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Introduction: Comparative Racialization: Culture and National Origin in the Latina/o Communities

COMPARATIVE RACIALIZATION: CULTURE AND NATIONAL ORIGIN IN THE LATINA/O COMMUNITIES

KEVIN R. JOHNSON*

Within the contours of critical Latina/o (LatCrit) Theory, “comparative racialization” analyzes how society constructs, or racializes, or “others,” various Latin American national origin groups in different ways.¹ Such comparisons in no way seek to demonstrate that one group is “more” disadvantaged than another, but rather strive for a deeper understanding of racial formation and the roots of racial subordination. In so doing, we must recognize the vast differences between various Latina/o communities.

This cluster of essays directly and indirectly investigates the comparative racialization of Latina/o national origin groups.² Several essays

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1. See generally MICHAEL OMI & HOWARD WINANT, *RACIAL FORMATION IN THE UNITED STATES FROM THE 1960'S TO THE 1990'S* (2d ed. 1994) (analyzing racial formation in United States). In this essay, I use “racialization” in the context of “comparative racialization” broadly to refer to the different social constructions as “others” of persons of Mexican, Cuban, and Puerto Rican ancestry; such differentiation may be based on perceived class and cultural, as well as phenotypical (physical appearance), differences. See Kevin R. Johnson & George A. Martínez, *Crossover Dreams: The Roots of LatCrit Theory in Chicana/o Studies Activism and Scholarship*, 53 U. MIAMI L. REV. 1143, 1155-57 (1999) (advocating scholarship analyzing the distinctive racialization of Chicano/as in the United States); Kevin R. Johnson, *Celebrating LatCrit Theory: What Do We Do When the Music Stops?*, 33 U.C. DAVIS L. REV. 753, 764 (2000) (“[T]he process of racialization is complex, affecting different groups in different ways. Latina/os comprise a truly complex racial mixture of peoples . . .”) (footnote omitted).

2. LatCrit theory also has devoted itself to exploring how Latina/o subordination differs from that of other minority groups. See, e.g., Richard Delgado, *Rodrigo's Fifteenth Chronicle: Racial Mixture, Latino-Critical Scholarship, and the Black-White Binary*, 75 TEX. L. REV. 1181 (1997) (comparing racialization of Latina/os to African Americans); Rachel F. Moran, *Neither Black Nor White*, 2 HARV. LATINO L. REV. 61 (1997) (same); Athena D. Mutua, *Shifting Bottoms and Rotating Centers: Reflections on LatCrit III and the Black/White Paradigm*, 53 U. MIAMI L. REV. 1177 (1999) (same); Enid Trucios-Haynes, *Why “Race Matters”: LatCrit Theory and Latina/o Racial Identity*, 12 LA RAZA L.J. 1 (2000-01) (same). Asian American scholars have engaged in similar studies. See, e.g., Neil Gotanda, *Comparative Racialization: Racial Profiling and the Case of Wen Ho Lee*, 47 UCLA L. REV. 1689 (2000) (comparing racialization of Asians with African Americans in law enforcement).

devote attention to the growing popularity of certain aspects of "Latin" culture among Anglos.³ Their rich cultural analysis teaches much about the Latina/os able to achieve mainstream popularity, the hierarchy among Latina/o national origin groups, and the stereotypes that they reinforce.

Another contribution focuses on the tragic case of Elian Gonzalez, in which a young Cuban boy who journeyed by raft to the United States, lost his mother on the way, and became the center of a controversy over whether the United States should return him to his father in Cuba; this analysis considers how immigration law creates distinctions between Latina/o national origin groups—effectively racializing them differently—and reinforces their differential treatment.⁴ The fluidity of racial constructions can be seen in the differentiation of immigrants of Mexican and Cuban ancestry over time, and the evolving legal responses to each group.⁵

I. "LATIN" DANCE AND MUSIC: PROMOTING CULTURAL APPRECIATION OR REINFORCING NEGATIVE STEREOTYPES?

Multiculturalism teaches tolerance of racial and cultural diversity.⁶ The relationship between race and culture has been the subject of increasing legal,⁷ including LatCrit,⁸ analysis. Contrary to popular belief, "[c]ulture is not some monolithic, fixed, and static essence."⁹ Any culture is constantly changing, affected by interaction with other cultures, especially in an era of globalization.¹⁰ We must acknowledge, for example,

3. See *infra* text accompanying notes 6-98.

4. See *infra* text accompanying notes 99-153.

5. See *infra* text accompanying notes 105-30.

6. See, e.g., NATHAN GLAZER, *WE ARE ALL MULTICULTURALISTS NOW* (1997).

7. See Rosemary J. Coombe, *New Direction: Critical Cultural Legal Studies*, 10 *YALE J.L. & HUMAN* 463, 469 (1998) ("The cultural dimensions of social life and the interpretative nature of human experience have become issues of concern in legal scholarship primarily in the last decade.") (footnote omitted). Compare Leti Volpp, *Blaming Culture for Bad Behavior*, 12 *YALE J.L. & HUMAN* 89 (2000) (analyzing relationship between race and culture), with Richard T. Ford, *Race as Culture? Why Not?*, 47 *UCLA L. REV.* 1803 (2000) (questioning the extension of civil rights protections to remedying discrimination based on cultural difference).

8. See, e.g., Sharon K. Hom, *Lexicon Dreams and Chinese Rock and Roll: Thoughts on Culture, Language, and Translation as Strategies of Resistance and Reconstruction*, 53 *U. MIAMI L. REV.* 1003 (1999); Eric K. Yamamoto, *Practically Reframing Rights: Culture, Performance, and Judging*, 33 *U.C. DAVIS L. REV.* 875 (2000).

9. Leti Volpp, *Talking "Culture": Gender, Race, Nation, and the Politics of Multiculturalism*, 96 *COLUM. L. REV.* 1573, 1589 (1996) (footnote omitted); see Janet E. Halley, *Sexuality, Cultural Tradition, and the Law*, 8 *YALE J.L. & HUMAN* 93 (1996) (analyzing sexual orientation, culture, and the law). See generally RENATO ROSALDO, *CULTURE & TRUTH: THE REMAKING OF SOCIAL ANALYSIS* (1993) (offering theoretical justification for modern cultural studies).

10. See Andrew T. Guzman, *International Bankruptcy: In Defense of Universalism*, 98 *MICH. L. REV.* 2177, 2177 (2000) ("The globalization of business activity is rightfully celebrated as one of the triumphs of the second half of the twentieth century."); see also Anupam Chander, *Diaspora Bonds*, 76 *N.Y.U. L. REV.* 1005, 1007-08 (2001) (discussing role of immigrant diasporas in the

that Anglo American culture in this country has been indelibly influenced by Mexican culture while Mexican culture has been forever transformed by its interaction with Anglo culture.¹¹ Indeed, with technological innovation over the last century, "American culture" has influenced the world.¹² To add to the complexity, culture in any society is also the subject of continuing internal dissent and debate over its contours.¹³

This line of analysis, of course, represents a gross oversimplification. In fact, no single "Mexican", "Latin," or "American" culture exists. Consistent with Critical Latina/o Theory's commitment to anti-essentialism,¹⁴ care must be taken not to homogenize cultures from Latin American nations, which vary dramatically across and within national borders.

A. *Latin Dance and Music: Lessons from Anglo Popularity*

1. Salsa Dancing

LatCrit inquiry has analyzed "Latina/o communities, cultures, and concerns," including "the Ricky Martin and Jennifer Lopez hysteria of contemporary pop culture."¹⁵ In this vein, Professor Nancy Ehrenreich explores how Latina/os view Anglo participation in salsa as part of the larger "Latin Music Craze," which generates "mixed reactions" from

globalization of capital). See generally THOMAS C. FISCHER, *THE UNITED STATES, THE EUROPEAN UNION, AND THE "GLOBALIZATION" OF WORLD TRADE: ALLIES OR ADVERSARIES* (2000) (analyzing impacts of increasingly global markets).

11. See ILAN STAVANS, *THE HISPANIC CONDITION: REFLECTIONS ON CULTURE AND IDENTITY IN AMERICA* 7-10 (1995) (analyzing cultural transformation of Latina/os who come to United States and how they transform culture in the U.S.); Marcelo M. Suárez-Orozco, *Everything You Ever Wanted to Know About Assimilation But Were Afraid to Ask*, 129 *DAEDALUS* 1, 22-23 (2000) (contending that "large-scale immigration" to United States has brought cultural and other change); see also Alicia Gaspar de Alba, *The Alter-Native Grain: Theorizing Chicano/a Popular Culture*, in *CULTURE AND DIFFERENCE: CRITICAL PERSPECTIVES ON THE BICULTURAL EXPERIENCE IN THE UNITED STATES* 103, 107 (Antonia Darder ed., 1995) ("Chicano/a identity is, ultimately, a border identity: neither side wants you and you can't go home."). See generally GEORGE J. SÁNCHEZ, *BECOMING MEXICAN AMERICAN: ETHNICITY, CULTURE, AND IDENTITY IN CHICANO LOS ANGELES, 1900-1945* (1993) (analyzing historically the change in Mexican immigrant culture after settling in the United States and the transformation of Mexican immigrants into Mexican-Americans).

12. See Gary Minda, *Globalization of Culture*, 71 *U. COLO. L. REV.* 589, 594-95 (2000) (analyzing the impact of globalization on culture throughout the world); Robert Holton, *Globalization's Cultural Consequences*, 570 *ANNALS* 140 (2000) (same).

13. See generally Madhavi Sunder, *Cultural Dissent*, 54 *STAN. L. REV.* (forthcoming 2002) (analyzing debates within communities over cultural content).

14. See Elizabeth M. Iglesias & Francisco Valdes, *Religion, Gender, Sexuality, Race and Class in Coalitional Theory: A Critical and Self-Critical Analysis of LatCrit Social Justice Agendas*, 19 *CHICANO-LATINO L. REV.* 503, 515 (1998).

