act of the Republic of Mexico."<sup>19</sup> Debate on this resolution was severely limited, with dissenting voices given little chance to be heard.<sup>20</sup> Ironically, and revealingly, Polk and his cabinet had agreed to ask Congress to declare war against Mexico *before* news of the bloodshed reached Washington.<sup>21</sup> Most contemporary historians agree that President Polk provoked the United States' war against Mexico as a pretext for accomplishing his expansionist purposes.<sup>22</sup>

## II. RACE AND THE WAR AGAINST MEXICO

*The first condition . . . is that of forced entry into the larger society or metropolitan domain.*

—Robert Blauner, *Racial Oppression in America*

### A. The Role of Slavery in the Annexation of Texas

Slavery and the southern wish for expansion of the number of slave states played a prominent role in the annexation of Texas, the first seizure of Mexican territory by the U.S. government. Anglo-Americans first began arriving in Mexico's northernmost provinces in the early 1820s.<sup>23</sup> They were, perhaps, some of the first illegal aliens. In 1821, prior to Mexican independence, Spanish authorities allowed American Moses Austin to establish a colony within Texas.<sup>24</sup> Moses Austin was later succeeded by his son, Stephen Austin, who along with other early settlers from slave states, brought his slaves with him.<sup>25</sup>

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18. *Id.*; SCHROEDER, *supra* note 16, at 10.

19. SCHROEDER, *supra* note 16, at 10–11, 13.

20. *Id.* at 13, 17–18.

21. POLK, *supra* note 14, at 81–83; FOREIGNERS IN THEIR NATIVE LAND, *supra* note 2, at 95–96.

22. FOREIGNERS IN THEIR NATIVE LAND, *supra* note 2, at 96; JAMES M. MCPHERSON, BATTLE CRY OF FREEDOM: THE CIVIL WAR ERA 47–50 (1988); SCHROEDER, *supra* note 16, at 3–4; ACUÑA, *supra* note 9, at 12–13; FREDERICK MERK, MANIFEST DESTINY AND MISSION IN AMERICAN HISTORY 61–88 (1963).

23. ACUÑA, *supra* note 10, at 10–11; RANDOLPH B. CAMPBELL, AN EMPIRE FOR SLAVERY: THE PECULIAR INSTITUTION IN TEXAS, 1821–1865, at 12–15 (1989).

24. CAMPBELL, *supra* note 23, at 13–15.

25. *Id.* at 13–15, 32.

Mexico's declaration of independence from Spain in 1821 cast doubt on the future of slavery in Texas.<sup>26</sup> Eventually, because of the sparse population of its northern provinces, the Mexican government passed legislation encouraging and legalizing the migration of white North Americans into Texas.<sup>27</sup> Although Mexican leaders generally disapproved of slavery and sought to limit slave trading in Texas, they never did anything to effectively abolish it.<sup>28</sup> Furthermore, Mexican laws restricting slavery went unenforced, and American slave owners found ways to evade Mexican law. When Mexicans became concerned about the expansionist desires of Americans and their disrespect for Mexican law and traditions, they passed additional legislation seeking to forbid further immigration by Americans.<sup>29</sup> Yet this too proved ineffective because Americans ignored the laws and continued immigrating illegally into Mexico.

Over time, Mexico's prohibition against slavery became a major irritant between the Mexican government and American immigrants. The President of Mexico outlawed slavery by decree on September 15, 1829.<sup>30</sup> However, Mexican officials effectively excepted Texas from the decree, by choosing to promote Texas's settlement and economic development over the decree's enforcement.<sup>31</sup> Many Americans immigrating into Texas were slave-owning southerners whose slave ownership was illegal under Mexican law.<sup>32</sup> Slave owners attempted to circumvent the law by "freeing" their slaves while simultaneously forcing them to become indentured servants for life.<sup>33</sup> Accustomed to U.S. protections for slave ownership, Americans viewed the abolition of slavery as a deprivation of their individual liberties and of their private property.<sup>34</sup> Although at times critical of slavery, Stephen Austin was a forceful advocate of slavery in Texas, and "more than any other individual, was responsible for gaining the approval of Mexican authorities for introducing [slavery] there."<sup>35</sup> Austin stated his views in an 1833 letter:

I have been adverse to the principle of slavery in Texas. I have now, and for the last six months, changed my views of that matter; though my ideas are the same as to the abstract principle. Texas *must be* a slave country. Circumstances and unavoidable necessity compels it. It is the

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26. DAVID J. WEBER, *THE MEXICAN FRONTIER, 1821-1846*, at 12 (1982); CAMPBELL, *supra* note 23, at 14.

27. *FOREIGNERS IN THEIR NATIVE LAND*, *supra* note 2, at 88-89.

28. CAMPBELL, *supra* note 23, at 16-17.

29. *FOREIGNERS IN THEIR NATIVE LAND*, *supra* note 2, at 90.

30. ACUÑA, *supra* note 10, at 12.

31. CAMPBELL, *supra* note 23, at 25.

32. *Id.* at 18.

33. ACUÑA, *supra* note 10, at 12; CAMPBELL, *supra* note 23, at 23-24.

34. *FOREIGNERS IN THEIR NATIVE LAND*, *supra* note 2, at 89.

35. CAMPBELL, *supra* note 23, at 16, 32.

wish of the people there, and it is my duty to do all I can, prudently, in favor of it. I will do so.<sup>36</sup>

Anglo-Americans together with Mexican Tejanos fought a war of independence from Mexico in 1835. Stephen Austin described the war in racial terms: "A war of extermination is raging in Texas—a war of barbarism and of despotic principles, waged by the mongrel Spanish-Indian and negro race, against civilization and the Anglo-American race."<sup>37</sup> The famous, or infamous, battle of the Alamo was part of the Texas war for independence. While typically characterized by North American whites as a battle for freedom, this interpretation is, unintentionally, deeply ironic. Whites who were fighting for Texas independence were also fighting for the "freedom" to own slaves, which was prohibited under Mexican law.<sup>38</sup>

The importance of the "freedom" to own slaves as a cause of Texas's independence is illustrated by Texas's first constitution after gaining independence from Mexico, which explicitly protected the right to own slaves. Section 9 of the General Provisions of this constitution protected the property rights of slave owners in their slaves as well as the rights of future immigrants to own slaves:

All persons of color who were slaves for life previous to their emigration to Texas, and who are now held in bondage, shall remain in the like state of servitude: *Provided*, The said slave shall be the *bona-fide* property of the person so holding said slave as aforesaid. [Texas's] Congress shall pass no laws to prohibit emigrants from bringing their slaves into the republic with them, and holding them by the same tenure by which such slaves were held in the United States; nor shall congress have power to emancipate slaves; nor shall any slaveholder be allowed to emancipate his or her slave or slaves without the consent of congress, unless he or she shall send his or her slave or slaves without the limit of the republic. No free person of African descent, either in whole or in part, shall be permitted to reside permanently in the republic without the consent of congress. . . .<sup>39</sup>

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36. *Id.* at 30 (quoting a letter from Stephen Austin to Wiley Martin (May 30, 1833), in THE AUSTIN PAPERS 981 (Eugene C. Barker ed., n.d.)).

37. Letter from Stephen Austin to Andrew Jackson (Apr. 15, 1836), in THE AUSTIN PAPERS, OCTOBER 1834–JANUARY 1837, at 332 (Eugene C. Barker ed., n.d.); see also CAMPBELL, *supra* note 23, at 42.

38. "Remember the Alamo!" is still frequently invoked as a kind of warning from Anglos to Mexicans and Mexican Americans about the ultimate triumph of Anglo-Americans against Mexicans.

39. FRANCIS N. THORPE, 6 THE FEDERAL AND STATE CONSTITUTIONS: COLONIAL CHARTERS, AND OTHER ORGANIC LAWS OF THE STATES, TERRITORIES AND COLONIES NOW OR HERETOFORE FORMING THE UNITED STATES OF AMERICA 3539–40 (1909).



