

Straight From the Mouth of the Volcano: The Lowdown on Law, Language, and *Latin@s*

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*Amor mío en el mar navegamos de vuelta a la raza,
a la herencia, al volcán y al recinto, al idioma dormido
que se nos salía por la cabellera en tierras ajenas.*¹

I. “THE BEGINNING OF WISDOM”²

*Auch das Ungewöhnliche muß Grenzen haben.*³

“How does U.S. law regulate linguistic practices and cultures? Does it operate explicitly, through the constitutional or statutory officialization of English? Or does it instead simply presume that public and perhaps also private communication will take place in the ‘dominant’ language? If so, does it impose penalties on people who undermine this presumption? Does it ever outsource its policing functions and, accordingly, empower employers or others to keep in line those who might express themselves in foreign tongues? Where do the ethnic majority’s sentiments on immigration and on *Latin@s* fit into this picture? Does U.S. society reflect, with its restrictions, a failure to appreciate the benefits of multiculturalism? Or does it show, more profoundly, the will to subordinate a long marginalized group? Are the policies in question, at a third level, a continuation of the nineteenth-century colonization crusade against *Latin@s*? How will these three perspectives affect not only the understanding, but also the solution of the ‘problem’?”

As I dot this last question mark, the tip of my pencil cracks. I look at the knife on the table and consider sharpening my writing instrument—as my father taught me ages ago—in order to continue scribbling. Instead, I rip the sheet of paper off the pad, crumble it into a ball in the palm of my right hand, and fling it toward the garbage can close to my desk. It hits the rim and flies away.

This piece has been burning in me for a while. Unfortunately, I have just realized that I cannot, should not, and will not write it; at least not in its original form. The thought has struck me suddenly, like a lightning bolt: an epiphany. The world does not

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1. Pablo Neruda, *Regreso*, in LA BARCAROLA 15 (1977) (literal translation: “My love, while at sea, we navigated back to our race, to our heritage, to the volcano, and to the terrain, to the dormant language, which oozed out of our mane in foreign lands.”).

2. “The fear of the Lord is the beginning of wisdom: and the knowledge of the holy is understanding.” *Proverbs* 9:10.

3. Translation: “Even what is unusual must have bounds.” Franz Kafka, *Blumfeld, ein älterer Junggeselle*, in DIE ERZÄHLUNGEN 219, 226 (2003) .

need another long law review article, padded with superfluous footnotes, examining the case law, distilling government policy from administrative or legislative documents, and spouting statistics.

Mind you, giving up this project is not easy for me. After all, I was hoping that it would redeem me as a scholar and perhaps even be my “knuckle-ball.” Though not a sports fan myself, I remember reading about an infielder who, upon hearing that he lacked skills needed to make it to the major leagues, told his trainer that he could throw a mean knuckle-ball. “Yeah, right: Every player on his way out claims to have an amazing knuckle-ball.” Despite his disbelief, the coach gave the man a chance to pitch. The athlete not only proved his claim, but actually went on to have a great career in the majors.⁴ Similarly, my law school was poised to deny me tenure when I reported that I was working on a wonderful scholarly work that would make up for the disappointment of my previous two publications. At the time, I was nervous because in academia, as in baseball and in California’s penal system, you get three strikes and you’re out. Nevertheless, I was betting on the knuckle-ball saving me.

Now, I have given up this last hope, just a few minutes ago. No need to worry, though, or to get melodramatic. I was probably riding on vain hopefulness, on “*religiöse[m] Elend*,” on the “*Seufzer der bedrängten Kreatur*,” on the “*Opium des Volks*”⁵ anyway. Moreover, a full professorship wouldn’t matter much to me at this stage and would be out of my reach in any case.

With an English translation of Lenin’s *What is to Be Done?* under my arm,⁶ I pace back and forth and ponder my next step for a while (within my radically altered sense of time). As soon as the Holy Ghost’s “cloven tongues . . . of fire”⁷ begin to hover over my head, I jump out of my armchair and abruptly decide to do something different: to focus and zoom in. *Eureka!* I must imitate the micro-historian who tells a story that stands on its own feet, that perhaps insinuates a larger history, but that post-modernly resists any generalization. Ideally, I would craft a *micro-cuento*⁸ à la Augusto Monterroso: “*Cuando despertó, el dinosaurio todavía estaba allí.*”⁹ That’s all of it: the whole thing. Don’t look for symbols or a broader (hidden) message. Don’t analyze it. Take it as it is.