15. Francisco Valdes, *Race, Ethnicity, and Hispanismo in a Triangular Perspective: The "Essential Latina/o" and LatCrit Theory*, 48 *UCLA L. REV.* 305, 308 (2000) (footnote omitted); see Mary Romero, *Historicizing and Symbolizing a Racial Ethnic Identity: Lessons for Coalition Building with a Social Justice Agenda*, 33 *U.C. DAVIS L. REV.* 1599, 1622 (2000) (advocating greater LatCrit analysis of "production and consumption of Latina/o popular culture in the U.S.").

observers.¹⁶ Her fundamental premise is that “one should reject any impulse to interpret Anglo/a interest in Latin cultural productions as either unequivocally good or unequivocally bad.”¹⁷

The need to investigate Anglo interest in Latina/o culture results from the dramatically different possible explanations for that interest. Cultural tolerance may help make it possible for mutual understanding.¹⁸ In contrast, the embrace of Latina/o culture may reinforce popular stereotypes.¹⁹ Importantly, the Anglo embrace of certain aspects of Latina/o culture has not ended anti-Latina/o sentiment in the United States.²⁰ Although salsa has emerged as the most popular condiment in the United States,²¹ traces of animosity directed at persons of Mexican ancestry persist.²² The specific subject of Professor Ehrenreich’s essay, salsa dancing, presents particularly perplexing complexities.²³

a. Deconstructing “Latin”

At the outset, Professor Ehrenreich observes that there is no “pure” or “true” version of “Latin music.”²⁴ Nor am I precisely sure how to define “Latin music,” as that phrase is currently used in the popular media.

16. Nancy Ehrenreich, *Confessions of a White Salsa Dancer: Appropriation, Identity, and the “Latin Music Craze,”* 78 DENV. U.L. REV. 795 (2001) [hereinafter Ehrenreich, *Salsa Dancer*]. Professor Ehrenreich is a well-published feminist jurisprudence scholar. See, e.g., Nancy S. Ehrenreich, *The Colonization of the Womb*, 43 DUKE L.J. 492 (1993) (addressing medical and legal treatment of reproduction); Nancy S. Ehrenreich, *Pluralist Myths and Powerless Men: The Ideology of Reasonableness in Sexual Harassment Law*, 99 YALE L.J. 1177 (1990) (addressing sexual harassment in the work environment).

17. Ehrenreich, *Salsa Dancer*, *supra* note 16, at 797.

18. See *id.* (contending that Anglo appreciation of Latin dance can facilitate “true multicultural understanding”).

19. See *infra* text accompanying notes 48-50, 58-61, 68-75.

20. See, e.g., NATIONAL COUNCIL OF LA RAZA, *THE MAINSTREAMING OF HATE: A REPORT ON LATINOS AND HARASSMENT, HATE VIOLENCE, AND LAW ENFORCEMENT ABUSE IN THE ‘90S* (1999).

21. See Christopher David Ruiz Cameron, *The Labyrinth of Solidarity: Why the Future of the American Labor Movement Depends on Latino Workers*, 53 U. MIAMI L. REV. 1089, 1093-94 (1999). Actually, the increased popularity of salsa in fact is an increased popularity in salsa that is not too spicy. See *infra* text accompanying notes 37, 48-52, 72-75 (analyzing cultural representations likely to be embraced by Anglos).

22. See, e.g., Ruben J. Garcia, *Critical Race Theory and Proposition 187: The Racial Politics of Immigration Law*, 17 CHICANO-LATINO L. REV. 118 (1995) (examining immigration law known as Proposition 187, which was fueled by anti-Mexican sentiment in California).

23. See Frances R. Aparicio, *Salsa, Maracas, and Baile: Latin Popular Music in the Poetry of Victor Hernandez Cruz*, 16 MELUS 43, 44 (1989-90) (discussing complexity of salsa music as “[a]ppropriated by the North American music industry”, “express[ing] a retrograde and reactionary attitude toward sexual roles”, and “represent[ing] [a] form[] of cultural resistance to anglicization”); Frances R. Aparicio, “*Así Son*”: *Salsa Music, Female Narratives, and Gender (De)Construction in Puerto Rico*, 15 POETICS TODAY 659 (1994) (analyzing salsa music and why Latinas enjoy it despite patriarchal lyrics). See generally FRANCES R. APARICIO, *LISTENING TO SALSA: GENDER, LATIN POPULAR MUSIC, AND PUERTO RICAN CULTURES* (1998) (analyzing salsa’s cultural meaning).

24. Ehrenreich, *Salsa Dancer*, *supra* note 16, at 800.

Latina/os come from many national origin ancestries and popular music varies by country.²⁵ The “Latin music craze” thus reflects the homogenization of many Latin cultures and peoples, including indigenous ones.

Moreover, the “Latin” music currently popular in the United States has been distinctly Caribbean in flavor. Puerto Ricans, such as Ricky Martin, Jennifer Lopez, and Marc Anthony, and Cuban Americans, including Gloria Estefán, have been at the forefront.²⁶ Musicians of Mexican ancestry and U.S. citizenship, such as Ritchie Valens²⁷ and Selena,²⁸ both the subject of movies, became more well-known after their lives met tragic ends. Mexican-American artists like Los Lobos have received critical acclaim for decades but have failed to attract mass appeal or generate anything resembling a “craze”; indeed, Los Lobos was not invited to perform at the first Latin Grammys in 2000,²⁹ which was marred by

25. See Kevin R. Johnson, “Melting Pot” or “Ring of Fire”? *Assimilation and the Mexican-American Experience*, 85 CAL. L. REV. 1259, 1293-94 (1997), 10 LA RAZA L.J. 173, 205-06 (1998).

26. See *infra* text accompanying notes 62-71. Others, such as Christina Aguilera, a blond mixed Ecuadoran, Irish singer raised in a Pittsburgh suburb, have also attracted popular attention. See Christopher John Farley, *Christina Aguilera; Building a 21st Century Star*, TIME, Mar. 6, 2000, at 70 (reporting that “[n]ow that [Aguilera’s] a mainstream star, she wants to be a Latin star too”); Steve Sailor, *Not Hispanic Enough*, WASH. TIMES, Jan. 8, 2001, at A15 (stating that “somebody of Irish American upbringing who couldn’t resist cashing in on her Spanish surname is the blue-eyed and blond teen diva Christina Aguilera”).

27. See *La Bamba* (Columbia Pictures, 1987); DAVID REYES & TOM WALDMAN, *LAND OF A THOUSAND DANCES: CHICANO ROCK ‘N’ ROLL FROM SOUTHERN CALIFORNIA* 41-42 (1998) (discussing the various efforts to “remember” Valens and his music after his death); Michael A. Olivas, *I’ll Just Cry – “96 Tears.”* 24 BILINGUAL REV. 292, 293 (1999) (noting that Valens “is remembered today as much for dying in the ill-fated flight with . . . the Big Bopper . . . and Buddy Holly as for his music” and that his song *La Bamba* did “not become a huge hit until the movie” of his life was released almost three decades after his death); see also Sheila Benson, *Accent on the Latino Market*, L.A. TIMES, July 24, 1987, Calendar, at 6 (noting that movie on Valens life, *La Bamba*, overlooked the difficulties that Valens faced, including the perceived need to Anglicize his name to succeed in the music business, and complications caused by the fact that the love of his life, Donna, was Anglo).

28. See Selena (Warner Studios, 1997); JOSÉ E. LIMÓN, *AMERICAN ENCOUNTERS: GREATER MEXICO, THE UNITED STATES, AND THE EROTICS OF CULTURE* 169-92 (1998) (analyzing sexuality of Selena’s music and dancing as a form of cultural resistance); EMMA PÉREZ, *THE DECOLONIAL IMAGINARY: WRITING CHICANAS INTO HISTORY* 116-21 (1999) (viewing Selena’s racialized, working class sexuality as act of Chicana resistance); Ediberto Román, *The Legal and Political Consequences of Latino-Latina Ethnic and Racial Stereotypes in Film and Other Media*, 4 J. GENDER RACE & JUST. 37, 41 n.31 (2000) (mentioning how radio show host mocked Selena’s murder). Jennifer Lopez, a Puerto Rican, played Selena, a Mexican-American, in the film “Selena”:

Lopez argued that she was well-suited to play Selena because they shared an ethnic identity as Latinas beyond their “national” identities. “I don’t think the actress who played her had to be Mexican-American because Selena was,” Lopez said. “Selena and I are both Latinas and both had the common experience of growing up Latina in this country. This is good enough.”

Frances Negrón-Muntaner, *Jennifer’s Butt*, 22 AZTLÁN 181, 183 (1997) (footnote omitted).

29. See Sandra Barrera, *Los Lobos Endures Snubs, Tragedy*, DAILY NEWS (Los Angeles), Dec. 27, 2000, at L3.

controversy concerning the alleged exclusion of Mexican musicians.³⁰ A veteran of the 1960s music watershed known as Woodstock, Carlos Santana arguably represents an exception to the exclusion of Mexicans from popular circles, but he only attained commercial acclaim after decades in the music business.³¹

In fact, the band of popular "Latin" music is rather narrow. Relatively little public attention has been paid to artists like Kid Frost, a rapper from East Los Angeles who analyzes the Chicana/o inner city experience marred by violence, police brutality, and desperation,³² Los Tigres del Norte, a group composed of undocumented immigrants whose music documents the Mexican immigrant experience,³³ or Tish Hinojosa, a TexMex folk singer whose *corridos* offer insights about the place of Mexican-American and Mexican immigrants in the U.S. borderlands.³⁴

The interrogation of the "Latin" in the "Latin music craze" is critical. Although portrayed by the media as generic Latina/os, Ricky Martin and Jennifer Lopez are not generally seen by Mexican-Americans as one of them; Puerto Ricans understandably may view them as Puerto Rican.³⁵

30. See Mireya Navarro, *Latin Grammys' Border Skirmish; New Awards Face Complaints About Slighting a Mexican Genre*, N.Y. TIMES, Sept. 13, 2000, at E1; see also *Latin Grammys*, CITY NEWS SERV., Sept. 29, 2000 (reporting that two groups refused to accept Latin Grammys because of alleged bias against Mexican music); David Bauder, *Santana Wins 3 Latin Grammys; Inaugural Awards Offer Emotion, Controversy*, COMMERCIAL APPEAL (Memphis, Tenn.), Sept. 14, 2000, at A10 (reporting that television producers of Latin Grammys favored artists who sang in English and are better known in United States).

31. See Kristi Singer, *From Woodstock to Mega-Platinum; After More than 50 Years in the Business, Santana Strikes It Rich with 'Supernatural'*, MORNING STAR (Wilmington, NC), July 21, 2000, at 9.