Once slavery was formally legalized in newly independent Texas, the migration of slave owners and the number of slaves within Texas increased dramatically.<sup>40</sup>

Texans, a majority of whom were white Americans by 1846, were strong supporters of U.S. annexation.<sup>41</sup> The United States annexed Texas despite strident objections from the Mexican government and the dubious constitutionality of annexing an independent foreign country merely by joint resolution of Congress rather than by treaty.<sup>42</sup> In 1845, Texas was accepted into the United States as a slave state. Its state constitution contained provisions protecting slavery that resembled those of other southern slave states.<sup>43</sup> Article VIII of the Texas Constitution of 1845 was titled "Slaves," and provided, in part:

The legislature shall have no power to pass laws for the emancipation of slaves, without the consent of their owners; nor without paying their owners, previous to such emancipation, a full equivalent in money for the slaves so emancipated. They shall have no power to prevent emigrants to this State from bringing with them such persons as are deemed slaves by the laws of any of the United States, so long as any person of the same age or description shall be continued in slavery by the laws of this State: *Provided*, That such slave shall be the *bona-fide* property of such emigrants. . . .<sup>44</sup>

John Quincy Adams understood the efforts to annex Texas as "designed primarily for the extension of the area of slavery and the magnification of the power of the slaveocracy in the councils of the nation."<sup>45</sup> The antislavery North saw the annexation of Texas as a national disaster.<sup>46</sup> The expansion of slavery had led to the annexation of formerly Mexican territory, and thereby set a precedent that would facilitate the subsequent war of conquest against Mexico.

## B. White Racism Against Mexicans as a Rationale for the War of Conquest

As I described in Part II.A., the United States sought Mexican lands for a long time. In addition to slavery's role in the United States' desire for Texas, race played a second role in the creation of the border. The racism

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40. CAMPBELL, *supra* note 23, at 54–55.

41. FREDERICK MERK, *SLAVERY AND THE ANNEXATION OF TEXAS* 38, 171–72 (1972).

42. *Id.* at 121–66.

43. *Id.* at 174–75.

44. THORPE, *supra* note 39, at 3563.

45. MERK, *supra* note 41, at 181.

46. *Id.*

of white Americans created the rationale to justify the seizure of the lands from allegedly inferior Mexicans. Mexicans were perceived by white Americans as a mixed-race, mongrel people distinctly inferior to the presumed racially pure whites.<sup>47</sup> According to historian David Weber, "American visitors to the Mexican frontier were nearly unanimous in commenting on the dark skin of Mexican mestizos, who, it was generally agreed, had inherited the worst qualities of Spaniards and Indians to produce a 'race' still more despicable than that of either parent."<sup>48</sup> Rufus Sage, a newspaperman and Rocky Mountain trapper, described Mexicans with typical disparagement:

There are no people on the continent of America, whether civilized or uncivilized, with one or two exceptions, more miserable in condition or despicable in morals than the mongrel race inhabiting New Mexico . . . .

. . . .

. . . To manage them successfully, they must needs be held in continual restraint, and kept in their place by force, if necessary,—else they will become haughty and insolent.

As servants, they are excellent, when properly trained, but are worse than useless if left to themselves.<sup>49</sup>

Perceived as some incomprehensible mixture of Black, Indian, and Spanish races, Mexicans, by their very existence, violated white American taboos against racial mixing. The presumed racial inferiority of Mexican people fed the ideology of Manifest Destiny, which asserted that it was the destiny of white Anglo-Saxons to occupy the entire continent without regard for the presence of presumed inferior races.<sup>50</sup>

The theory of the Mexican conquest resembled the theory underlying the conquests of American Indians. Since Anglos perceived Mexicans as prominently Amerindian, the rationale used to usurp Indian lands was in turn used against Mexicans.<sup>51</sup> White Anglos believed that Mexicans, like Indi-

47. HORSMAN, *supra* note 4, at 210 ("While the Anglo-Saxons were depicted as the purest of the pure—the finest Caucasians—the Mexicans who stood in the way of southwestern expansion were depicted as a mongrel race, adulterated by extensive intermarriage with an inferior Indian race."). For another review of racist Mexican stereotypes held by whites, see Laura E. Gómez, *Race, Colonialism, and Criminal Law: Mexicans and the American Criminal Justice System in Territorial New Mexico*, 34 LAW & SOC'Y REV. 1129 (2000).

48. FOREIGNERS IN THEIR NATIVE LAND, *supra* note 2, at 59–60. See generally Raymund A. Paredes, *The Mexican Image in American Travel Literature, 1831–1869*, 52 N.M. HIST. REV. 5 (1977).

49. 2 RUFUS B. SAGE: HIS LETTERS AND PAPERS, 1836–1847, at 82–87 (LeRoy R. Hafen & Ann W. Hafen eds., 1956), reprinted in FOREIGNERS IN THEIR NATIVE LAND, *supra* note 2, at 71–75.

50. HORSMAN, *supra* note 4, at 208.

51. White American commentators frequently perceived Mexicans as though they were Indians. See *id.* at 210–12.

ans, were incapable of using their lands productively and that whites would put the lands to better use. This belief also provided a justification for the war of conquest. According to Reginald Horsman:

Americans, it was argued, were not to be blamed for forcibly taking the northern provinces of Mexico, for Mexicans, like Indians, were unable to make proper use of the land. The Mexicans had failed because they were a mixed, inferior race with considerable Indian and some black blood. The world would benefit if a superior race shaped the future of the Southwest.<sup>52</sup>

### C. Race and the Drawing of the Border

In addition to shaping the decision to conquer Mexico, race also influenced the amount of formerly Mexican territory that the United States decided to retain. By the end of the war, the United States occupied much of Mexico, both its northern provinces, which had long been sought by American expansionists, and many interior provinces, including Mexico City.<sup>53</sup> Even under military occupation by the United States, Mexico refused to negotiate the cession of its territory.<sup>54</sup> Responding to the Mexicans' refusal to negotiate, President Polk considered the possibility of conquering and annexing all of Mexico.<sup>55</sup> The move to annex all of Mexico enjoyed popularity in the United States, but also engendered significant resistance.<sup>56</sup> Many politicians and the American public resisted the annexation of the long-sought northern provinces of Mexico, in large part because of race.<sup>57</sup>

The annexation of Mexican land posed a profound problem for white politicians. Adding Mexican lands to the United States meant adding racially undesirable Mexicans to the population. The prospect of bringing mixed-race Mexicans into the Anglo-Saxon republic of the United States ignited fears of the degradation of white supremacy as well as fears concerning the survival of American democracy.<sup>58</sup> Senator John Calhoun, a prominent southern Democrat, opposed annexation because of these racial implications:

[I]t is without example or precedent, either to hold Mexico as a province, or to incorporate her into our Union. No example of such a line of policy can be found. We have conquered many of the neighboring tribes of Indians, but we have never thought of holding them in

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52. *Id.* at 210.

53. SCHROEDER, *supra* note 16, at 142; ACUÑA, *supra* note 10, at 27–28.

54. SCHROEDER, *supra* note 16, at 142.

55. *Id.* at 143, 148, 155.

56. *Id.*

57. *Id.* at 149, 151, 155.

58. MERK, *supra* note 22, at 191–92.

subjection—never of incorporating them into our Union. They have either been left as an independent people amongst us, or been driven into the forests.

I know further, sir, that we have never dreamt of incorporating into our Union any but the Caucasian race—the free white race. To incorporate Mexico, would be the very first instance of the kind of incorporating an Indian race; for more than half the Mexicans are Indians, and the other is composed chiefly of mixed tribes. I protest against such a union as that! Ours, sir, is the Government of a white race. The greatest misfortunes of Spanish America are to be traced to the fatal error of placing these colored races on an equality with the white race. That error destroyed the social arrangement which formed the basis of society. . . . And yet it is professed and talked about to erect these Mexicans into a Territorial Government and place them on an equality with the people of the United States. I protest utterly against such a project.