Regrettably, I cannot be as concise as Monterroso. My story will therefore go on a bit longer. Furthermore, it will not be purely fictional, but rather true or at least based on the truth, which will help if anyone ever wants to make a movie out of it. Still, I will change the names of the people involved in order to protect the guilty. Everyone is always so concerned about the innocent. When the Berlin Wall collapsed, someone spray-painted on the stone pedestal underlying the huge statue of Marx and Engels in

4. See Tom Weir, *Pirates to Knuckle Down in Game 3*, USA TODAY, Oct. 9, 1992, available at 1992 WLNR 2226875.

5. KARL MARX, *Zur Kritik der Hegelschen Rechtsphilosophie*, in 1 MARX ENGELS WERKE 378 (1988) (translations: “religious misery”; the “sigh of the subjugated creature”; the “opium of the people.”).

6. VLADIMIR ILICH LENIN, *WHAT IS TO BE DONE?* (Joe Fineberg & George Hanna trans., 1988).

7. *Acts* 2:3 (King James).

8. Translation: “Micro-story.”

9. AUGUSTO MONTERROSO, *CUENTOS, FÁBULAS Y LO DEMÁS ES SILENCIO* 69 (1996) (translation: “When he woke up, the dinosaur was still there.”).

the eastern part of the city: “*Wir sind unschuldig!*”¹⁰ My reaction is simply to ask: “Well, what about the guilty?”

Such a piece of fiction might enable me effectively to re-imagine discriminatory oppression in the United States. It might help me underscore how discrimination operates radically differently as provincialism, as subordination, and as colonialism. One would then fully visualize why the struggle for liberation must, alternatively and depending on the context, extol the virtues of pluralism, combat social subjugation, and pursue decolonization. *Latin@* characters could vividly show how their community faces and fights against colonial domination.

I can already hear my critics pouting, pestering, and protesting, especially the members of the Personnel Advisory Committee. “This is horrible. This is pointless. This is unworthy.” Yada, yada, yada. These geniuses probably think that a traditional law review article is the only legitimate contribution that a legal academic can make. I wonder: “In what sense would such a work represent an improvement over the one that I am contemplating?” Granted, it might help the author’s career and reputation more. Nonetheless, it would not necessarily make more of a difference “out there.” Even if it offered concrete proposals, probably not too many people would read it, let alone heed its advice. In contrast, a well-told story would have a more realistic chance of finding interested listeners and firing up their imagination. Ideally, it could be the Archimedean point from which to move the world.

Don’t get me wrong. I don’t mean to exaggerate the importance of the size of one’s readership, let alone overestimate my marketability prospects. I whole-heartedly agree with Jorge Luis Borges that if you only sell a handful of books, you can vividly envisage each one of your readers and therefore have a more intimate relationship with them. In contrast, if your work becomes a bestseller and reaches millions, you can hardly have a concrete conception of who your audience is. (Borges made this point to the love-of-his-life, who was complaining about her lack of success as a writer; he assured her that his first publication had sold exactly twelve copies).¹¹ I’m just saying that, to the extent that visibility and impact are the criteria, the kind of piece that I have in mind might face brighter odds than the standard *opus*.

Of course, storytelling in law has already arrived and attained respectability. Richard Delgado, Derrick Bell, Patricia Williams, Mari Matsuda, and Lucie White provide cases in point.¹² Nevertheless, the genre remains suspect. Even people who are not only believers, but also well-established practitioners, often feel that they have to justify themselves. The feeling of insecurity increases exponentially if you enjoy no recognition and if your piece is relentlessly narrative and has absolutely no allegorical ambitions.