32. See, e.g., KID FROST, *EAST SIDE STORY* (Virgin Records, 1992); Steve Hochman, *Kid Frost Raps to La Raza*, L.A. TIMES, Aug. 26, 1990, Calendar, at 8; see also JOSE DAVID SALDIVAR, *BORDER MATTERS: REMAPPING AMERICAN CULTURAL STUDIES* 126-29 (1997) (analyzing Kid Frost's music including songs named "I Got Pulled Over," "Penitentiary," and "Chaos on the Streets of East Los Angeles"). See generally STEVEN LOZA, *BARRIO RHYTHM: MEXICAN AMERICAN MUSIC IN LOS ANGELES* (1993) (discussing history of Mexican-American music in Los Angeles).

33. See, e.g., *Los Tigres del Norte, 16 Grandes Exitos* (Fonoriso 1991); SALDIVAR, *supra* note 32, at 1-8 (analyzing group's focus on undocumented Mexican experience); GEORGE LIPSITZ, *DANGEROUS CROSSROADS: POPULAR MUSIC, POSTMODERNISM AND THE POETICS OF PLACE* 131 (1994) (noting that, despite their popularity in Mexico, Los Tigres de Norte "have secured almost no 'mainstream' commercial recognition in the U.S.A., perhaps because they sing in Spanish..., but also perhaps because their lyrics contain values that threaten vested interests too much.").

34. See, e.g., TISH HINOJOSA, *FRONTEJAS* (Rounder Records, 1995); SALDIVAR, *supra* note 32, at 187-91 (analyzing cultural significance of Hinojosa's music); Timothy O'Hara, *The Power of Music; Songs Tell Workers' Tale*, SARASOTA HERALD-TRIB., Apr. 21, 2000, at B1B (reporting that Hinojosa's songs touched on plight of farmworkers and Mexican immigrants and that "[t]hough she has won the praises of music critics and other song writers, major commercial success has eluded her.").

35. See *infra* text accompanying notes 94-98. In fact, some Puerto Ricans attended the movie "Selena" to watch Puerto Rican actress Jennifer Lopez play the real life subject of the movie, Selena, a Mexican-American. See Negrón-Muntaner, *supra* note 28, at 181. Lopez seems to claim a Latina, as opposed to a Puerto Rican, identity. See *supra* note 28.

In a country in which many, if not most, Latina/os identify primarily on the basis of national origin ancestry, not as Latina/o or "Hispanic,"³⁶ the appreciation of the diversities among Latin musical artists is critically important.

Importantly, the nature of the "Latin music craze" teaches much about Anglo society. We would expect, for example, Anglo acceptance of "Latin" music and dance that most easily fit into conventional Anglo norms and sensibilities. The popularity of the "Macarena," described as a "line dance that looks like a Simon Says routine and doesn't involve too much compromising action below the shoulders," among the public and politicians in the mid-1990s is an apt example.³⁷ The mainstream generally does not embrace "too different," or, put more gently, significant deviance from the norm. We also would expect less popular appeal generated by cultural representations that are deeply critical of the status quo or focus too specifically on the Latina/o experience.

b. Cultural Appreciation, Appropriation, or Commodification?

Professor Ehrenreich expresses concern with cultural appropriation of "Latin music,"³⁸ which has been a concern of minorities seeking cultural survival. "Cultural appropriation" is a term used to describe the phenomenon of . . . the taking—from a culture that is not one's own—of intellectual property, cultural expressions or artifacts, history and ways of knowledge."³⁹ Appropriation of "Latin music" is a difficult charge to prove in light of the dynamic nature of culture as well as the diversity of the Latina/o community.⁴⁰ Moreover, much of the current "Latin music" at the center of the current "craze" is designed by, as well as marketed to, Anglos as well as Latina/os.⁴¹ As Professor Ehrenreich observes, most salsa clubs in Denver are owned by Anglos.⁴² It therefore is uncertain

36. See RODOLFO O. DE LA GARZA ET AL., *LATINO VOICES: MEXICAN, PUERTO RICAN, AND CUBAN PERSPECTIVES ON AMERICAN POLITICS* 39 (1992) (reporting survey data); see also Luis Angel Toro, "A People Distinct From Others": *Race and Identity in Federal Indian Law and the Hispanic Classification in OMB Directive No. 15*, 26 TEX. TECH L. REV. 1219, 1225-30, 1243-45, 1252-71 (1995) (analyzing classification of Latina/os as "Hispanics" for Census purposes).

37. Jon Parales, *The Dance Within the Hit Parade*, N.Y. TIMES, Aug. 31, 1996, at sec. 1, p. 9.

38. See Ehrenreich, *Salsa Dancer*, *supra* note 16, at 796.

39. Madhavi Sunder, *Intellectual Property and Identity Politics: Playing With Fire*, 4 J. GENDER RACE & JUST. 69, 73 (2000) (quoting Bruce Ziff & Pratima V. Rao, *Introduction to Cultural Appropriation: A Framework for Analysis*, in *BORROWED POWER: ESSAYS ON CULTURAL APPROPRIATION* 1, 20 (Bruce Ziff & Pratima V. Rao eds., 1997)). Cultural appropriation may damage a culture by misrepresenting it, as well as possibly incurring economic losses. See Sunder, *supra*, at 73-74. See generally WILL KYMLICKA, *MULTICULTURAL CITIZENSHIP: A LIBERAL THEORY OF MINORITY RIGHTS* 82-105 (1995) (analyzing minority efforts to maintain cultural integrity).

40. See *supra* text accompanying note 14.

41. See *infra* text accompanying note 67.

42. See Ehrenreich, *Salsa Dancer*, *supra* note 16, at 795, fn 5.

what, if any, aspect of “authentic” Latina/o culture is being appropriated by Anglos with the recent popularity of “Latin” music.

One may divine from Professor Ehrenreich’s discussion that she worries over “white fascination with Latin cultural productions”⁴³ and “exoticization [and] orientalizing of Latin artists.”⁴⁴ As recognized in other contexts, cultural interest does not inevitably result in multicultural sensitivity.⁴⁵ Attention to particular aspects of a minority culture may lead to objectification or commodification of a cultural practice and reinforce racial subordination.⁴⁶ One is left to ponder when Anglo fascination with Latina/o cultural crosses the line from commendable appreciation into the realm of fetishism.⁴⁷

Although perhaps an extreme example, the annual ritual of college students in the Southwest of spending spring break in Mexican resort cities may reinforce negative stereotypes about Mexico and the Mexican people. Positive cultural representations, of course, are possible through travel and exposure to different countries and cultures. Similarly, hip liberals may go “slumming” because of a fascination with certain aspects of minority cultures.

Confirming the fears with cultural voyeurism, Professor Ehrenreich discusses how the salsa dance clubs in Denver currently attract a large Anglo audience,⁴⁸ and expresses concern about how this dancing fits into stereotypical Anglo notions of Latino/a sexuality.⁴⁹ Professor Ehrenreich further observes that “Latin music,” including the music and public persona of Jennifer Lopez, might reinforce stereotypes of Latina/o hypersexuality and a happy-go-lucky approach to living “la vida loca.”⁵⁰

43. *Id.* at 796, fn 6.

44. *Id.* at 799.

45. See, e.g., EDWARD SAID, *ORIENTALISM* (1979); LISA LOWE, *CRITICAL TERRAINS: FRENCH AND BRITISH ORIENTALISM* (1991).

46. See MARGARET JANE RADIN, *CONTESTED COMMODITIES* 154-63 (Harv. University Press 1996); see also Peter Halewood, *Law's Bodies: Disembodiment and the Structure of Liberal Property Rights*, 81 IOWA L. REV. 1331, 1332-33 (1996) (“Commodification, the process of transforming an object, quality, or capacity into something with a recognizable market value, occurs in several ways. The human body is commodified by wage labor, by advertising, by commercial exploitation of women’s bodies, by biotechnology’s reduction or fragmentation of the body into marketable parts, and by the conceptual and ideological shift in our society toward thinking of the body as something marketable or alterable.”). Consider, for example, the commodification of Mexican cuisine. See VICTOR M. VALLE & RODOLFO D. TORRES, *LATINO METROPOLIS* 67-99 (2000).

47. See Anthony Paul Farley, *The Black Body as Fetish Object*, 76 OR. L. REV. 457 (1997) (analyzing fetishism surrounding the subject of race and Black body).

48. See Ehrenreich, *Salsa Dancer*, *supra* note 16, at 795.

49. See *id.* at 806.

50. See *id.* at 805: (stating that Anglos “tend to reduce [salsa] to a crass form of commercialized sexiness (‘hot tamale,’ ‘hot Latin rhythms,’ etc.)”); Elizabeth M. Iglesias, *Rape, Race and Representation: The Power of Discourse, Discourses of Power, and the Reconstruction of*

Although ambivalent about the cultural benefits of salsa to Anglos, Professor Ehrenreich acknowledges how her appreciation of salsa dancing, and frequenting salsa clubs, enhanced her understanding of the greater Latina/o community.⁵¹ She learned about the significant Afro Latina/o population in the United States, the heart-wrenching immigration experiences of many Mexicans, and the political situation in Mexico that contributed to the migration.⁵² LatCrit scholarship has considered these important subjects with rigor.⁵³

In considering her concerns with the Anglo embrace of salsa, Professor Ehrenreich raises interesting questions about who possesses standing to raise objections to cultural representations, such as whether a Latina/o who does not dance salsa or speak Spanish may object to their alleged appropriation.⁵⁴ One certainly can understand why a Latina/o non-Spanish speaker or U.S. citizens would object to English-only rules or restrictionist immigration laws. Such rules arguably represent subtle attacks on Latinas/os generally cloaked in non-racial terms.⁵⁵ LatCrit theory has been inclusive in terms of allowing Anglos, Asian Americans, African Americans, Native Americans, and others to criticize the status of Latinas/os and other people of color in the United States.⁵⁶ Just as in the realm of constitutional law,⁵⁷ standing in this context is difficult to define. One often does better by focusing on the merits of the argument than on who is making it.

Heterosexuality, 49 VAND. L. REV. 869 (1996) (analyzing dominant images of women and their impact on law).