Are we to associate with ourselves as equal, companions, and fellow citizens, the Indians and mixed race of Mexico? Sir, I should consider such a thing as fatal to our institutions.<sup>59</sup>

Calhoun could countenance retaining only those Mexican lands that contained no Mexicans:

[O]ur army has ever since held all that it is desirable to hold—that portion whose population is sparse, and on that account the more desirable to be held. For I hold it in reference to this war a fundamental principle, that when we receive territorial indemnity, it shall be unoccupied territory.<sup>60</sup>

Furthermore, American citizenship was understood to be for whites only, with full voting membership only for some whites. Accordingly, American politicians perceived the problem of incorporating Mexicans into the United States as profound. As expressed by historian Frederick Merk, “the idea of a wholesale raising to citizenship of the mixed races in Mexico, which seemed inescapable if they were to be absorbed, was horrifying.”<sup>61</sup>

The final boundary lines approved in the Treaty of Guadalupe Hidalgo required Mexico to cede to the United States only its northernmost, sparsely populated provinces of New Mexico and California.<sup>62</sup> These provinces constituted roughly one-third of Mexico. Including the formerly annexed Texas, Mexico lost the northernmost half of its territory as a result of U.S. aggression. President Polk had desired all of Mexico. Ultimately,

59. CONG. GLOBE, 30th Cong., 1st Sess. 98 (1848).

60. *Id.* at 96.

61. MERK, *supra* note 22, at 191–92.

62. FOREIGNERS IN THEIR NATIVE LAND, *supra* note 2, at 100.

however, he went along with the limited territorial annexation. In his diary, Polk expressed concern about taking land populated by many Mexicans: "I expressed a doubt as to the policy or practicability of obtaining a country containing so large a number of the Mexican population."<sup>63</sup> The racial concerns of Senator Calhoun and others were thus assuaged and the press congratulated Polk for acquiring land "encumbered by only 100,000 Mexicans."<sup>64</sup>

So part of the solution to the problem of incorporating too many Mexicans was to take only the most sparsely populated northern provinces of Mexico. There still remained, however, the problem of how to manage the presence of the Mexicans remaining in the conquered territories. This problem was addressed through the careful drafting of the Treaty of Guadalupe Hidalgo and, later, through the deliberately slow fulfillment of the promise to incorporate the conquered territories into the United States.<sup>65</sup>

#### D. Race and the Treaty of Guadalupe Hidalgo

The white politicians who modified and ratified the Treaty of Guadalupe Hidalgo were concerned about the threat of Mexican participation in the U.S. democratic process. Accordingly, they modified certain provisions of the draft Treaty in order to minimize the possibility of Mexican participation in U.S. politics.

Under Article VIII, both as drafted and as ratified, Mexicans in the conquered territories had the right to remain in the United States.<sup>66</sup> Either by election within one year or by continued residence within the United States, Mexicans were to "be considered to have elected to become citizens of the United States."<sup>67</sup> The U.S. citizenship granted to the Mexicans remaining in the conquered territories, however, was much less significant than might appear at first glance. State citizenship—the source of political representation and potential voting rights—was not conferred by the treaty's provisions.<sup>68</sup>

Revisions made to Article IX of the Treaty delayed the incorporation of the territories as full states. Under the original draft language of Article

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63. POLK, *supra* note 14, at 291.

64. MERK, *supra* note 22, at 189.

65. See *infra* Part III.

66. See Treaty of Peace, Friendship, Limits, and Settlement With the Republic of Mexico, Feb. 2, 1848, U.S.-Mex., 9 Stat. 922 (Treaty of Guadalupe Hidalgo), reproduced in FOREIGNERS IN THEIR NATIVE LAND, *supra* note 2, at 163–64.

67. *Id.*

68. See ALEXANDER KEYSSAR, THE RIGHT TO VOTE 23–24 (2000).

IX, the conquered Mexican territories, and Mexicans still residing within the territories:

[S]hall be incorporated into the Union of the United States, and admitted *as soon as possible, according to the principles of the Federal Constitution*, to the enjoyment of all the rights of citizens of the United States. In the mean time, they shall be maintained and protected in the enjoyment of their liberty, their property, and the civil rights now vested in them according to the Mexican laws.<sup>69</sup>

This draft language, based on the Treaty for the Cession of Louisiana, promised admission of those territories to full statehood “as soon as possible.”<sup>70</sup> However, the Senate amended this language so that the final ratified version of Article IX read:

The Mexicans . . . shall be incorporated into the Union of the United States and be admitted, *at the proper time (to be judged of by the Congress of the United States)* to the enjoyment of all the rights of citizens of the United States according to the principles of the Constitution.<sup>71</sup>

Rather than admit Mexicans into the Union “as soon as possible,” the Senate made their admission discretionary, “at the proper time,” in Congress’s judgment. The original language of the draft treaty raised the “horrifying” prospect of Mexicans enjoying citizenship on an equal basis with whites “as soon as possible.” The revised and final language, however, gave Congress discretion to admit states containing Mexicans whenever Congress deemed it “proper.”

The revised treaty language proved sufficient for Senate ratification. Even Senator Calhoun, who earlier had protested loudly regarding the Mexican threat to white rule in the United States, supported the revised Treaty.<sup>72</sup> Public concern over the possibility of legal equality between whites and Mexicans was also allayed by the final treaty language. According to one popular newspaper:

In the annexation of New Mexico and California the United States will incur none of the danger which have been predicted of admitting a race of men, differing from us in language, religion, descent, laws, manners, and social condition to an equal participation in the benefits and responsibilities of free government. The country thus acquired is comparatively unsettled, and by the time it has a population enough to send a member of Congress, will be thoroughly Americanized. So all of the forebodings concerning the appearance

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69. See 5 TREATIES AND OTHER INTERNATIONAL ACTS OF THE UNITED STATES OF AMERICA 41 (Hunter Miller ed., 1937) (emphasis added).

70. *Id.* at 241.

71. *Id.* at 219 (emphasis added).

72. S. EXEC. DOC. NO. 30-52, at 27 (1848).

in the Senate or House of Representatives of a thorough-bred Mexican or half-breed Mexican will be dissipated.<sup>73</sup>

It was race, in turn, that became a principal determinant of the "proper time" for admission. As I will discuss in Part III, Congress deemed the admission of former Mexican territories "proper" only when the immigration of whites to the territories created a majority white population. Accordingly, Mexicans would never attain political influence as Mexicans, but only as minority members of predominantly white-populated states. Because New Mexico was populated by a majority of Spanish-speaking Mexicans and Mexican Americans, Congress used its discretion under the revised Article IX to deny it statehood for sixty-two years. Except for Puerto Rico, this is the longest period in which a U.S. territory remained unincorporated.<sup>74</sup>

The Senate's decision to delay statehood for the conquered territories until the "proper time" was based on an intent to exclude Mexicans from political power. As stated by one commentator: "The final form of Article IX of the Treaty of Guadalupe Hidalgo simply recognized the determination of Americans to oppose admission of Mexicans into their republic of white men."<sup>75</sup>

### III. RACE AND STATEHOOD

The important role of race in the exercise of congressional discretion to grant or withhold statehood is apparent in examining Congress's decisions to approve or deny statehood to the territories taken from Mexico. The speedy annexation of Texas in 1845 was allegedly accomplished to protect white settlers from the threat posed by Mexico. Mexico, however, had never conceded the legitimacy of an independent Texas or an annexed Texas. Contemporary historians discount the idea that Mexico posed any real threat to U.S. immigrants residing there.<sup>76</sup> As discussed earlier, the protection of

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73. NEW ORLEANS PICAYUNE, Feb. 15, 1848, *quoted in* Philip Anthony Hernandez, *The Other North Americans: The American Image of Mexico and Mexicans*, 268–69 (1979) (unpublished Ph.D. dissertation, University of California of Berkeley) (on file with author).

74. See Arnold H. Leibowitz, *The Imposition of English as the Language of Instruction in American Schools*, 10 REVISTA DE DERECHO PUERTORRIQUEÑO 175, 203 (1970); see also John Nieto-Phillips, *Spanish American Ethnic Identity and New Mexico's Statehood Struggle*, in *THE CONTESTED HOMELAND: A CHICANO HISTORY OF NEW MEXICO* 97, 115 (Erlinda Gonzales-Berry & David R. Maciel eds., 2000).