10. Translation: “We are innocent.”

11. See UN AMOR DE BORGES (Artistas Argentinos Asociados 2000) (directed by Javier Torres).

12. See, e.g., RICHARD DELGADO, THE RODRIGO CHRONICLES: CONVERSATIONS ABOUT AMERICA AND RACE (1995); DERRICK A. BELL, JR., FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM (1992); PATRICIA WILLIAMS, OPEN HOUSE: OF FAMILY, FRIENDS, FOOD, PIANO LESSONS, AND THE SEARCH FOR A ROOM OF MY OWN (2004); Mari Matsuda, *What Would It Take to Feel Safe?*, 27 N.Y.U. REV. L. & SOC. CHANGE 78 (2001/2002); Lucie E. White, *Democracy in Development Practice: Essays on a Fugitive Theme*, 64 TENN. L. REV. 1073 (1997).

I have to overcome my chronic lack of self-confidence and will eventually. In addition, I must learn to take risks in a carefree manner. “*Si on ne risque rien, on n’a rien*,”¹³ Simone de Beauvoir reportedly told her paramour Nelson Algren in an attempt to persuade him to move to Paris. In fact, the flip side of this phrase, “*si on n’a rien, on ne risque rien*,”¹⁴ suits me better at this juncture. As a dead man, I shouldn’t give a damn, literally. When you have recently passed away, however, you preserve the instincts, as well as the fears, of the living. Indeed, a guillotined head will scream, grimace, and avert its eyes on its way down to the ground.

Before I go on, let me just show you what I’ve got. You be the judge. By the way, you’ll notice that the tale’s tone and the style differ from those of this introduction and of the conclusion. The contrast should come to you as no surprise inasmuch as my circumstances and those of the narrator are so radically different.¹⁵ In any case, you probably learned in high school not to equate the narrator with the author.

II. THE STORY: “THE LANGUAGE OF SLAVERY”

*Je ne suis pas esclave de l’esclavage qui déshumanisa mes pères.*¹⁶

The moment I remember most vividly came later, when the fight was already over. I’m not thinking of the celebration that took place immediately after the initial victory, but rather of an informal get-together that transpired a few days later. Everybody wanted to prolong the sensation of triumph. We believed that a real bond had developed among us and that we had achieved something that would endure. We were wrong.

José and Héctor hauled a case of beer out of the trunk. María brought some food in an aluminum container: rice, beans, and a few *alcapurrias*. I had made a *flan* and picked up some refreshments on the way. Don Sergio arrived later, apologizing for the delay and for showing up empty-handed. His interview with a local newspaper had taken longer than expected and he decided to drive directly to our modest *fiesta*. Of course, no one minded. With a reassuring “*no te apures*” or “don’t sweat it,” María offered him a plate of food.

We improvised a picnic on the empty parking lot, with some of us leaning on the cars and others sitting on the blacktop. We shared snippets of our life stories and

13. Translation: “If one doesn’t risk anything, one has nothing.” I quote from my recollection of an account that I heard on Radio France International many years ago. In looking through the book that reproduces de Beauvoir’s letters to Algren, the closest statement I could find was the following: “*En tout cas, essayons dès que possible, nous n’avons rien à perdre car même un échec ne gâcherait rien du passé ni rien entre nous, et nous avons beaucoup à gagner.*” SIMONE DE BEAUVOIR, *LETTRES À NELSON ALGREN: UN AMOUR TRANSATLANTIQUE 1947–1964* 527 (1999) (translation: “In any case, let us try, as far as possible. We have nothing to lose. Even if we fail, we will not ruin the past or anything between us. And we have much to gain.”).

14. Translation: “If one has nothing, one doesn’t risk anything.”

15. Note, of course, the aphorism: “*yo soy yo y mis circunstancias*” (translation: “I am myself and my circumstances”). JOSÉ ORTEGA Y GASSET, *MEDITACIONES DEL QUIJOTE* 25 (1994).

16. FRANTZ FANON, *PEAU NOIRE, MASQUES BLANCS* 186 (1952) (translation: “I am not the slave of the slavery that dehumanized my parents.”).

became somewhat better acquainted with each other. At one point, Tomás confessed that he had had a crush on a woman who subsequently attended my law school: Isabel Rivera. I told him that I knew her. (She had worked as my research assistant the previous semester.) Tomás recalled that she was a “knockout”—actually, “*una mami*”—but a bit stuck up. Cristina jumped in and accused Tomás of saying exactly the same thing about all women who turned him down. Tomás simply cracked a grin of both mischief and embarrassment.