51. See Ehrenreich, *Salsa Dancer*, *supra* note 16, at 795.

52. See *id.* at 803.

53. See, e.g., Tanya K. Hernandez, *An Exploration of the Efficacy of Class-Based Approaches to Racial Justice: The Cuban Context*, 33 U.C. DAVIS L. REV. 1135 (2000); Kevin R. Johnson, *Immigration and Latino Identity*, 19 CHICANO-LATINO L. REV. 197 (1998); Siegfried Wiessner, *¡Esa India! LatCrit Theory and the Place of Indigenous Peoples Within Latina/o Communities*, 53 U. MIAMI L. REV. 831, 850-51 (1999).

54. See Ehrenreich, *Salsa Dancer*, *supra* note 16, at 809.

55. See Kevin R. Johnson & George A. Martínez, *Discrimination by Proxy: The Case of Proposition 227 and the Ban on Bilingual Education*, 33 U.C. DAVIS L. REV. 1227 (2000) (analyzing how language can be employed as a proxy for race); *supra* note 22 (citing authority discussing anti-Latina/o edge to California's Proposition 187, which would have eliminated public benefits to undocumented immigrants); see also Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Racism*, 39 STAN. L. REV. 317 (1987) (advocating "cultural meaning" test for claims of racial discrimination).

56. See, e.g., *supra* note 2 (citing examples).

57. See William A. Fletcher, *The Structure of Standing*, 98 YALE L.J. 221, 221 (1988) (characterizing standing doctrine developed by Supreme Court under Article III of Constitution as "incoherent").

2. "Latin" Pop Music

Professor Steve Bender critically analyzes the "Latin music craze,"⁵⁸ concluding that the Latin Pop emerging in the late 1990s reinforced negative stereotypes about Latina/os.⁵⁹ Popular "Latin music," for example, promotes the myth of Latin lovers and bandidos.⁶⁰ This stereotyping damages the greater Latina/o community in two distinct ways; the music contributes to Latina/o internalization of negative self images about themselves, while Anglos see their popular stereotypes confirmed.⁶¹

As Professor Bender correctly observes, this music is "more American 'pop' than Latin(o/a)."⁶² Consistent with the popularity of the English-only movement,⁶³ most of the "Latin" music that currently captures the hearts of the country is performed in English.⁶⁴ Music in Spanish generally fails to make it high on the charts. Similarly, Latin artists continue the long history of Anglicizing their names (e.g., Enrique Martin Morales a/k/a Ricky Martin and Marco Antonio Muñiz became Marc

58. See Steven W. Bender, *Will the Wolf Survive?: Latino Pop Music in the Cultural Mainstream*, 78 DENV. U.L. REV. 719 (2001) [hereinafter Bender, *Latino Pop Music*]. Professor Bender has written influential LatCrit scholarship. See, e.g., Steven W. Bender, *Direct Democracy and Distrust: The Relationship Between Language Law Rhetoric and the Language Vigilantism Experience*, 2 HARV. LATINO L. REV. 145 (1997) [hereinafter Bender, *Language Vigilantism*]; Steven W. Bender, *Consumer Protection for Latinos: Overcoming Language Fraud and English-Only in the Marketplace*, 45 AM. U.L. REV. 1027 (1996).

59. See Bender, *Latino Pop Music*, *supra* note 58; see also GEORGE LIPSITZ, TIME PASSAGES: COLLECTIVE MEMORY AND AMERICAN POPULAR CULTURE 159 (1990) (stating that Mexican-Americans in Los Angeles "suffer from the anguish of invisibility" and that the mass media rarely portrays "their world . . . sympathetically or even accurately" and "reinforce[s] and legitimate[s] Anglo cultural hegemony"); Richard Delgado & Jean Stefancic, *Images of the Outsider in American Law and Culture: Can Free Expression Remedy Systemic Social Ills?*, 77 CORNELL L. REV. 1258 (1992) (analyzing stereotypical depictions of different minority groups in media); Jerry Kang, *Cyber-Race*, 113 HARV. L. REV. 1131, 1208 nn.162, 163 (2000) (observing that racial stereotypes are common to advertising and film); Román, *supra* note 28 (analyzing stereotypical representations of Latina/os in film).

60. See Bender, *Latino Pop Music*, *supra* note 58, at 734; see also Mary Romero, *State Violence, and the Social and Legal Construction of Latino Criminality: From El Bandido to Gang Members*, 78 DENV. U.L. REV. 1089 (2001) (analyzing impact of stereotypes of Latina/o criminality on law and law enforcement).

61. See Román, *supra* note 28, at 49-65; see also Laura M. Padilla, *Social and Legal Repercussions of Latinos' Colonized Mentality*, 53 U. MIAMI L. REV. 769 (1999) (analyzing damage caused by Latina/o internalization of society's negative stereotypes about them).

62. Bender, *Latino Pop Music*, *supra* note 58, at 732.

63. See, e.g., Bender, *Language Vigilantism*, *supra* note 58 (analyzing various English only language laws); Christopher David Ruiz Cameron, *How the Garcia Cousins Lost Their Accents: Understanding the Language of Title VII Decisions Approving English-Only Rules as the Product of Racial Dualism, Latino Invisibility, and Legal Indeterminacy*, 85 CAL. L. REV. 1347 (1997), 10 LA RAZA L.J. 261 (1998) (analyzing English only rules in the workplace); see also Drucilla Cornell & William W. Bratton, *Deadweight Costs and Intrinsic Wrongs of Nativism: Economic, Freedom and Legal Suppression of Spanish*, 84 CORNELL L. REV. 595 (1999) (raising philosophical and economic arguments against English-only regulations); Johnson & Martínez, *supra* note 55 (analyzing how ban on bilingual education in California amounts to unlawful discrimination against Latina/os).

64. See Bender, *Latino Pop Music*, *supra* note 58, at 722.

Anthony),⁶⁵ just like Richard Valenzuela transformed into Ritchie Valens in the 1950s.⁶⁶ The Anglicization of “Latin” music should not be surprising given that Anglos wrote many of the popular songs and design them to appeal to a mass—beyond Latina/o—audience.⁶⁷

LatCrit scholarship from its inception has challenged the classification of Latina/os as perpetual foreigners.⁶⁸ Professor Bender observes that the categorization of Enrique Iglesias, a Spaniard, as Latino based on Spanish surname is consistent with the treatment of Latina/os as “foreigners.”⁶⁹ Even U.S.-born artists, such as Jennifer Lopez, Marc Anthony, and Ricky Martin, find themselves classified as natives of another country.⁷⁰ Latino/a entertainers find themselves homogenized as a generic foreign influence on U.S. culture, as represented by the bizarre (from the perspective of a Mexican-American) association of jalapeños and tamales (Mexican foods) with Puerto Rican artists.⁷¹

Importantly, the Latina/o artists most likely to ascend to the top of the pop music charts are those that best approximate the Anglo norm.⁷² Afro Latina/o and Mexican artists, for example, are not a prominent part of the “Latin music craze.”⁷³ Latina/os who seek to cross-over into the mainstream, such as Ritchie Valens and Selena, must exhibit assimilationist tendencies.⁷⁴ Consequently, Latina/o artists at the core of the modern Latin pop scene are presented and received as “bilingual, young, attractive (‘eye candy’), light-skinned middle to upper class, and hetero-

65. See *id.* at 743.

66. See *supra* text accompanying note 27; see also Michael A. Olivas, *It's Only Rock 'n Roll Pero Me Gusta*, 16 AM. REV. 210, 213 (1988) (stating that Anglicization of Spanish and Italian names reveals much about 1950s music industry).

67. See Bender, *Latino Pop Music*, *supra* note 58, at 737.

68. See, e.g., Kevin R. Johnson, *Some Thoughts on the Future of Latino Legal Scholarship*, 2 HARV. LATINO L. REV. 101, 117-29 (1997).

69. See Bender, *Latino Pop Music*, *supra* note 58, at 733.

70. See *id.*

71. See *id.* at 729-30.

72. See *supra* text accompanying note 37. For analysis of Latina/o assimilation generally, see Johnson, *supra* note 25; Sylvia R. Lazos Vargas, *Deconstructing Homo[geneous] Americanus: The White Ethnic Immigrant Narrative and Its Exclusionary Effect*, 72 TUL. L. REV. 1493 (1998); George A. Martínez, *Latinos, Assimilation, and the Law: A Philosophical Perspective*, 20 CHICANO-LATINO L. REV. 1 (2000); see also Bill Ong Hing, *Beyond the Rhetoric of Assimilation and Cultural Pluralism: Addressing the Tension of Separatism and Conflict in an Immigration-Driven Multiracial Society*, 81 CAL. L. REV. 863 (1993) (analyzing tension between assimilation and separatism among racial minorities).

73. See *supra* text accompanying notes 24-36.

74. See *supra* text accompanying note 66 (noting that Valens Anglicized his name); see also BEVERLY MENDHEIM, *RITCHIE VALENS: THE FIRST LATINO ROCKER* 136 (1987) (observing that the “majority of fans, even those of Mexican heritage, did not know [Ritchie Valens] was of Mexican descent until well into the 60’s”); Olivas, *supra* note 66, at 211 (telling story of Chicano author who did not know that Valens was Mexican until after his death); Ehrenreich, *Salsa Dancer*, *supra* note 16, at 815 (“[T]he versions of Latino/a cultural productions that tend to gain entry into the mainstream (white) ‘American’ consciousness are often the more whitewashed ones.”).

sexual.”⁷⁵ The monolingual Spanish speaker, middle aged, average looking, dark and indigenous appearing, poor and working class, out-of-the-closet gays and lesbians, are not among the popular Latin pop artists in the United States.

Professor Bender recognizes that none of the top Latina/o Pop artists, except Carlos Santana, are of Mexican ancestry, “by far the most populous of the group that comprise Latino/as in the United States.”⁷⁶ He innocuously attributes this to being a function of the fact that there are few Latina/o stars in popular music.⁷⁷ However, coming on the heels of an era of deep public concern with Mexican immigrants in the 1990s,⁷⁸ combined with a long history of treatment of Mexicans as inferior,⁷⁹ we should not expect to see a Mexican-American pop culture icon. Ironically, dead Mexicans seem to achieve greater popularity in the United States than live ones.⁸⁰

The lack of entertainers of Mexican ancestry in the “Latin music craze” suggests a hierarchy of Latina/o racialization.⁸¹ Different Latina/o groups and different aspects of Latina/o culture may be more attractive to Anglos than others. This difficult question, which is easily evaded if we do not affirmatively recognize the diversity of the Latina/o community, requires future exploration.