75. Hernandez, *supra* note 73, at 275; see also DAVID MONTEJANO, *ANGLOS AND MEXICANS IN THE MAKING OF TEXAS, 1836–1986*, at 309–11 (1987) (expressing a similar understanding of the dynamics of the Treaty).

76. See ACUÑA, *supra* note 9, at 20–21.

slavery and the addition of a slave state to the Union were prime factors in the independence and later annexation of Texas.<sup>77</sup>

The gold rush of 1848–1850 generated a huge influx of immigrants into California, transforming the former Mexican majority into a minority.<sup>78</sup> After the gold rush, California's population increased dramatically.<sup>79</sup> When California was admitted as a state in 1850, Anglos were a majority of the population. Corresponding to their dramatically diminished proportion of the population, Mexicans saw their political influence in California decline.<sup>80</sup> The drafters of the California Constitution intended for Mexican political influence to remain minimal.<sup>81</sup> For example, Article II of the 1849 California state constitution granted the right to vote only to white males and denied suffrage to Mexicans, Indians, and blacks.<sup>82</sup>

While Texas and California were admitted promptly to statehood because of white political control in each of the states, New Mexico languished for sixty-two years as a federal territory. Among the principal reasons for denying statehood to New Mexico were that racially mixed, dark-skinned Mexicans lived there and that they spoke Spanish.<sup>83</sup> New Mexicans submitted several formal petitions for statehood. In 1850, New Mexicans held a constitutional convention and drafted a constitution with strong antislavery

77. CAMPBELL, *supra* note 23, at 35.

78. By 1850, the percentage of Mexicans in the population had declined to 15 percent. *Id.*

79. FOREIGNERS IN THEIR NATIVE LAND, *supra* note 2, at 148–49.

80. *Id.*

81. See ROBERT F. HEIZER & ALAN F. ALMQUIST, *THE OTHER CALIFORNIANS* (1971), at 92–119. As the authors explain:

The delegates at Monterey in 1849 remained firm in their convictions that no persons other than whites should play any part in the governing of the state and proceeded to disenfranchise many of those individuals who had originally cast their ballots in the special election that put these very same delegates in their convention seats. Even an amendment that proposed to grant the right to vote to those Indians who had been citizens of Mexico and were taxed as owners of real estate, and expressly excepted all Negroes, was defeated by a vote of 22 to 21.

*Id.* at 96; see also HORSMAN, *supra* note 4, at 277–78.

82. The California Constitution of 1849 article II, section 1, provides that:

*Every white male citizen of the United States, and every white male citizen of Mexico, who shall have elected to become a citizen of the United States, under the treaty of [Guadalupe Hidalgo] . . . shall be entitled to vote at all elections which are now or hereafter may be authorized by law: Provided, That nothing herein contained, shall be construed to prevent the Legislature, by a two-thirds concurrent vote, from admitting to the right of suffrage, Indians or the descendants of Indians, in such special cases as such a proportion of the legislative body may deem just and proper.*

California State Archives, 1849 State Constitution, at [http://www.ss.ca.gov/archives/level3\\_const1849txt.html](http://www.ss.ca.gov/archives/level3_const1849txt.html).

83. See, e.g., Robert W. Larson, *Statehood for New Mexico, 1888–1912*, 37 N.M. HIST. REV. 161, 169, 181 (1962).



provisions.<sup>84</sup> The 1850 state constitution enjoyed overwhelming popular support, suggesting strong popular desire for statehood.<sup>85</sup> Because the admission of new slave or free states would alter the balance of power in Congress, debates over new states at this time focused on the issue of whether slavery would be permitted in the state or territory.<sup>86</sup> Under the Compromise of 1850, California was admitted as a free state, but New Mexico was recognized only as a federal territory. Its status with respect to slavery was to be decided at a later time.<sup>87</sup> Another state constitution was drafted in New Mexico in 1872, but this time it was rejected by New Mexican voters, effectively condemning this second opportunity to petition Congress for statehood.<sup>88</sup> In 1874, a bill was introduced into Congress "to enable the people of New Mexico to form a constitution and State government, and for the admission of said State into the Union on an equal footing with the original States . . . ."<sup>89</sup> Serious objections to this legislation were raised because a majority of the inhabitants of the territory were of Mexican descent, "aliens to us in blood and language," because of alleged widespread illiteracy, and because most New Mexicans were Catholic.<sup>90</sup> Yet another state constitution was drafted in 1889. Like its 1872 predecessor, this constitution was rejected by New Mexican voters. An important factor influencing the rejection of this constitution was the Anglo fear that if New Mexico became a state, Mexican domination would be the result.<sup>91</sup>

In April 1902, during what appeared to be a more favorable climate for New Mexican statehood, a bill was introduced proposing statehood for New Mexico, Arizona, and Oklahoma.<sup>92</sup> When this bill reached the Senate, it came under the control of Senator Albert Beveridge, Chairman of the Senate Committee on Territories.<sup>93</sup> Beveridge was known as one of the strongest and most effective opponents of statehood for New Mexico between 1902 and 1912.<sup>94</sup>

In particular, the race and language of Mexicans were of great concern to Beveridge and his colleagues. When Beveridge led a subcommittee to conduct hearings on the fitness of New Mexico for statehood, much of his

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84. ROBERT W. LARSON, *NEW MEXICO'S QUEST FOR STATEHOOD, 1846-1912*, at 25-61 (1968).

85. *Id.* at 38.

86. *Id.* at 50-51.

87. *Id.* at 51-52, 55, 56, 59-60.

88. *Id.* at 99-101, 115.

89. *Id.* at 117 (quoting H.R. 2418, 43d Cong. (1874) (admission of New Mexico as state)).

90. *Id.* at 125.

91. *Id.* at 168.

92. *Id.* at 205.

93. *Id.* at 207.

94. Jesse de la Cruz, *Rejection Because of Race: Albert J. Beveridge and Nuevo Mexico's Struggle for Statehood 1902-1903*, 7 *AZTLAN* 79 (1976).

questioning concerned the racial composition of New Mexicans and the extent of their use of the Spanish language.<sup>95</sup> Beveridge's first question during these hearings was a request for a description of "the differences in the races, and the relative proportions of each."<sup>96</sup> Beveridge inquired extensively about the use of Spanish in New Mexico courts and classrooms, and its use by Mexican children on the playgrounds and in their homes.<sup>97</sup> Based on these concerns, Beveridge concluded that the most prudent course was to withhold statehood for New Mexico and Arizona indefinitely. In reporting his committee's conclusions, Beveridge wrote:

On the whole, the committee feel that in the course of time, when education . . . shall have accomplished its work; when the masses of the people or even a majority of them shall in the usages and employment of their daily life have become identical in language and customs with . . . the American people; when the immigration of English-speaking people who have been citizens of other States does its modifying work with the "Mexican" element—when all these things have come to pass, the committee hopes and believes that this mass of people, unlike us in race, language, and social customs, will finally come to form a creditable portion of American citizenship.<sup>98</sup>

It appears that New Mexico did not become a state until a bare majority of its population was English-speaking, which apparently first occurred in 1910.<sup>99</sup> Around this time, congressional concerns over the use of Spanish in the territory were expressed in the New Mexico Enabling Act of 1910. This Act required that public education "shall always be conducted in English" and that the "ability to read, write, speak and understand the English language without an interpreter shall be a necessary qualification for all state officers and members of the state legislature."<sup>100</sup> Discussing the perceived necessity for these language-restrictive provisions, Beveridge wrote that "since we are about to admit this Territory [New Mexico] as a state of the Union, the disposition of its citizens to retain

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95. See *Hearings Before the Subcomm. of the Comm. on Territories on House Bill 12543*, 57th Cong., 2d Sess., DOC. NO. 36 (1902) [hereinafter *Beveridge Hearings*].

96. *Id.* at 2; LARSON, *supra* note 84, at 211–12.

97. See, e.g., *Beveridge Hearings*, *supra* note 95, *passim*.

98. De la Cruz, *supra* note 94, at 79, 84 (quoting 36 CONG. REC. HR188-90 (1902).; see also LARSON, *supra* note 84, at 215.