Every now and then we referred to what we had been through. José felt that the outcome boded well for the future. He went over various grievances at work and elsewhere. He told himself that he would get his act together and file some complaints. Marta teased him about his bubbly enthusiasm. She knew that his new-found determination, like our nicely cut-up and slightly overripe *papaya*, would not hold up past that night.

After a couple of hours of random conversation, we rolled up and started heading out. I shook hands with the guys and kissed the women good-bye. We thanked each other for the fun time. We promised to stay in touch and in fact did, at least to some extent. Yet we never managed to find another cause, or even a pretext, that would bring us together in quite same way.

My first encounter with the group occurred a few weeks earlier. I had received a call from my friend Pedro, who ran a public-interest organization. He reported that a *Latino* employee of the Housing Authority had contacted his office. Furious but focused on his purpose, Don Sergio had decided to challenge a recently issued directive that forbade employees to speak Spanish at work. The agency’s director, Mark Johnson, had justified the measure by stating that the use of the Spanish language in the workplace, even in informal settings,¹⁷ led to mistrust among those who did not understand. He did not specify, however, what sanctions he would apply against violators.¹⁸

When the telephone rang, I had just adjourned my civil procedure class and was wading through an article on private international law. Hearing Pedro’s voice cheered me up, almost as much as taking a break from my scholarly pursuits. I took copious notes during the conversation and readily agreed to collaborate on the case. We scheduled the first attorney-client meeting for the next day at five in the afternoon.

About twenty workers, and many more supporters, turned up. I arrived early and therefore had a chance to chat with them ahead of time. Marta introduced herself, as well as several *compañeras* and *compañeros* who were standing to her side. They were all enraged by what had happened and had not only confronted their boss, but also organized the workforce. They had set up the room for that day’s gathering.

17. Similarly, “Plaintiffs [in *Maldonado v. City of Altus*] offered evidence that employees were told that the restrictions went beyond the written policy and prohibited all use of Spanish if a non-Spanish speaker was present, even during breaks, lunch hours, and private telephone conversations.” *Maldonado v. City of Altus*, 433 F.3d 1294, 1300 (10th Cir. 2006). *See also id.* at 1305 (“Plaintiffs presented evidence that the English-only policy extended beyond its written terms to include lunch hours, breaks, and even private telephone conversations, if non-Spanish-speaking co-workers were nearby.”).

18. The Equal Employment Opportunity Commission establishes that “the employer should inform its employees of the . . . consequences of violating the rule.” 29 C.F.R. § 1606.7(c) (2007).

In short order, Pedro appeared on site with Sofia, the in-house counsel whom he had designated to handle the case. We had a quick conversation on how to proceed, on the judicial precedents, and on the employees' concerns. Sofia came across as a sharp, hard-nosed, but friendly person. Notwithstanding her rather advanced pregnancy, she moved swiftly and energetically.

Because some of the workers were still finishing up their assignments for the day, we began about half an hour late. Almost as a matter of principle, we conducted the discussion in Spanish. Much to our surprise, Marta and some of her cohorts immediately stopped us. They explained that they did not speak the language fluently and would need a translator.

It then dawned on me that the policy that so incensed Marta and her companions would have no practical impact on them. They did not speak much Spanish and would therefore not have to alter their behavior in any significant way. They nonetheless understood, better than anybody else, that the rule in question was not about language, but rather about identity. It aimed not at what they did, but at who they were.

We ultimately decided to switch to English. This solution created problems of its own, as some of our interlocutors informed us that they did not fully understand "*el difícil*," or "the difficult one," as *Latin@s* sometimes refer to the English language. In fact, a few of the workers—mostly maintenance personnel and auto mechanics—spoke only Spanish. Obviously, the new measure would completely isolate them. They would no longer be able to communicate with their supervisors or coworkers about their job or about anything else. Had the Authority anticipated or even planned this effect? Did it ultimately want to get rid of these individuals? Or did it intend to carve out an exception for them later on? Perhaps it had simply not considered any of these issues because it rarely took these guys into account.