Perhaps more troubling, as is true for African Americans,⁸² while certain types of Latina/os are visible in the music industry, few can be seen in other prominent places in U.S. culture,⁸³ such as television, film,

75. Bender, *Latino Pop Music*, *supra* note 58, at 731. Of course, the role of the marketing of sex appeal affects the popularity of entertainers of all races and ethnic backgrounds.

76. *Id.*; *supra* text accompanying notes 24-36 (discussing fact that no entertainers of Mexican ancestry are at center of “Latin music craze”).

77. *Id.*

78. See David G. Gutiérrez, *Migration, Emergent Ethnicity, and the “Third Space”: The Shifting of Nationalism in Greater Mexico*, 86 J. AM. HIST. 481, 481-82 (1999).

79. See Jane E. Larson, *Free Markets Deep in the Heart of Texas*, 84 GEO. L.J. 179, 222-28 (1995). See generally RODOLFO F. ACUÑA, *OCCUPIED AMERICA: A HISTORY OF CHICANOS* (3d ed. 1988) (analyzing history of Chicana/os in Southwest); TOMÁS ALMAGUER, *RACIAL FAULT LINES: THE HISTORICAL ORIGINS OF WHITE SUPREMACY IN CALIFORNIA* (1994) (analyzing history of persons of Mexican ancestry in California).

80. See *supra* text accompanying notes 27-28 (discussing careers of Ritchie Valens and Selena).

81. See *infra* text accompanying notes 105-30 (analyzing how U.S. immigration laws racialize various Latin American national origin groups in different ways).

82. See Margaret M. Russell, *Race and the Dominant Gaze: Narratives of Law and Inequality in Popular Film*, 15 LEGAL STUD. F. 243 (1991) (discussing stereotypes of African Americans in television and film).

83. See Gerald P. Lopez, *Learning About Latinos*, 19 CHICANO-LATINO L. REV. 363, 367 (1998); see also George A. Martínez, *Philosophical Considerations and the Use of Narrative in Law*, 30 RUTGERS L.J. 683 (1999) (contending that minority stories must be told to secure social change).

and literature.⁸⁴ Although efforts have been made to increase Latina/o visibility in popular culture,⁸⁵ change has been glacially slow. Latina/os are even rarer at the highest levels of government, academia, and business.⁸⁶ With that in mind, Latino/as in the music industry might be equated to the minstrel show of the days of old.

B. *Lessons from Puerto Rican Culture*

Professor Pedro Malavet specifically analyzes the Puerto Rican culture on the island from the perspective of an "exile" on the United States mainland.⁸⁷ In considering "two Puerto Rican cultures,"⁸⁸ he implicitly recognizes that living in the United States transforms people; people and cultures change in response to their surroundings.⁸⁹ He looks nostalgically upon his own transformation, including the slow loss of his Puerto Rican-ness as he continues life in the United States. In discussing "*mi*

84. See Juan F. Perea, *Los Olvidados: On the Making of Invisible People*, 70 N.Y.U. L. REV. 965, 970-72 (1995).

85. See Dana Calvo, *Finally in the Ring*, L.A. TIMES, Dec. 19, 1999, Calendar, at 7 (discussing "Resurrection Boulevard," a Showtime television series made by Latina/os with Latina/o actors and themes); see, e.g., JULIA ALVAREZ, *HOW THE GARCIA GIRLS LOST THEIR ACCENTS* (1991); YXTA MAYA MURRAY, *LOCAS* (1997); MARY HELEN PONCE, *HOYT STREET* (1993).

86. For example, the highest levels of government have few, if any, Latina/os. The Supreme Court never has had a Latina/o Supreme Court Justice. See "Toward a Supreme Court Appointment" Conference, Harvard Law School, Apr. 7, 2001. Similarly, despite activism over decades, Harvard Law School still lacks a Chicana/o law professor. See Luz Herrera, *Challenging a Tradition of Exclusion: The Push for Latino Faculty at Harvard Law School*, 5 HARV. LATINO L. REV. (forthcoming 2002). The difficulties experienced by Henry Cisneros in the Clinton administration reveal the public scrutiny of high profile Latina/os. See Deborah L. Rhode, *Conflicts of Commitment: Legal Ethics in the Impeachment Context*, 52 STAN. L. REV. 269, 347 (2000) ("Taxpayers paid seven million dollars to learn that former [U.S. Housing and Urban Development] Secretary Henry Cisneros lied, not about paying money to a former mistress (which he acknowledged), but only about the precise amount paid.") (footnote omitted). More recently, because she had employed an undocumented worker from Guatemala, Linda Chavez, President Bush's original nominee for Secretary of Labor, was the only new Cabinet nominee forced to withdraw. See Steven A. Holmes & Steven Greenhouse, *Bush Choice for Labor Post Withdraws and Cites Furor of Illegal Immigrant Issue*, N.Y. TIMES, Jan. 10, 2001, at A1.

87. See Pedro A. Malavet, *The Accidental Crit II: Culture and the Looking Glass of Exile*, 78 DENV. U.L. REV. 753 (2001) [hereinafter Malavet, *Looking Glass of Exile*]. Professor Malavet's scholarship has focused on the Puerto Rican experience. See Pedro A. Malavet, *Puerto Rico: Cultural Nation, American Colony*, 6 MICH. J. RACE & L. 1 (2000); Pedro A. Malavet, *Literature and Arts As Antisubordination Praxis: LatCrit Theory and Cultural Production: The Confessions of an Accidental Crit*, 33 U.C. DAVIS L. REV. 1293 (2000). It is part of a growing body of vibrant literature on Puerto Rico and Puerto Ricans. See, e.g., Ediberto Román, *The Alien-Citizen Paradox and Other Consequences of U.S. Colonialism*, 26 FLA. ST. U. L. REV. 1 (1998); Ediberto Román, *Empire Forgotten: The United States's Colonization of Puerto Rico*, 42 VILL. L. REV. 1119 (1997); Sylvia R. Lazos Vargas & Petra DeWitt, *One Hundred Years of Solitude for the Tropical Peoples of the Insular Territories: Transformations of National Identity, Race and Citizenship, 1896-1900* (unpublished manuscript, on file with author); Sylvia R. Lazos Vargas, *History, Legal Scholarship, and LatCrit Theory: The Case of Racial Transformations Circa the Spanish American War, 1896-1900*, 78 DENV. U. L. REV. 923 (2001).

88. See Malavet, *Looking Glass of Exile*, *supra* note 87.

89. See *supra* text accompanying notes 9-13.

cultura puerto rriqueña” (*my Puerto Rican culture*),” Professor Malavet implicitly acknowledges the multiplicity of Puerto Rican culture, with divisions based on class and other lines. In this vein, he acknowledges the “many diverse forms of Puerto Rican popular music.”⁹⁰

Professor Malavet’s “looking glass of exile” is not limited to Puerto Ricans.⁹¹ Other Latina/o national origin groups share a duality in their experiences. Many Mexican immigrants in the United States, for example, face difficulties adapting to life in this country but change in innumerable ways.⁹² Those who develop transnational identities⁹³ may live a life straddling two nations. Their children born in the United States, in turn, view the world in entirely different ways than they do and parents did.

Professor Malavet’s observations raise important questions. Namely, is the individual transformation that he describes for “exiles” something “good” or “bad”? Such individual changes may be inevitable in a globalizing world marked by increasing movement of people and capital across national lines.

Like other contributions to this cluster of essays,⁹⁴ Professor Malavet recognizes that the current popularity of “Latin” music may reinforce

90. Malavet, *Looking Glass of Exile*, *supra* note 87, at 776.

91. Professor Malavet employs narrative to relay his thoughts as a Puerto Rican exile. The narrative in places proves difficult to connect to broader LatCrit themes. See Robert S. Chang & Natasha Fuller, *Performing LatCrit*, 33 U.C. DAVIS L. REV. 1277, 1280 (2000) (discussing “narrative responsibility of a LatCrit storyteller”) (footnote omitted).

92. See *supra* text accompanying notes 10-11. This transformation can be viewed in different ways. Anglos view assimilation positively. See *supra* note 72 (citing authorities). In contrast, the derogatory term used by Mexicans to refer to assimilated Mexican immigrants is “pocho,” see JOSE ANTONIO VILLARREAL, *POCHO* (Doubleday 1970) (1959); see also Richard Delgado, *Rodrigo’s Fourteenth Chronicle: American Apocalypse*, 32 HARV. C.R.-C.L. L. REV. 275, 299 & n.115 (1997) (mentioning “pocho” as slang for person of Mexican ancestry “who does not speak Spanish and has lost touch with his or her roots”), or “gabacho,” see, e.g., RICK P. RIVERA, *A FABRICATED MEXICAN* 79-81 (1995) (telling story of Mexican-American accusing another one of being a “gabacho,” slang for Anglo). The desire not to be seen as becoming “too” American may help explain the history of relatively low naturalization rates among Mexican immigrants. See Kevin R. Johnson, *Civil Rights and Immigration: Challenges for the Latino Community in the Twenty-First Century*, 8 LA RAZA L.J. 42, 52-54 (1995).

93. See Rachel F. Moran, *Demography and Distrust: The Latino Challenge to Civil Rights and Immigration Policy in the 1990’s and Beyond*, 8 LA RAZA L.J. 1, 19-24 (1995); see also Maria L. Ontiveros, *Forging Our Identity: Transformative Resistance in the Areas of Work, Class, and the Law*, 33 U.C. DAVIS L. REV. 1057, 1064-66 (2000) (contending that concept of citizenship must change with emergence of transnational identities); María de los Angeles Torres, *Transnational Political and Cultural Identities: Crossing Theoretical Borders* (“With increased contact between people and cultures, we may be witnessing the rise of transnational identities. Such identities are likely to be more visible in communities where people have crossed many borders.”), in *BORDERLESS BORDERS: U.S. LATINOS, LATIN AMERICANS, AND THE PARADOX OF INTERDEPENDENCE* 169, 181 (Frank Bonilla et. al. eds., 1998).