99. See HEINZ KLOSS, *THE AMERICAN BILINGUAL TRADITION* 128 (1977); Leibowitz, *supra* note 74, at 203; Juan F. Perea, *Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English*, 77 MINN. L. REV. 269, 321–23 (1992).

100. Perea, *supra* note 99, at 322. The English-language requirement for state elective office was withdrawn by Congress soon after its enactment, in 1911. *Id.* at 323 (citations omitted); see also Larson, *supra* note 83, at 192–93.

their racial solidity, and in doing so to continue the teaching of their tongue, *must be broken up*.”<sup>101</sup> Beveridge’s words echo the racial concerns that led to the discretionary and delaying language of the Treaty of Guadalupe Hidalgo. These words also suggest a powerful view of statehood as a kind of ultimate Americanization, requiring the obliteration of racial and linguistic differences from Anglo norms.

The race- and language-based reasons for withholding statehood from New Mexico should not be taken to mean that the Mexicans in New Mexico were unable to exercise power within the territory. For example, one careful study demonstrates the extensive degree to which white Americans and Mexicans shared power in administering the criminal justice system in territorial New Mexico.<sup>102</sup> Mexicans served frequently on juries, deciding the fates of European Americans and Mexicans.<sup>103</sup> Ironically, given the role that race played in the ultimate decision to grant or to withhold statehood, it may be that evidence of the important role that Mexicans played in the criminal justice system slowed the acceptability of New Mexico as a state.

#### IV. MINIMIZATIONS OF LATINO POLITICAL PARTICIPATION: CONTEMPORARY CONSEQUENCES OF THE RACIAL PREMISES OF THE CONQUEST

Congressional discretion in admitting former Mexican territories to statehood tempered widespread concerns about admitting Mexicans to full citizenship. Congress minimized the political influence of Mexicans by refusing to admit states unless whites held political control. This theme, the minimization of the political influence of Mexicans, Mexican-origin Americans and, subsequently, other Latinos, remains a prominent one in the relationship between white Americans and Latinos. In this part, I explore three ways in which this historical theme may exert contemporary influence: (1) the subordinate status of Puerto Rico, (2) the legal subordination of migrant and seasonal workers, most of whom are Mexican, and (3) the continuing attempts to limit political participation through legal restrictions on the use of Spanish.

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101. S. REP. NO. 454, *supra* note 1, at 26.

102. See Gómez, *supra* note 47, at 1164–94.

103. *Id.* at 1130.

### A. The Colonial Status of Puerto Rico

*The first condition . . . is that of forced entry into the larger society or metropolitan domain.*

—Robert Blauner, *Racial Oppression in America*

The current status of Puerto Rico as an “unincorporated territory” is closely related to the precedent of the racialized allocation of political power reflected in the Treaty of Guadalupe Hidalgo. Article IX of the Treaty was revised to guarantee Congress the discretion to incorporate the conquered Mexican territories at “the proper time.” In the 1898 Treaty of Paris, which settled the Spanish-American War and transferred dominion over Puerto Rico to the United States from Spain, Congress followed and extended the precedent set in its Treaty with Mexico. Consequently, Congress reserved for itself complete control over the political and civil rights of Puerto Ricans. According to Article IX of the Treaty of Paris, “The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress.”<sup>104</sup> This was the first time that a territory had been acquired by treaty with neither an implicit nor an explicit promise of admission to statehood.<sup>105</sup>

Subsequently, in the *Insular Cases*<sup>106</sup> and *Balzac v. Porto Rico*,<sup>107</sup> the U.S. Supreme Court relied on the language of the Treaty of Paris to confirm Congress’s dominion over Puerto Rico. In these cases, the Court held that, based on Article IX, Puerto Ricans were not entitled to constitutional protection,<sup>108</sup> but only to such rights as Congress chose to grant them.<sup>109</sup> In addition, the Court described Puerto Rico’s constitutional status as an “unincorporated territory.”<sup>110</sup> In part, the Court’s reasoning was based on concerns about the race and inferior culture of Puerto Ricans.<sup>111</sup>

Such racial concerns were also prominent in subsequent debates over the Jones Act, which granted statutory U.S. citizenship to Puerto Ricans.<sup>112</sup> As in the case of Mexicans, serious objections were raised about the fitness

104. Treaty of Paris, Dec. 10, 1898, U.S.–Spain, art. IX, *reprinted in* 11 TREATIES AND OTHER INTERNATIONAL AGREEMENTS OF THE UNITED STATES OF AMERICA 1776–1949, at 615, 619 (Charles I. Bevans ed., 1974).

105. See JOSÉ A. CABRANES, CITIZENSHIP AND THE AMERICAN EMPIRE 20 (1979).

106. E.g., *Downes v. Bidwell*, 182 U.S. 244 (1901). See ARNOLD H. LEIBOWITZ, DEFINING STATUS: A COMPREHENSIVE ANALYSIS OF UNITED STATES TERRITORIAL RELATIONS 143 n.66 (1989).

107. 258 U.S. 298 (1922).

108. *Downes*, 182 U.S. at 270–71.

109. *Id.* at 280.

110. *Id.* at 287–344.

111. *Id.* at 284.

112. See PEREA ET. AL., *supra* note 7, at 341.

of mixed-race, part African Puerto Ricans for citizenship.<sup>113</sup> In addition, Congressmen were concerned about the capacity for self-governance of people from tropical climates, the assumption being that democracy was only for white people raised in cold, Nordic climes.<sup>114</sup> Indeed, statutory citizenship was created for Puerto Ricans as a way of showing that they were under U.S. control, rather than for purposes of inclusion.<sup>115</sup>

As in the implementation of the Treaty of Guadalupe Hidalgo, the Treaty of Paris was implemented to minimize the political participation of Puerto Ricans. To this day, Puerto Ricans remain essentially powerless in U.S. politics. Because Puerto Rico is not a state, it has no voting representation in Congress.<sup>116</sup> Approximately 3.8 million U.S. citizens who reside on the island<sup>117</sup> are ineligible to vote for the President and the Vice President of the United States.<sup>118</sup> Yet, despite their lack of representation in the formulation of federal law, they are subject to all the federal executive and legislative power that is not "locally inapplicable."<sup>119</sup> In addition, Congress has plenary power over Puerto Ricans under the Territorial Clause of the Constitution, which is subject only to rational basis review.<sup>120</sup> These conditions violate a fundamental norm of democratic theory: that citizens should have a voice in the enactment of laws binding them.<sup>121</sup> The unjust contemporary condition of Puerto Ricans is closely related to the race-based allocation of political power evident in the Treaty of Guadalupe Hidalgo.

#### B. Anything but Free: Disfranchisement Through the Exploitation of Mexican Labor

*The second [condition] is subjection to various forms of unfree labor that greatly restrict the physical and social mobility of the group and its participation in the political arena.*

—Robert Blauner, *Racial Oppression in America*

The plight of migrant farm workers, mostly of Mexican origin, belies the mythology of the United States as a place where the operation of the free

113. RUBIN FRANCIS WESTON, *RACISM IN U.S. IMPERIALISM* 183–207 (1972).

114. *See id.* at 195–96.

115. *See PEREA ET. AL.*, *supra* note 7, at 341.

116. *See U.S. CONST.* arts. I, II (specifying that U.S. Representatives and Senators come from states, and that electors for President shall be appointed from states).

117. U.S. Census Bureau, 2002 Annual Population Estimates for Puerto Rico: Apr. 1, 2000 to July 1, 2002, at <http://eire.census.gov/popest/data/puerto/PR-EST2002-01.php> (last visited Sept. 9, 2003).

118. *See, e.g., Sanchez v. United States*, 376 F. Supp. 239 (D.P.R. 1974).

119. *See Jones Act*, ch. 145, §§ 9–10, 39 Stat. 951, 954–55 (1917).

120. *Harris v. Rosario*, 446 U.S. 651 (1980).