When a speaker at the next day's protest rally mentioned these characters, a bystander within my earshot muttered a common complaint about *Latin@s*' difficulties with the U.S. vernacular: "This is America. Why the hell don't they learn English?" "I'm really not sure," I thought to myself. "Perhaps for the same reason Anglos themselves usually speak no second language: lack of instruction, ability, or interest? Who knows?" At any rate, *Latin@s* do no worse than other immigrant groups in terms of picking up English.¹⁹

The onlooker, who had two other silent *contras* or counter-demonstrators with him, obviously would not have accepted such explanations. As I glanced toward him, he defiantly jeered: "Why don't they just stay home? Why do they have to come here?" Actually, the truth of the matter is that the United States came to them, in a dramatically real sense.

The point is not merely that U.S. neo-imperialism displaces peoples all over the world and drags them into the metropolis. It is also that the United States militarily expanded its borders into Latin America and thus absorbed the first and largest *Latin@* communities. In the nineteenth century, U.S. troops wrested two-thirds of Mexico's territory and colonized the *Chicano* population, which has grown exponentially in the

19. See Roberto Calderin, *Latino Immigrants Do Assimilate and Learn English*, TIMES HERALD-RECORD, Oct. 5, 2006, <http://www.recordonline.com/apps/pbcs.dll/article?AID=/20061005/OPINION/610050311/-1/opinion04>; Samuel P. Huntington, *The Hispanic Challenge*, FOREIGN POL'Y, Mar.–Apr. 2004 ("English language use and fluency for first- and second-generation Mexicans thus seem to follow the pattern common to past immigrants.").

last five decades mostly through immigration from the mother ship.²⁰ Many of the employees in the case at hand were Puerto Rican, part of a group that first “arrived” in the United States when U.S. troops invaded their land and declared it U.S. territory in 1898. Most likely, these workers either belonged to or descended from the group of men and women that the local tobacco industry recruited on the island and brought to the mainland as cheap labor in 1960s and 1970s.

Needless to say, marshaling these and other arguments would not have impressed my accidental antagonist. He would have simply carried on his rant. In fact, he ultimately spat out his racism, as a checkmate move: “We just don’t like these people.” His buddies instantly drew closer to him in support and solidarity. Without uttering a word, I turned around and went on with my business.

During our first gathering with the employees, however, we did not have much time to meditate on linguistic identity, exclusion, and intolerance. We had to focus concretely on language logistics. After some further, brief deliberation, we stuck to our decision to use English, but made arrangements for simultaneous translation. A few of the bilingual workers did most of the interpreting. I helped out with the more technical, legal terms.

Ironically, the agency had hired many of the bilingual employees precisely to take care of its large Spanish-speaking clientele. It now informed them that, as receptionists, they could continue to answer the phone in Spanish, but that, otherwise, they had to stick to the official language.²¹ Not surprisingly, they perceived that their employer was jerking them around and disrespecting them. To add insult to injury, the directive required non-English speakers seeking service to bring their own translator to the office from now on.

In order to keep everyone on board, we proceeded rather slowly. We paused to allow for translation and repeatedly fielded questions. Our team sat at one end of the table, while the workers spread themselves out all over the area, amid relatives, friends, and supporters.

Pedro started out by introducing himself, then Sofia and me. He expressed his organization’s interest in serving the community and in hearing about these kinds of grievances. He specifically thanked Don Sergio for having reached out and welcomed everybody to the session. With palpable sincerity, he encouraged those present to contact him directly if they had any concerns about this case or about any other matter.

Subsequently, Sofia and I averred that the practice constituted illegal discrimination and that we would help the employees fight it, upon their request. We explained that

20. See, generally, LAURA GÓMEZ, *MANIFEST DESTINIES: THE MAKING OF THE MEXICAN AMERICAN RACE* (2007).

21. Similarly, the plaintiff in *García v. Gloor*, 618 F.2d 264 (5th Cir. 1980), “was hired . . . precisely because he was bilingual, and, apart from the contested rule, his preference in language was restricted to some extent by the nature of his employment. On the job, in addressing English-speaking customers, he was obliged to use English; in serving Spanish-speaking patrons, he was required to speak Spanish. The English-only rule went a step further and restricted his preference while he was on the job and not serving a customer.” *Id.* at 269. In contrast to the case in the story, however, García “was permitted to speak the language he preferred during work breaks.” *Id.* at 268; see also *id.* at 270 (“The rule was confined to the work place and work hours. It did not apply to conversations during breaks or other employee free-time.”).

the law protected their right to be who they were and to preserve their culture. While telling them that we knew how they felt, we insisted that they had to react intelligently. In our opinion, they should avoid confrontation on the job, to the extent possible. We asked them to keep track and, ideally, to write down everything relevant that happened from that point on.