94. See *supra* text accompanying notes 48-50, 58-61, 68-75.

negative stereotypes about Latina/os.⁹⁵ Nonetheless, he considers the popularity to be beneficial to Puerto Ricans in the United States “especially because three of the most famous performers ([Ricky] Martin, [Jennifer] Lopez and [Marc] Anthony) are Puerto Ricans and they [identify] as Puerto Rican.”⁹⁶ One must question, however, how positive it is to have visible Puerto Rican performers who reinforce negative Latina/o stereotypes.⁹⁷ Although the presence of Puerto Ricans in the public eye helps remedy Latina/o invisibility in American social life, such visibility may on the whole have negative consequences.⁹⁸

C. Conclusion

These three essays demonstrate that LatCrit inquiry has much to offer cultural analysis. At any historical moment, a society’s political, economic, and social institutions tend to be mutually reinforcing.⁹⁹ The popular portrayal of Latina/os in ways that confirm Anglo stereotypes helps circumscribe Latina/o membership in U.S. law and society. Importantly, we would be surprised to see the law dramatically out of step with the conceptions of Latina/os found in popular culture.

II. THE IMPACT OF IMMIGRATION LAW ON THE RACIALIZATION OF DIFFERENT LATINA/O NATIONAL ORIGIN GROUPS: THE CASE OF ELIAN GONZALEZ

An influential critical Latina scholar,¹⁰⁰ Professor Berta Hernández analyzes one of the most newsworthy events of the year 2000 in the United States, perhaps only overshadowed by the presidential election.¹⁰¹ She shows how the Elian Gonzalez case¹⁰² implicated two deeply held Cuban American values—the rule of law and family—that called for Elian Gonzalez’s return to his father in Cuba when partisan anti-Castro politics did not. Analyzing the court of appeals decision in that case, Professor Hernández demonstrates that the rule of law compelled the

95. See Malavet, *Looking Glass of Exile*, *supra* note 87, at 789.

96. *Id.* at 44 (footnote omitted); see *supra* text accompanying notes 26, 35-36.

97. See *supra* text accompanying notes 58-61.

98. See *supra* text accompanying notes 58-61.

99. See, e.g., ÉMILE DURKHEIM, *EDUCATION AND SOCIOLOGY* (1956).

100. See, e.g., Berta Esperanza Hernández-Truyol & Kimberly A. Johns, *Global Rights, Local Wrongs, and Legal Fixes: An International Human Rights Critique of Immigration and Welfare “Reform”*, 71 SO. CAL. L. REV. 547 (1998); Berta Esperanza Hernández-Truyol, *Borders (En)Gendered: Normativities, Latinas, and a LatCrit Paradigm*, 72 N.Y.U. L. REV. 882 (1997); Berta Esperanza Hernández-Truyol, *Building Bridges – Latinas and Latinos at the Crossroads: Realities, Rhetoric, and Replacement*, 25 COLUM. HUM. RTS. L. REV. 369 (1994).

101. See Berta Esperanza Hernández-Truyol, *On Becoming the Other: Cubans, Castro, and Elian - a LatCritical Analysis*, 78 DENV. U. L. REV. 687 (2001). For a brief factual summary of the election dispute, see *Bush v. Gore*, 531 U.S. 98 (2000) (*per curiam*).

102. For a summary of the facts of the case, see *Gonzalez v. Reno*, 212 F.3d 1338 (11th Cir.), *cert. denied*, 530 U.S. 1270 (2000), and Sean D. Murphy, *Contemporary Practice of the United States Relating to International Law*, 94 AM. J. INT’L L. 516, 516-26 (2000).

result.¹⁰³ As Legal Realists and Critical Race Theorists might hypothesize,¹⁰⁴ Professor Hernández's interviews with Cuban American law professors confirm that their migration experiences from Cuba, including whether they left with the nuclear family intact, shaped their views on the U.S. government's response to the Elian Gonzalez case.

A. *The Cuban Migrant Experience*

Professor Hernández observes that Cuban Americans historically have been viewed as an immigrant success story, with the community known for its work ethic and economic, social, and political mobility.¹⁰⁵ As political commentator Linda Chavez has stated, Cuban American "accomplishments in the United States are attributable in large measure to diligence and hard work."¹⁰⁶

The conventional wisdom about Cuban Americans is complex, however. Throughout the 1960s and 1970s, the U.S. government embraced Cuban migrants as refugees from Fidel Castro's communist Cuba.¹⁰⁷ With the rising Cuban population, south Florida experienced growing pains. African Americans voiced concerns that Cubans received preferential treatment.¹⁰⁸ The increased public use of Spanish by Cuban refugees led to English-only laws in Dade County, Florida.¹⁰⁹

Nonetheless, as Professor Hernández suggests, the first wave of Cuban migrants who fled the 1959 revolution were widely considered to be a model Latin minority.¹¹⁰ Other Latina/o national origin groups, such as

103. See Hernández-Truyol, *supra* note 101, see also Mark S. Kende, *A Misguided Statutory Interpretation Theory: The Elian Gonzalez Cuban Asylum Case*, 18 B.U. INT'L L.J. 201 (2000) (reaching similar conclusions).

104. See, e.g., KARL N. LLEWELLYN, *BRAMBLE BUSH: ON OUR LAW AND ITS STUDY* (1981); Alex M. Johnson, Jr., *The New Voice of Color*, 100 YALE L.J. 2007 (1991).

105. See Hernández-Truyol, *supra* note 101, at 689.

106. LINDA CHAVEZ, *OUT OF THE BARRIO: TOWARD A NEW POLITICS OF HISPANIC ASSIMILATION* 102 (1991).

107. See generally MARÍA CRISTINA GARCÍA, *HAVANA USA: CUBAN EXILES AND CUBAN AMERICANS IN SOUTH FLORIDA, 1959-1994* (1997) (analyzing Cuban American experience in South Florida).

108. See U.S. COMM'N ON CIVIL RIGHTS, *RACIAL AND ETHNIC TENSIONS IN AMERICAN COMMUNITIES: POVERTY, INEQUALITY, AND DISCRIMINATION - VOLUME IV: THE MIAMI REPORT* 10-11 (1997).

109. See Sylvia R. Lazos Vargas, *Judicial Review of Initiatives and Referendums in Which Majorities Vote on Minorities' Democratic Citizenship*, 60 OHIO ST. L.J. 399, 433-34 (1999).

110. See *id.* at 438 ("The first waves of Cuban immigrants came to Miami in the 1950s as model immigrants and soon became model minorities."); see also Lisandro Pérez, *Cubans in the United States*, 487 ANNALS 126 (1986) (studying demographics of Cuban refugees and studying relative Cuban economic success); Alejandro Portes & Robert L. Bach, *Immigrant Earnings: Cuban and Mexican Immigrants in the United States*, 14 INT'L MIGRATION REV. 315 (1980) (analyzing differences between Mexican and Cuban migrations to United States). Somewhat like Cubans, Asian Americans also have been cast as the "model minority," even though only certain segments of this diverse community have enjoyed economic and social mobility in the United States. See, e.g., Robert

Mexican-Americans and Puerto Ricans, were extolled to work hard like the Cubans.¹¹¹ Frequently ignored was the fact that, as Professor Hernández acknowledges, this first wave of Cuban immigrants was largely white, middle and upper class, professional, and educated.¹¹² U.S. citizens more easily accepted this immigrant cohort into the mainstream than other Latin American immigrants. Consequently, many Cuban Americans over time successfully integrated themselves into south Florida socially, economically, and politically.¹¹³

For its part, the law fully supported Cuban refugees, offering them advantages unavailable to other migrant groups.¹¹⁴ At least until 1980, the U.S. government classified Cubans as “political refugees” and virtually all that reached the United States were allowed to remain in this country.¹¹⁵ In addition, Cuban migrants received special immigration benefits, including refugee resettlement assistance, under congressional legislation enacted specifically for their benefit.¹¹⁶

S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 CAL. L. REV. 1242, 1308-12 (1993); Pat K. Chew, *Asian Americans: The “Reticent” Minority and Their Paradoxes*, 36 WM. & MARY L. REV. 1, 24-33 (1994).

111. See CHAVEZ, *supra* note 106, at 139-59.

112. See Max J. Castro, *The Politics of Language in Miami*, in CHALLENGING FRONTERAS: STRUCTURING LATINA AND LATINO LIVES IN THE U.S.: AN ANTHOLOGY OF READINGS 279, 284-85 (Mary Romero et al. eds., 1997); Gloria Sandrino-Glasser, *Los Confundidos: De-Conflating Latinas’ Race and Ethnicity*, 19 CHICANO-LATINO L. REV. 69, 87-88 (1998). Due to their background, Cuban immigrants brought with them different attitudes toward their status in the United States than persons of Mexican and Puerto Rican ancestry. See, e.g., Alice G. Abreu, *Lessons from LatCrit: Insiders and Outsiders, All at the Same Time*, 53 U. MIAMI L. REV. 787, 789-97 (1999).

113. See *supra* text accompanying notes 105-09; see also Berta Esperanza Hernández-Truyol, *Nativism, Terrorism, and Human Rights – The Global Wrongs of Reno v. American-Arab Anti-Discrimination Committee*, 31 COLUM. HUM. RTS. L. REV. 521, 551-54 (2000) (studying how Cuban-American groups seeking to overthrow Fidel Castro, who were involved in Elian Gonzalez matter, were not classified as “terrorists” under immigration laws while those loosely affiliated with Palestinian groups are). For example, Cuban Americans successfully pushed for early bilingual education programs in Florida. See JAMES CRAWFORD, *BILINGUAL EDUCATION: HISTORY, POLITICS, THEORY AND PRACTICE* 35-37 (3d ed. 1995).

114. See Hernández-Truyol, *supra* note 101, at 689-90. See generally ALEJANDRO PORTES & ROBERT L. BACH, *LATIN JOURNEY: CUBAN AND MEXICAN IMMIGRANTS IN THE UNITED STATES* (1985) (comparing histories of Cuban and Mexican migration to United States).

115. See GIL LOESCHER & JOHN A. SCANLAN, *CALCULATED KINDNESS: REFUGEES AND AMERICA’S HALF-OPEN DOOR, 1945 TO THE PRESENT* 61-67 (1986); see also Joyce A. Hughes, *Flight from Cuba*, 36 CAL. W. L. REV. 39, 50-70 (1999) (analyzing history of U.S. government’s response to Cuban migration). See generally FELIX ROBERTO MASUD-PILOTO, *FROM WELCOMED EXILES TO ILLEGAL IMMIGRANTS: CUBAN MIGRATION TO THE U.S., 1959-1995* (1996) (analyzing changes in U.S. treatment of different waves of Cuban migrants).