121. *See, e.g., United States v. Carolene Prods.*, 304 U.S. 144, 152 n.4 (1938).

market yields humane working conditions for all. Most migrant farm workers are anything but free. They toil for long hours doing back-breaking stoop labor, picking strawberries and other crops by hand, wracking their bodies to preserve the unblemished appearance of the fruit. At night they sleep in overcrowded garages, caves, and shantytowns. Most Americans will not do the work because it is too difficult and it pays too little. The situation of migrant farm workers has been described as "involuntary servitude" and "virtual peonage" by knowledgeable observers.<sup>122</sup>

American agriculture reverses free market principles.<sup>123</sup> Ordinarily, the more difficult a job is, the more employers have to pay to attract employees. In the fields of California, however, the only laborers who will do extraordinarily hard labor for illegally low wages are undocumented workers, mostly from Mexico, who are in no position to complain about their wages.<sup>124</sup> In this way, undocumented laborers subsidize American agriculture and those of us who eat California fruits and vegetables, by keeping the costs of these items lower than they would be if workers were paid a legal wage.

The consistent, cyclical, and cynical use of temporary and undocumented Mexican labor in the United States also illustrates the minimization of Latino political power.<sup>125</sup> For a century now, American agriculture and other labor-intensive industries have sought both documented and undocumented Mexicans as sources of cheap, reliable labor.<sup>126</sup> Even during times of overt nativism and racism, such as during the enactment of the National Origins Quota system in 1924, agricultural interests were able to argue successfully for unrestricted Mexican labor.<sup>127</sup> While demand for Mexican labor has generally been strong, periods of economic weakness and surplus

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122. ERIC SCHLOSSER, REEFER MADNESS: SEX, DRUGS, AND CHEAP LABOR IN THE AMERICAN BLACK MARKET 85, 87, 99 (2003); cf. ACUÑA, *supra* note 9, at 152.

123. Cf. Marc Linder, *Crewleaders and Agricultural Sweatshops: The Lawful and Unlawful Exploitation of Migrant Farmworkers*, 23 CREIGHTON L. REV. 213, 216-17 (1989).

124. *Id.*

125. See Gilbert Paul Carrasco, *Latinos in the United States: Invitation and Exile*, in IMMIGRANTS OUT! THE NEW NATIVISM AND THE ANTI-IMMIGRANT IMPULSE IN THE UNITED STATES 190 (Juan F. Perea ed., 1997) [hereinafter IMMIGRANTS OUT!]; Manuel García y Griego, *The Importation of Mexican Contract Laborers to the United States, 1942-1964: Antecedents, Operation, and Legacy*, in THE BORDER THAT JOINS 49, 50-51 (Peter G. Brown & Henry Shue eds., 1983); see also ACUÑA, *supra* note 10, at 210-18; ERNESTO GALARZA, *MERCHANTS OF LABOR: THE MEXICAN BRACERO STORY* (1964); MEXICAN WORKERS IN THE UNITED STATES: HISTORICAL AND POLITICAL PERSPECTIVES (George C. Kiser & Martha Woody Kiser eds., 1979) [hereinafter MEXICAN WORKERS].

126. See, e.g., ACUÑA, *supra* note 10, at 130-50; MEXICAN WORKERS, *supra* note 125, at 9-10, 68-70.

127. See ACUÑA, *supra* note 10, at 134-43.

labor have resulted in the expulsion and repatriation of Mexican laborers, as during the Great Depression and during Operation "Wetback" of the 1950s.<sup>128</sup>

The extensive history of the migration of temporary Mexican laborers, encouraged by the U.S. government and powerful agricultural interests, can be understood in the context of the political powerlessness intended for Mexicans subject to the U.S. conquest. Despite the frequent characterization of undocumented Mexican immigration as illegal and criminal, both the U.S. government and agricultural employers have actively encouraged such migration because it serves important economic interests. The Mexican government also benefits from migration to the United States: The United States provides a safety valve for Mexican workers unable to find work in the chronically weak Mexican economy. Mexico also benefits from the dollars sent back to Mexico by migrant workers.<sup>129</sup>

But through temporary contract labor programs like the Bracero Program,<sup>130</sup> and simultaneous tacit or formal acquiescence in undocumented migration that is temporary and clandestine in nature, both governments guarantee the reproduction of a politically powerless Mexican and Latino population within the United States. As Professor Michael Olivas described the situation:

Most crucial to the agricultural growers was the need for a reserve labor pool of workers who could be imported for their work, displaced when not needed, and kept in subordinate status so they could not afford to organize collectively or protest their conditions. Mexicans filled this bill perfectly, especially in the early twentieth Century [sic] Southwest, where Mexican poverty and the Revolution forced rural Mexicans to come to the United States for work.<sup>131</sup>

The importation of Mexican laborers, accomplished by joint agreements between the Mexican and U.S. governments, was "cynically employed to create a reserve pool of temporary laborers who had few rights and no vesting of equities."<sup>132</sup>

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128. For extended discussions of these repatriations, see FRANCISCO E. BALDERRAMA & RAYMOND RODRÍGUEZ, *DECADE OF BETRAYAL, MEXICAN REPATRIATION IN THE 1930S* (1995); JUAN GÓMEZ-QUIÑONES, *MEXICAN AMERICAN LABOR, 1790–1990*, at 174, 204, 208 (1994); ABRAHAM HOFFMAN, *UNWANTED MEXICAN AMERICANS IN THE GREAT DEPRESSION: REPATRIATION PRESSURES* (1974); García y Griego, *supra* note 125, at 64–66.

129. See *MEXICAN WORKERS*, *supra* note 125, at 7–8. Cf. SCHLOSSER, *supra* note 122, at 95; García y Griego, *supra* note 125, at 77.

130. For a discussion of how the Bracero Program has been effectively revived by the Supreme Court, see Christopher David Ruiz Cameron, *Borderline Decisions: Hoffman Plastic Compounds, the New Bracero Program, and the Supreme Court's Role in Making Federal Labor Policy*, 51 *UCLA L. REV.* 1 (2003). See also sources cited *supra* note 125.

131. Michael A. Olivas, *The Chronicles, My Grandfather's Stories, and Immigration Law: The Slave Traders Chronicle as Racial History*, 34 *ST. LOUIS U. L.J.* 425, 436 (1990).

132. *Id.* at 438.

The cyclical use of Mexican and other Latino labor contributes to the current political powerlessness of Latinos in several ways. Large numbers of undocumented Latino persons in the United States inflate the perceived political power of Latino citizens. The number of Latinos aged eighteen and over, and thus age-eligible to vote, is about 22.9 million.<sup>133</sup> However, this number includes over four million undocumented adults, bringing the potential number of Latino voters down to about 18.9 million.<sup>134</sup>

Scholars have established a close relationship between the treatment of immigrants and the treatment of citizens of similar ethnicity.<sup>135</sup> One particularly egregious example was the so-called repatriation, or expulsion, of Mexican laborers and Mexican American citizens to Mexico during the Depression and later during Operation Wetback in the 1950s.<sup>136</sup> During the nativist segregating of undocumented Latinos during the mid-1980s, the hostility ostensibly aimed at immigrants also resulted in negative treatment and perceptions of Latinos citizens.<sup>137</sup> Another, more recent, example occurred when U.S. Congressman Luis Gutiérrez of Illinois, attempted to enter the Capitol building with his daughter and niece. He was denied entry by a Capitol Police aide. When he identified himself as a member of Congress, the aide told him, "I don't think so."<sup>138</sup> When he produced his congressional identification card, the aide responded that "it must be a fake."<sup>139</sup> The aide added, "Why don't you and your people just go back to the country you came from?"<sup>140</sup> Congressman Gutiérrez and his family were stunned. Eventually another Capitol Police officer recognized the Congressman and allowed him to

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133. See U.S. Census Bureau, Annual Resident Population Estimate of U.S. by Age, Race, and Hispanic or Latino Origin: April 1, 2000 to July 1, 2002, tbl.3 at <http://eire.census.gov/popest/data/national/tables/asro/NA-EST2002-ASRO-03.php> (last visited Sept. 9, 2003).

134. Louis DeSipio & Rodolfo O. de la Garza, *Forever Seen as New: Latino Participation in American Elections*, in *LATINOS: REMAKING AMERICA* 398, 402 (Marcelo M. Suárez-Orozco & Mariela M. Pérez eds., 2002).