Nonetheless, we underscored that they were entitled to speak up against their employer on this matter. We pointed out that the agency would be acting illegally if it retaliated against them for exercising their entitlements. We invited them to get in touch with us if they encountered any problems on this front.

Sofia then made clear that we would not be charging for our services. She noted that those who wanted us to represent them would have to sign the form to retain us as attorneys. Thereupon, she urged them to peruse the document with utmost care, either in the original English version or in the Spanish translation. She offered to go through each provision with those who could not read or understand the text. She advised all of them to act voluntarily and freely to say so, if they did not wish to have us as counsel.

Afterwards, we fielded numerous questions. Some people wanted to know more about the law. A few brought up related incidents, which had occurred recently. Others voiced concern about the consequences of joining the action. We answered the queries as clearly and openly as we could.

Cristina pointed out that the agency had openly singled out and discriminated against them, as a linguistic community. Indeed, Executive Director Johnson had candidly and imprudently prefaced his rule with the acknowledgement that Spanish speakers had forced him to act. He wrote that he was seeking to stop those individuals from aggravating others. Hence, he essentially conceded that he was targeting *Latin@s* and their language. Sofia granted that this fact was particularly problematic and confirmed that we would firmly rely on it in our challenge.²²

When we concluded our presentation, a large group approached us and decisively declared that they wanted to participate. More hesitantly, other employees said that they were inclined to join in, but preferred to consult with their spouses or family members first. A small contingent simply remained at the back of the room and expressed no position, one way or the other.

The meeting broke up and an informal gathering ensued. We got to know each other a little bit and soon began addressing each other on a first-name basis. Almost naturally, we drifted from the respectful “*usted*” to an informal “*tú*”. The workers unambiguously conveyed to us their gratitude for our assistance and their satisfaction at having a *Latin@* legal team. Nonetheless, they kept some distance, most probably because they perceived us lawyers as aliens from a remote social and economic context.

Sofia and I agreed to file a complaint with the state’s Civil Rights Commission, so as to “exhaust administrative remedies.” I promised to put together a rough draft soon and to send it to her for comments. On the spot, I made a mental note to myself: focus

22. In its compliance manual, the Equal Employment Opportunity Commission specifies that “a policy that prohibits some but not all of the foreign languages spoken in a workplace, such as a no-Navajo rule, would be unlawful.” U.S. EQUAL EMPLOYMENT OPPORTUNITY COMM’N, EEOC COMPLIANCE MANUAL 13V(C) (915.003) (2002), available at <http://www.eeoc.gov/policy/docs/national-origin.html#VC>.

on the document and class preparation; postpone the article for later, *viz.*, standard operating procedure.

The following day, the demonstration that I alluded to earlier took place. Once again, Marta and company played the role of organizers, or at least ringleaders. Many workers, civil rights leaders, and community members converged upon the asphalt quad in front of the Housing Authority to protest against the language policy. Holding posters, flags, and balloons, they chanted and strutted in a circle, keeping rhythm with their palms, with *maracas* made out of empty soda cans holding a few pebbles, and with plastic garbage containers serving as drums. They seemed to be engaging in a *rumba*, rather than in a march. Pedro and Ricardo Vélez, who headed the Latino Affairs Commission, took the stand and so did a *Latino* state official. All three urged the agency to retract the directive. A couple of reporters positioned themselves behind the scene and occasionally scribbled on their notepads. A sizeable, multicultural assortment of gawkers, myself among them, watched and cheered on. Of course, the crowd included some dissenters too, probably more than the three who revealed themselves to me.