116. See, e.g., Cuban Refugee Adjustment Act, Pub. L. No. 89-732, 80 Stat. 1161 (1966); see also Note, *The Cuban Adjustment Act of 1966: Mirando Por Los Ojos de Don Quijote o Sancho Panza?*, 114 HARV. L. REV. 902 (2001) (arguing for repeal of Cuban Adjustment Act and its preferential treatment for Cuban migrants). Cuban immigrants continue to receive legislation that benefits them over other Latin American immigrant groups. See Nicaraguan Adjustment and Central American Relief Act (NACARA), Pub. L. No. 105-100, 111 Stat. 2160 (1997); Immigration &

B. Changing Demographics, Changing Law Enforcement

Popular perceptions, and the legal response to Cuban migrants, changed dramatically in 1980. In that year, the Mariel boatlift brought many poorer, Afro-Cubans to the United States; media characterization of the Marielitos as criminals, mentally ill persons, and homosexuals provoked public concern, even within the Cuban American community in south Florida.¹¹⁷ Depictions of crime brought by Cuban migrants, exemplified by the movie "Scarface," starring Al Pacino as a murderous Cuban American drug kingpin, reflected popular views about the new refugees.¹¹⁸ In response, the U.S. government's open embrace of Cuban refugees shifted to mass detention and slow admission of Cuban migrants.¹¹⁹

In the 1990s, with the threat of a mass migration looming on the horizon after an influx of rafters from Cuba, the U.S. government offered even harsher treatment.¹²⁰ In 1994, "the U.S. and Cuban governments

Nationality Act § 235(b)(1)(F), 8 U.S.C. § 1225(b)(1)(F) (providing that expedited removal procedure "shall not apply to an alien who is a native or citizen of a country in the Western Hemisphere with whose government the United States does not have full diplomatic relations and who arrives by aircraft at a port of entry [i.e., Cuba]"); see also Patrick E. Caldwell, Comment, *NACARA: Minotaur or Midas?*, 53 SMU L. REV. 1559 (2000) (noting broad benefits for Cubans and Nicaraguans and more limited ones for Guatemalans, Salvadorans, and Eastern Europeans, in NACARA). A public outcry about the failure to provide any relief in NACARA to similarly situated Haitians led to passage of the Haitian Refugee Immigration Fairness Act of 1998, Pub. L. No. 105-277, 901-02, 112 Stat. 2681-538. See Linda Kelly, *Defying Membership: The Evolving Role of Immigration Jurisprudence*, 67 U. CIN. L. REV. 185, 227-235 (1998) (analyzing political pressures culminating in NACARA and Haitian legislation).

117. See PORTES & BACH, *supra* note 114, at 88 (noting the changing demographics of Cuban migrants to the United States, including that less than five percent of Cuban refugees before 1980 were Black compared to 30 percent after); GARCÍA, *supra* note 107, at 44 (noting that only 3 percent of Cubans in United States in 1970 were Black, compared to 30 percent of population in Cuba); see also Susan Martin, Andy Schoenholtz, & Deborah Waller Meyers, *Temporary Protection: Towards a New Regional and Domestic Framework*, 12 GEO. IMMIGR. L.J. 543, 556-57 (1998) (discussing changing Cuban American attitudes toward Cuban rafters in the 1990s); Sandrino-Glasser, *supra* note 112, at 89 (discussing "[p]opular images" of the Mariel refugees as "undesirables – poorer, less educated and mostly black or mixed Cubans, with a large percentage being either criminal or mentally ill") (footnotes omitted).

118. See Román, *supra* note 28, at 42-43.

119. See, e.g., *Guzman v. Tippy*, 130 F.3d 64, 66 (2d Cir. 1997); *Barrera-Echavarría v. Rison*, 44 F.3d 1441 (9th Cir. 1995) (en banc), cert. denied, 516 U.S. 976 (1995). See generally MARK S. HAMM, *THE ABANDONED ONES: THE IMPRISONMENT AND UPRISING OF THE MARIEL BOAT PEOPLE* (1995) (discussing detention of Cuban migrants). But see *Rodriguez-Fernandez v. Wilkinson*, 654 F.2d 1382, 1390 (10th Cir. 1981) (finding indefinite detention to be unlawful).

120. See Arthur C. Helton, *Securing Protection in the Americas: The Inter-American System on Human Rights and the Rights of Asylum Seekers*, 6 SW. J.L. & TRADE IN THE AMERICAS 129, 133-41 (199) (summarizing U.S. government's treatment, including interdiction and return, of Cuban rafters in the 1990s); see, e.g., *Cuban Am. Bar Ass'n, Inc. v. Christopher*, 43 F.3d 1412 (11th Cir. 1995) (holding that Cuban migrants outside United States have no legal right to seek asylum in this country); see also T. ALEXANDER ALEINIKOFF ET AL., *IMMIGRATION AND CITIZENSHIP: PROCESS AND POLICY* 1173-74 (4th ed. 1998) (summarizing changes in U.S. policy toward Cuban migrants in response to fears of mass migration); Gary W. Palmer, *Guarding the Coast: Alien Migrant*

signed an unprecedented agreement . . . , whereby the two governments 'recognized their common interest' in preventing Cubans from leaving by sea" and allowing for interdiction, repatriation, and return of Cubans; the United States also agreed to accept a minimum of 20,000 Cubans per year.¹²¹

Beginning in 1994, the U.S. government has interdicted Cuban rafters before reaching U.S. shores. Under the U.S. Coast Guard's "feet wet/feet dry" policy, only Cubans who make it to shore (feet dry) are permitted to pursue their rights to apply for asylum while those interdicted (feet wet) are returned to Cuba.¹²² In the summer of 1999, the Coast Guard was captured on camera using pepper spray and force, to keep Cuban rafters from making it to land and asylum in the United States.¹²³ The Supreme Court's 1993 decision upholding the Haitian interdiction policy served as the principal legal precedent for the feet wet/feet dry policy.¹²⁴

The changing racial demographics of the Cuban migrants unquestionably affected their shifting legal treatment by the U.S. government.¹²⁵ Viewed more recently as economic migrants than political refugees, class, fears of mass migration, and related political concerns also came into play. Consequently, for better or worse, the U.S. government now treats Cuban migrants more like other Latin American immigrants.

C. A Comparison: Mexican, Central American, and Haitian Migrants

Over the last half of the twentieth century, Mexican and Central American migrants have been classified as "economic migrants," not political refugees, and consistently been subject to harsh border enforcement measures.¹²⁶ In the 1980s, for example, the Immigration and Naturalization Service (INS) detained Salvadorans and Guatemalans fleeing political violence and affirmatively encouraged them to forego their legal claims to apply for political asylum and return "voluntarily" to their

Interdiction Operations at Sea, 29 CONN. L. REV. 1565, 1577-80 (1997) (discussing Cuban interdiction operations).

121. Harold Hongju Koh, *America's Offshore Refugee Camps*, 29 U. RICH. L. REV. 139, 156 (1994) (footnote omitted).

122. See Rick Bragg, *Cubans Now Choosing Smugglers Over Rafts*, N.Y. TIMES, July 21, 1999, at A1.

123. See *id.*; Sue Anne Pressley, *Refugee Incident Spawns a Tempest; Miami in Uproar After Cubans' Arrest*, WASH. POST, July 3, 1999, at A3.

124. See *infra* text accompanying note 129.

125. See Richard A. Boswell, *Throwing Away the Key: Limits on the Plenary Power*, 18 MICH. J. INT'L L. 689, 705-08 & n.52 (1997) (book review). Race also affects Cuban migrants' experience in the United States. See Mirta Ojito, *Best of Friends, Worlds Apart*, N.Y. TIMES, June 5, 2000, at A1 (reporting that two Cuban immigrants – one Black, one not – who had been friends in Cuba had dramatically different experiences in Miami with one associating with white Cubans and the other with African Americans).

126. See *infra* text accompanying notes 127-28.

homeland.¹²⁷ The 1990s saw a dramatic escalation of the use of military force along the border resulting in the death of hundreds of Mexican migrants, which has provoked little public concern.¹²⁸ Similarly, Haitians, classified as economic migrants even though they fled the political turmoil of their homeland, historically have been subject to much harsher treatment than Cubans.¹²⁹

Interestingly, the U.S. government has begun to treat Cuban migrants in the way that it long has treated those from other Latin American nations. This has been facilitated by the changing demographics, and racialization, of Cuban migrants.¹³⁰

D. *Elían Gonzalez*

Against this historical backdrop, the Elían Gonzalez controversy arose. After months of controversy, negotiations, and political hand-wringing, the United States government returned Elían Gonzalez, a young boy whose mother tragically died at his side as they traveled by raft to the United States, to his father in Cuba.¹³¹ The Cuban American community's history of special treatment under the immigration laws inevitably influenced views on the matter.¹³² The fact that in the wake of Castro's revolution some Cuban parents sent their unaccompanied children to the United States in the hopes that they could live a better life, surely did as well.¹³³ To many Cuban Americans, it must have been a

127. See, e.g., *Orantes-Hernandez v. Thornburgh*, 919 F.2d 549 (9th Cir. 1990); see also *Am. Baptist Churches v. Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991) (settling case in which Salvadoran and Guatemalan asylum-seekers claimed that asylum claims were subject to improper bias in adjudication).

128. See Karl Eschbach et al., *Death at the Border*, 33 INT'L MIGRATION REV. 430 (1999) (documenting deaths resulting from heightened U.S. border enforcement efforts in 1990s); Bill Ong Hing, *The Dark Side of Operation Gatekeeper*, 7 U.C. DAVIS J. INT'L L. & POLICY (forthcoming 2002) (documenting deaths resulting from increased border enforcement combined with failure to reduce undocumented migration). See generally TIMOTHY J. DUNN, *THE MILITARIZATION OF THE U.S.-MEXICO BORDER, 1978-1992: LOW-INTENSITY CONFLICT DOCTRINE COMES HOME* (1996) (studying increased use of military force to enforce U.S./Mexico border).