135. See DAVID G. GUTIÉRREZ, *WALLS AND MIRRORS: MEXICAN AMERICANS, MEXICAN IMMIGRANTS AND THE POLITICS OF ETHNICITY* 5 (1995); Kevin R. Johnson, *Some Thoughts on the Future of Latino Legal Scholarship*, 2 HARV. LATINO L. REV. 101 (1997), excerpted in *THE LATINO/A CONDITION* 198-201 (Richard Delgado & Jean Stefancic eds., 1998).

136. See Carrasco, *supra* note 125 at 192-94, 197-98; BALDERRAMA & RODRÍGUEZ, *supra* note 128, at 216; KITTY CALAVITA, *INSIDE THE STATE: THE BRACERO PROGRAM, IMMIGRATION AND THE I.N.S.* 53-61 (1992).

137. For an excellent analysis of the metaphors and imagery surrounding immigrants and immigration during the debate over California's Proposition 187, see OTTO SANTA ANA, *BROWN TIDE RISING* 65-103 (2002).

138. See Suzanne Oboler, "It Must Be A Fake!": *Racial Ideologies, Identities, and the Question of Rights*, in *HISPANICS/LATINOS IN THE UNITED STATES* 125, 125 (Jorge J.E. Gracia & Pablo De Greiff eds., 2000).

139. *Id.*

140. *Id.*



enter his office building.<sup>141</sup> The aide assumed that someone who looked like Congressman Gutiérrez, who is Puerto Rican, neither belonged in the United States nor in the U.S. Congress, regardless of his evidence of membership.<sup>142</sup> The economic and social exploitation of undocumented immigrant laborers fuels the exploitation of Latino citizens. Thus Americans of Mexican or other Latino origins are sometimes assigned to do work which "Americans [do] not have to do."<sup>143</sup>

The political and economic powerlessness of undocumented persons is reinforced and reproduced by the doctrine of agricultural exceptionalism. The term *agricultural exceptionalism* refers to the statutory exemptions for the agricultural industry from minimal guarantees available to employees in virtually all other sectors of employment under, for example, the Fair Labor Standards Act (FLSA) and the National Labor Relations Act (NLRA).<sup>144</sup> Agricultural exceptionalism appears to have originated in a desire to reproduce the subordinated laboring class of the southern plantation:

Direct legislative history explaining the FLSA's exclusion of farm workers is virtually nonexistent. By 1938, when the FLSA became law, the exclusion had become routine in New Deal legislation. An examination of the predecessor legislation to FLSA, however, reveals the reason for the exclusion. To enact the social and economic reforms of the New Deal, President Roosevelt and his allies were forced to compromise with southern congressmen. Those congressmen negotiated with Roosevelt to obtain modifications of New Deal legislation that preserved the social and racial plantation system in the South—a system resting on the subjugation of blacks and other minorities. As a result, New Deal legislation, including the FLSA, became infected with unconstitutional racial motivation.

... The discrimination survives, however, in the wholesale exclusion of agricultural workers from the maximum hours and overtime provision of the FLSA.<sup>145</sup>

Because of many such exclusions, undocumented workers are paid less and protected less than most American workers. The subordinate status of undocumented laborers is supported by the law, thus undermining both the interests of undocumented persons in fair treatment and the interests of

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141. *Id.* at 126.

142. *Id.*

143. *Ugalde v. W.A. McKenzie Asphalt Co.*, 990 F.2d 239, 241 (5th Cir. 1993).

144. See Sean A. Andrade, *Biting the Hand That Feeds You: How Federal Law Has Permitted Employers to Violate the Basic Rights of Farmworkers and How This Has Begun to Impact Other Industries*, 4 U. PA. J. LAB. & EMP. L. 601 (2002); Guadalupe T. Luna, *An Infinite Distance? Agricultural Exceptionalism and Agricultural Labor*, 1 U. PA. J. LAB. & EMP. L. 487 (1998).

145. Marc Linder, *Farm Workers and the Fair Labor Standards Act: Racial Discrimination in the New Deal*, 65 TEX. L. REV. 1335, 1336–37 (1987).

other American laborers and employees, whose competitive positions are undermined by immigrant labor.

Agricultural exceptionalism can be found in many American laws, of which I will give just a few examples. The NLRA excludes farm workers explicitly, making it extraordinarily difficult for them to organize and bargain collectively.<sup>146</sup> Their relative inability to bargain collectively results in some of the lowest wages in the nation paid for some of the hardest work, together with hazardous working conditions and often squalid living standards.<sup>147</sup> The Immigration Reform and Control Act of 1986, which makes it illegal to employ persons without evidence of employment eligibility, exempts agricultural employers, and therefore facilitates the employment of undocumented immigrants.<sup>148</sup> The FLSA provides another example of agricultural exceptionalism. The FLSA originally excluded agricultural workers from its minimum wage, overtime, and child labor protections.<sup>149</sup> In 1966, Congress amended the FLSA to include many agricultural workers, but excepted those working on family farms.<sup>150</sup> Farm owners, however, have continued to evade the FLSA by delegating the hiring and recruiting of farm workers to "labor contractors," and by leasing parcels of land to farm worker families in sharecropping arrangements.<sup>151</sup> These arrangements effectively "transfer[ ] the risks of agricultural employment to the workers."<sup>152</sup> Professor Guadalupe Luna has described the extensive scope of agricultural exceptionalism, showing how regulations, subsidies, and exemptions for the agriculture industry privilege agricultural producers while impoverishing and demeaning farm workers.<sup>153</sup>

The encouragement, use, and exploitation of temporary Mexican and Mexican American labor, beginning in the early twentieth century and continuing into the present, have left multiple legacies. One legacy is the profound economic disadvantage resulting from the importation of temporary labor and agricultural exceptionalism. "The policy of excluding farm labor from social and labor legislation . . . involved unstated legislative deci-

146. See 29 U.S.C. § 152(3) (2000) (under the NLRA, the definition of employee "shall not include any individual employed as an agricultural laborer"); Andrade, *supra* note 144, at 606–07.

147. See Luna, *supra* note 144; NANO RILEY & DAVIDA JOHNS, *FLORIDA'S FARMWORKERS IN THE TWENTY-FIRST CENTURY* 13–19 (2002); SCHLOSSER, *supra* note 122, at 79, 91, 93–94, 106–08.

148. See 8 U.S.C. § 1101(a)(15)(H)(ii)(a) (2000); Luna, *supra* note 144, at 493–94.

149. See Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201–219 (1964) (amended 1966).

150. See Andrade, *supra* note 144, at 613 & nn.57–58.

151. See Linder, *supra* note 123, at 220–21; Luna, *supra* note 144, at 494–95.

152. Linder, *supra* note 123, at 216 (citation omitted).

153. See Luna, *supra* note 144, at 491–95.

sions to perpetuate a low-income, disadvantaged farm labor force."<sup>154</sup> Another legacy is the persistence of informal Mexican migration.<sup>155</sup>

American society and government act with great hypocrisy towards migrant Latino laborers. While migrant laborers are condemned as illegal and criminal, further facilitating their disfranchisement, the agricultural industry and other industries remain highly dependent on them, as they have been for a very long time. As noted by one scholar:

Those who argue that the United States bears no responsibility to Mexican migrants who recently have entered illegally ignore the long-standing involvement of U.S. employers in promoting this flow, and of the U.S. government in encouraging the violation of its immigration laws in order to accomplish its foreign policy objectives.<sup>156</sup>

The perpetuation of a politically and economically powerless Mexican and Latino labor force is fully consistent with the racial legacy of the conquest.