Upon crafting the first version of our initial pleading and memorandum, I had an encounter and several telephone conversations with Sofia. We brainstormed, pondered, disagreed, ruminated, conferred, hesitated, yielded, and concurred—not necessarily in that order. We worked smoothly together, probably because we felt a strong affinity for one another and, yet, did not know each other well enough to get nasty. As the saying goes: “*La confianza da asco*,” which roughly translates into “intimacy is disgusting.”²³

We based our assertion that the municipality had violated the workers’ rights on two arguments. First, the contested practice had a disparate (actually lopsided) impact on a particular racial group, *i.e.*, *Latin@s*. Plaintiffs, accordingly, had a solid *prima facie* case.²⁴ The agency, for its part, did not have a sufficient business justification to rebut. It could at best support its decision by invoking the need to keep harmony in the workplace. Nevertheless, it had adopted a measure that had increased tension and poisoned labor relations. Consequently, it could not proffer a sensible rationale, only a pretextual rationalization. In any case, it could undoubtedly achieve the end of bringing its employees together more effectively and less discriminatorily through other means.²⁵

Second, the agency’s actions amounted to discriminatory treatment. From this perspective, the contested rule was not a facially neutral device that had an adverse

23. Barry Taylor traces the Spanish expression to its Latin origins and thus connects it to the English phrase “familiarity breeds contempt.” Barry Taylor, “*Familiarity Breeds Contempt*”: *History of a Spanish Proverb*, 83 BULL. SPAN. STUDIES 43 (2006).

24. We hoped that the adjudicator would not follow the Fifth and Ninth Circuits in underestimating the harm entailed by the language ban and in refusing to recognize the *prima facie* case. See *García v. Gloor*, 618 F.2d 264, 268 (5th Cir. 1980); *García v. Spun Steak Co.*, 998 F.2d 1480 (9th Cir. 1993). Years later, in *Maldonado v. City of Altus*, the Tenth Circuit adopted the position that various district courts and the Equal Employment Opportunity Commission endorse and that the narrator and his colleague were advocating. 433 F.3d 1294, 1300 (10th Cir. 2006).

25. See generally *Maldonado v. City of Altus*, 433 F.3d 1294, 1306–07 (10th Cir. 2006); 29 C.F.R. § 1606.7(b).

effect on the complainants. Instead, it directly discriminated against them. It imposed special burdens on Spanish speakers, a category that overlapped extensively with that of the ethnic group to which our clients belonged. Well over ninety percent of the *Latin@s* workforce had some fluency in Spanish and probably none of the Anglos did. More significantly, the policy expressed animosity to a language that is an essential part of the identity of all *Latin@s*, including those who do not speak a word of Spanish. It thus created a hostile work environment for this national-origin group.²⁶

We grounded both claims in Title VII and the second one additionally in the Fourteenth Amendment and the Civil Rights Act of 1866.²⁷ In *Griggs v. Duke Power Co.*, the U.S. Supreme Court had authorized disparate impact and discriminatory treatment suits under Title VII.²⁸ In *Washington v. Davis*, the Court had established that the Equal Protection Clause allowed only the latter kind of action and, accordingly required a showing of intentional bias.²⁹ Of course, we also relied on the relevant state constitutional and statutory provisions.

We both preferred the second allegation because it spared us from having to deal with the authorities' attempts to portray their directive as a reasonable business device. Furthermore, we believed that it captured directly what the rule was all about—*viz.*, disempowering and humiliating *Latin@* workers. The agency had unabashedly sided with its Anglo employees, who apparently viewed their Spanish-speaking coworkers as a threat or a nuisance.

The first charge almost entailed a concession of the directive's facial neutrality; yet the measure directly excluded non-English speakers or, more precisely, Spanish speakers. It frontally attacked and harassed the *Latin@* workforce. We would be engaging in a charade by assessing the policy objectively and examining its "effect" on *Latin@s*.

Nonetheless, we felt that the first approach had a somewhat better chance of carrying the day. After all, we would ultimately have to convince Anglo decision makers. They would have a hard time viewing the agency's procedures as an onslaught on the *Latin@* community. In fact, the ethnic majority generally benefits from a system in which its culture and its language dominate. It tends to treat practices designed to preserve and perpetuate its cultural hegemony as inherently legitimate. Accordingly, while administrative and judicial reviewers would probably not have much sympathy for a challenge to the collateral damages of a purportedly neutral rule, they would in all likelihood have no patience at all for an exception to the norm itself.