129. See *Sale v. Haitian Ctrs. Council, Inc.*, 509 U.S. 155 (1993) (upholding Coast Guard interdiction of Haitians seeking to come by boat to the United States and returning them to political violence in Haiti); see also Kevin R. Johnson, *Judicial Acquiescence to the Executive Branch's Pursuit of Foreign Policy and Domestic Agendas in Immigration Matters: The Case of the Haitian Asylum-Seekers*, 7 GEO. IMMIGR. L.J. 1 (1993) (analyzing role of race and class in policy decision to interdict and repatriate Haitian refugees); Cheryl Little, *InterGroup Coalitions and Immigration Politics: The Haitian Experience in Florida*, 53 U. MIAMI L. REV. 717 (1999) (discussing disparate treatment by U.S. government of Haitian and Cuban migrants).

130. See *supra* text accompanying notes 117-25.

131. See *supra* note 102 (citing authority recounting controversial events).

132. See *supra* text accompanying notes 110-16.

133. See GARCÍA, *supra* note 107, at 23-26. Other factors affecting Cuban American opinion include the political situation in Cuba, see Berta Esperanza Hernández Truyol, *Out in Left Field: Cuba's Post-Cold War Strikeout*, 18 FORDHAM INT'L L.J. 15 (1994), and the fact that the Cuban government in the past had persecuted persons returned there who had sought asylum in the United

rude awakening to see Elian Gonzalez suffer the indignities at the hands of the U.S. government that it regularly doles out to other immigrant groups.¹³⁴

In some ways, however, Elian Gonzalez's extended family's request that the child remain with them in the United States received extraordinary treatment.¹³⁵ Observers have noted that, if Elian Gonzalez were from any other Latin American country, he would have been returned to his father in a matter of days, if not hours.¹³⁶ The sensitive nature of Cuban American politics in south Florida resulted in more deliberate action by the INS, under the watchful eye of Attorney General Janet Reno, than one typically would see. The Cuban American vote, generally in the pocket of the Republican Party,¹³⁷ was cherished in a Presidential election year.¹³⁸ Despite the care taken in the decision, the negative political fallout with Elian Gonzalez's return to Cuba may have cost Vice President Al Gore the 2000 Presidential election.¹³⁹ The dawn INS armed raid in which Gonzalez was taken from his uncle's home, outraged vocal segments of the Cuban American community.¹⁴⁰

The vociferousness of the Cuban American political resistance to the return of Elian Gonzalez to his father in Cuba, which was out of step with popular public opinion, may have permanently damaged Cuban American political power.¹⁴¹ At least during the time of the controversy, Cubans were marginalized by the media and the general public, thus moving away from being perceived as the "model" Latina/o minority.¹⁴²

States, *see, e.g.*, *Rodriguez-Roman v. INS*, 98 F.3d 416 (9th Cir. 1996) (holding that Cuban asylum applicant fearing punishment for leaving Cuba was eligible for asylum).

134. *See supra* text accompanying notes 126-30.

135. *See Reno v. Flores*, 507 U.S. 292 (1993) (upholding INS policy of not releasing from detention unaccompanied minor to other than blood relatives); *see also* Cecelia Espenosa, *Good Kids, Bad Kids, A Revelation about the Due Process Rights of Children*, 23 HASTINGS CONST. L.Q. 407 (1996) (analyzing *Flores* and INS detention and other policies directed at unaccompanied minors).

136. *See, e.g.*, Charles J. Ogletree, Jr., *America's Schizophrenic Immigration Policy: Race, Class, and Reason*, 41 B.C. L. REV. 755, 756-57 (2000).

137. *See* GARCÍA, *supra* note 107, at 146-47.

138. For a literary account of Miami's complex politics, *see* JOAN DIDION, *MIAMI* (1987).

139. *See* Dexter Filkins & Dana Canedy, *A Mayor, Once Vocal for Gore, is Silent*, N.Y. TIMES, Nov. 25, 2000, at A11 (reporting that Democratic mayor of Miami, Alex Penelas, who did not actively support Vice President Gore because of the Clinton administration's handling of Elian Gonzalez matter, may have taken steps during ballot recount that adversely affected Gore).

140. *See, e.g.*, Jack Kemp, *Show of Force vs. Law*, WASH. TIMES, May 8, 2000, at A17; Laurence H. Tribe, *Justice Taken Too Far*, N.Y. TIMES, Apr. 25, 2000, at A23.

141. *See* Rick Bragg, *Fight Over Cuban Boy Leaves Scars in Miami*, N.Y. TIMES, June 30, 2000, at A12; *see also* Victorino Matus, *The Slanderers of Cuban-Americans; There's One Ethnic Group It's Still Politically Correct to Smear*, WKLY. STANDARD, Apr. 17, 2000, at 14 (contending that politicians and journalists during the Elian Gonzalez controversy viciously attacked Cuban-Americans as an ethnic "mob" with many anti-Cuban slurs).

142. *See supra* text accompanying notes 105-06.

E. *Future Latina/o Coalitions*

A silver lining may exist to the Elian Gonzalez controversy. The Cuban American reaction to the INS conduct in the Elian Gonzalez matter, as well as unhappiness with Coast Guard conduct in the Cuban interdiction program,¹⁴³ demonstrates that Latina/os share common ground in addressing immigration as a civil rights issue.¹⁴⁴

In the past, some Cuban leaders stated that the “Mexican problem” with immigration in the southwest had nothing to do with Cubans in Florida.¹⁴⁵ Recent events shed new light on such assertions. In these times, the U.S. government often focuses immigration enforcement on persons of Latin American ancestry.¹⁴⁶ Conduct like that seen in Elian Gonzalez’s case—namely, use of force—occurs with regularity in immigration enforcement against Mexican and Central American immigrants.¹⁴⁷ Over the course of the 1990s, Cuban Americans have begun to get a glimpse of how harsh the U.S. government can be if it wants to focus its power on a particular immigrant community. Organized politically, Cuban Americans may join forces with other Latina/os to challenge the inequities inherent in INS enforcement policies.

F. *Immigration Law and Racial Formation*

The sea change in popular attitude toward different groups, and the law’s response, reveals volumes about racial formation.¹⁴⁸ Specifically, immigration law and its enforcement affects the differential racialization of various Latina/o national origin groups. Efforts to keep some groups out of the country while welcoming others reinforce popular conceptions about the groups. At least at one time, positive stereotypes about Cubans as a “model minority” justified their generous treatment under the law.¹⁴⁹ When viewed as white, educated, middle and upper class, and refugees of communism, Cubans fared well.¹⁵⁰ When the popular construction of

143. See Hernández-Truyol, *supra* note 101; *supra* text accompanying notes 121-23.

144. See Johnson, *supra* note 68, at 115-16, 117-29.

145. See *id.* at 133-34 (footnote omitted).

146. See Kevin R. Johnson, *Race, The Immigration Laws, and Domestic Race Relations: A “Magic Mirror” Into the Heart of Darkness*, 73 IND. L.J. 1111, 1136-41 (1998); see also Adrienne Katherine Wing, *Reno v. American-Arab Anti-Discrimination Committee: A Critical Race Perspective*, 31 COLUM. HUM. RTS. L. REV. 561 (2000) (criticizing Supreme Court decision limiting judicial review of immigration decisions and offering insights on role of race and other aspects of identity, in immigration laws).

147. See Elvia R. Arriola, *LatCrit Theory, International Human Rights, Popular Culture, and the Faces of Despair in INS Raids*, 28 U. MIAMI INTER-AM. L. REV. 245 (1996-97); see, e.g., *INS v. Delgado*, 466 U.S. 210 (1984) (holding that workplace raids by INS failed to constitute “seizures” subject to the constraints of the Fourth Amendment); see also *supra* text accompanying note 128 (discussing increased border enforcement efforts in 1990s).

148. See *supra* text accompanying notes 100-47.

149. See *supra* text accompanying notes 100-16.

150. See *supra* text accompanying notes 100-16.

the migrants changed around the time of the Mariel boatlift—as Blacker, poorer, and undesirable, the legal treatment became stricter.¹⁵¹ Similarly, the racialization of Mexican immigrants as dark, poor, and uneducated, long has rationalized their harsh treatment under the immigration laws.¹⁵² Thus, over time, we see the evolving racialization of Cubans in a way that makes them more resemble Mexican migrants. Changes in the racialization of Cubans creates the potential for future political coalitions challenging immigration law and enforcement.¹⁵³

CONCLUSION

In analyzing “Latino culture,” we must take care not to ignore the diversity of the Latina/o communities. Such an approach violates the fundamental anti-essentialist core of LatCrit theory. By considering the variety of different Latin cultures, we are better able to appreciate how various Latin American groups are differentiated in law and popular culture. Specifically, LatCrit analysis of the “Latin music craze” allows for the study of the comparative racialization of different Latina/o national origin groups. The popularity of performers of Caribbean ancestry, combined with the relative marginalization of persons of Afro Latina/o and Mexican ancestry, is most revealing.

At its core, the “Latin music craze” reinforces negative stereotypes about Latina/s, including that they are foreigners. It promotes assimilationism in that the music promotes acceptance of certain types of Latina/os, those whom are viewed as most assimilable. Crossover appeal in fact rests on assimilation potential. The current “craze” therefore should be viewed critically.

Similarly, we should pay attention to how law racializes various Latina/o national origin sub-groups. Differential treatment between different immigrant groups affects how those groups are viewed by Anglos and those groups are racialized, in the United States. The Elian Gonzalez matter highlights the racialization of different Latina/o national origin groups in U.S. immigration law and policy, and how racial constructions change over time.

151. See *supra* text accompanying notes 117-24.

152. See Delgado & Stefancic, *supra* note 59, at 1273-75; see also Kevin R. Johnson, “Aliens” and the U.S. Immigration Laws: The Social and Legal Construction of Nonpersons, 28 U. MIAMI INTER-AM. L. REV. 263 (1996) (analyzing how “alien” terminology and stereotypes about “illegal alien” help rationalize harsh treatment of persons under immigration law); Yxta Maya Murray, *The Latino-American Crisis of Citizenship*, 31 U.C. DAVIS L. REV. 503, 531-45 (1998) (analyzing how immigration law and enforcement marginalizes Latina/os in United States).

153. See Francisco Valdes, *Foreword: Under Construction – LatCrit Consciousness, Community, and Theory*, 85 CAL. L. REV. 1087, 1094 (1997), 10 LA RAZA L.J. 1, 8 (1998).