The disfranchisement and devaluation of migrant laborers is also apparent in political attacks upon them. California's enactment of Proposition 187, for example, sought to deny undocumented immigrants access to basic medical care and public education.<sup>157</sup> During the heightened nativism of the mid-1990s, resolutions were introduced in Congress to deny birthright citizenship to American-born children of undocumented immigrants. One such proposal, introduced in 1994, requested "an amendment to the Constitution of the United States to provide that no person born in the United States will be a United States citizen on account of birth in the United States unless a parent is a United States citizen at the time of the birth."<sup>158</sup> Such proposed amendments illustrate powerfully the amount of political venom directed at undocumented Latino immigrants and aimed at their further disfranchisement.<sup>159</sup>

154. Andrade, *supra* note 144, at 607 (quoting DONALD B. PEDERSON & DALE C. DAHL, *AGRICULTURAL EMPLOYMENT LAW AND POLICY: A STUDY OF THE IMPACT OF MODERN SOCIAL AND LABOR RELATIONS LEGISLATION ON AGRICULTURAL EMPLOYMENT* 1 (1981)).

155. García y Griego, *supra* note 125, at 77.

156. *Id.* at 79.

157. See generally *IMMIGRANTS OUT!*, *supra* note 125.

158. Richard Delgado, *Citizenship*, in *IMMIGRANTS OUT!*, *supra* note 125, at 318, 319 (citing H.R.J. Res. 396, 103d Cong. (1994)).

159. While restrictions on the rights of undocumented persons are often a condition of guest-worker programs, international human rights norms support an argument that undocumented immigrants should be able to live free from racial and economic discrimination and should have either access to political participation or, at a minimum, access to citizenship and eventual political participation. See Berta Esperanza Hernández-Truyol, *Reconciling Rights in Collision: An International Human Rights Strategy*, in *IMMIGRANTS OUT!*, *supra* note 125, at 254; James W. Nickel, *Human Rights and the Rights of Aliens*, in *THE BORDER THAT JOINS*, *supra* note 125, at 31.

This history demands vigilance with respect to contemporary decisions that reinforce or aid in the further reproduction of the political powerlessness of Latinos. Just prior to the September 11, 2001 attacks on the World Trade Center, Presidents Vicente Fox and George W. Bush held a summit meeting to discuss a formal agreement creating a new guest worker program involving temporary Mexican laborers.<sup>160</sup> Any such program that does not include eligibility for legal residency and eventual U.S. citizenship should probably be rejected because it continues the now familiar pattern of enabling the United States to exploit Mexican labor while denying eventual access to political power. Although such programs may be in the interests of the U.S. and Mexican governments, they are clearly not in the interests of Latinos, whose political power remains less than it should be. As stated by one commentator, "For Latinos, guest workers without legalization will unacceptably set back the immigrant cause."<sup>161</sup> Such a program not only sets back the immigrant cause, it also sets back the cause of Latino citizens whose political representation and clout has been minimized.

### C. Disfranchisement Through Language Restriction

*The third [condition] is a cultural policy of the colonizer that constrains, transforms, or destroys original values, orientations, and ways of life.*

—Robert Blauner, *Racial Oppression in America*

As part of its racial reasoning for denying statehood to New Mexico, Congress objected to the political participation of Spanish speakers. This could be described as the denial of political participation through linguistic control or dominance. This theme remains a potent one. The Official English movement continues its work of attempting to solidify English as the official language of governance. However, this attempt is unnecessary, since English is unquestionably the dominant American language. The Official English movement also undermines America's claim of tolerance for diversity, particularly given the nation's long history of multilingualism. History shows the longtime presence within these borders of Spanish, Indian, French, and Asian languages, in addition to the remnants of African languages suppressed during slavery.<sup>162</sup>

Linguistic control through mandatory English has important ramifications for political participation. One of the principal aims of the recent Official English movement has been the repeal of certain provisions of the

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160. *Democratic Support for Bush on Immigration*, L.A. TIMES, Sept. 9, 2001, at A16.

161. Morning Edition (NPR Radio Broadcast, Sept. 10, 2001), 2001 WL 938792.

162. See, e.g., Perea, *supra* note 99.

Voting Rights Act that require multilingual ballots in areas with high concentrations of voters whose primary languages are not English.<sup>163</sup> Repeal of these provisions would obviously curtail voting by eligible voters. Moreover, it has also been documented that enactment of Official English laws reduces voting by persons who are bilingual.<sup>164</sup> The symbolic elevation of English, and simultaneous devaluation of other languages, sends a message that rejects and alienates all persons who identify with a language and culture other than, or in addition to, English.

Another form of linguistic subordination occurs commonly in American workplaces. Many employers have implemented English-only rules, prohibiting the use of Spanish in the workplace except during breaks or lunch.<sup>165</sup> Such rules have been applied to discipline or terminate an employee who answers a work-related question in Spanish,<sup>166</sup> as well as employees who engage in private conversations in Spanish.<sup>167</sup> Employers have disciplined employees or subjected them to such rules even when there is no interference with work performance, or when Spanish is actually needed to perform services for Spanish-speaking customers.<sup>168</sup> Despite Equal Employment Opportunity Commission (EEOC) guidelines which recognize English-only rules as a form of national origin discrimination, the U.S. courts of appeal have generally ignored the EEOC's guidelines and have upheld employer control over non-English languages.<sup>169</sup> I understand this continuing perceived need for linguistic control as part of the continuing legacy of conquest.

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163. See, e.g., The Language of Gov. Act of 1995, S. Res. 356, 104th Cong. (1995) (proposing to make English the official language of the U.S. government); see also statement of Juan F. Perea concerning S.356, *The Language of Government Act of 1995*, Mar. 7, 1996, at 1996 WL 107203 (F.D.C.H.).

164. Robert Brischotto, *The Availability and Use of Bilingual Election Services*, in MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND, BILINGUAL ELECTIONS AT WORK IN THE SOUTHWEST 84, 98-101 (1982).

165. See generally 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); Juan F. Perea, *Killing Me Softly With His Song: Anglocentrism and Celebrating Nouveaux Latinas/os*, 55 FLA. L. REV. 441 (2003); Juan F. Perea, *Ethnicity and Prejudice: Reevaluating "National Origin" Discrimination Under Title VII*, 35 WM. & MARY L. REV. 805 (1994); Juan F. Perea, *English-Only Rules and the Right to Speak One's Primary Language in the Workplace*, 23 U. MICH. J.L. REFORM 265 (1990).

166. *Garcia v. Gloor*, 618 F.2d 264 (5th Cir. 1980), cert. denied, 449 U.S. 113 (1981).

167. See, e.g., *Garcia v. Spun Steak Co.*, 998 F.2d 1480 (9th Cir. 1993), cert. denied, 512 U.S. 1228 (1994).

168. *Gloor*, 618 F.2d at 266-67.

169. See, e.g., *Gloor*, 618 F.2d at 264; *Spun Steak*, 998 F.2d at 1480.

## CONCLUSION

White racism and a desire for the expansion of slavery played prominent roles in the annexation of Texas, the conquest of Mexico, and in the annexation of the northern third of Mexico as part of the United States. The racism that created slavery shaped the conquest of Mexico. While Anglo-Americans coveted Mexican land, they despised Mexican people for racist reasons. White politicians, committed to a “[g]overnment of the white race,” deliberately minimized the voting and representation of Mexican people, either by racial qualifications for voting or by withholding statehood from territories with a predominantly Mexican population.

Events as large as the conquest of a neighboring country, and the seismic adjustments necessary to accommodate a conquest, have profound implications for both the conquerors and the conquered. The residue of conquest becomes like social DNA, producing and reproducing patterns and trajectories that resemble the originals. We can still sense the residue, the patterns and trajectories, in contemporary re-enactments of one of the themes of the conquest—the denial or limitation of political power to Mexicans, and later, Latino citizens and residents of the United States.

We can sense the guiding hand of the conquest of Mexico in the subsequent conquest and subordination of Puerto Rico. We can sense the guiding hand of conquest in the legally produced subordinate status of migrant farm workers and in the socially produced definition of undocumented Latino immigrants as “illegal” and “criminal.” We can also sense the guiding hand of conquest in attempts to delegitimize the Spanish language and Spanish-language education, and to disfranchise U.S. citizens who vote in Spanish.

The history of the conquest of Mexico can teach us the origins and functions of many contemporary racialized images of Mexican and other Latino people. It can help us to understand the structural, racialized distribution of employment opportunities. And it can help us to understand why the political power of Latinos always seems less than it should be.