We also threw in, alternatively, the contention that the city had encroached upon the employees' freedom of expression. Our complaint maintained that the First

26. See *Maldonado*, 433 F.3d at 1308.

27. 42 U.S.C. § 2000e-2 (2000); U.S. CONST. amend. XIV; 42 U.S.C. § 1981 (2000).

28. *Griggs v. Duke Power Co.*, 401 U.S. 424, 431 (1971) ("The Act proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation.").

29. *Washington v. Davis*, 426 U.S. 229, 242 (1976) (We "have not held that a law, neutral on its face and serving ends otherwise within the power of government to pursue, is invalid under the Equal Protection Clause simply because it may affect a greater proportion of one race than of another. Disproportionate impact is not irrelevant, but it is not the sole touchstone of an invidious racial discrimination forbidden by the Constitution."); see also *Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977) ("Proof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause.").

Amendment did not allow the state to ban the speech of a particular racial group, to impose such excessive restrictions of manner and form, or to zero in on discourse that had a specific implicit content, in other words, that implied a declaration of *Latin@* pride. On this front, we certainly did not have high hopes. We feared that the adjudicators would probably not appreciate the burden on the expressive liberties of bilingual *Latin@s*, the excessiveness of the proscription, or the link between language and a particular message.³⁰

Sofia insisted that we meet briefly, one-on-one, prior to our second appointment with the clients. I showed up a little early at the agreed-upon location: an unpretentious cafeteria not too far from the Housing Authority. Upon seeing that she had not yet arrived, I ordered a sandwich. (That day I had skipped lunch in order to prepare my afternoon class. The night before, I had been so consumed with our case that I had neglected my pedagogical duties.) I then darted over to a corner table with a heap of relevant materials and tried to catch up on my long-neglected law review piece. Unfortunately, I was not able to make much progress because I was keeping an eye out for Sofia and simply could not concentrate.

When Sofia finally pushed through the glass door, an elderly man eating at a booth near the entrance exclaimed in Spanish: “¡Ea, rayos!, she’s extremely pregnant.” His wife, who was sitting at his side, scolded him: “Why on earth do you have to ogle women’s bellies, Esteban? You’re too old for that.” He simply sighed and smiled.

Completely oblivious to this exchange, Sofia rushed to my table. I stood up to greet her and clumsily put my papers away. After parking her briefcase and her umbrella against the wall, she told me that several additional employees had signed the retainer: “We have a big group now.” I told her that I thought that the increase in numbers was wonderful and that we could easily add the newcomers to our suit through a separate instrument. I subsequently proceeded to place the court documents on the table: “Here’s our lottery ticket.” I asked whether I could get her anything at the counter. “Just a glass of milk; I don’t have any special *antojos* or cravings today.”

When I returned with her order and mine, Sofia was examining the pleadings, motions, and memoranda. “All of this looks pretty good to me. There is some bad law out there,³¹ but we should be fine.” My sense of optimism was more muted: “I got us a huge candle at the *botánica*, just in case.” She did not mind playing along: “Well, make sure you light it up and keep some powerful *hierbas* around it.”

In a casual manner, we discussed a few tactical issues. As I forked the last French fry off my plate, Sofia proposed that we “close up.” She flipped out a pen and went on

30. Even in *Maldonado*, 433 F.3d at 1294, in which the court recognized the “claims of (1) disparate-impact and disparate-treatment under Title VII; (2) intentional discrimination under 42 U.S.C. § 1981; and (3) denial of equal protection under 42 U.S.C. § 1983,” *id.* at 1316, the majority rejected a similar First Amendment charge against the municipality’s English-only policy. Only Judge Stephanie K. Seymour, “concurring in part and dissenting in part,” would have reversed the trial court’s summary dismissal of the free speech contention. *Id.* at 1316–1327.

31. She meant mostly the “García Girls”: *García v. Gloor*, 618 F.2d 264 (5th Cir. 1980) and *García v. Spun Steak Co.*, 998 F.2d 1480 (9th Cir. 1993). See JULIA ÁLVAREZ, *HOW THE GARCÍA GIRLS LOST THEIR ACCENTS* (1992).

to sign the documents. Next, she had me do the same. I pushed my food away to make sure we did not grease up the papers.

Sofia told me that she would be driving by the Human Rights Commission the next day and offered to do the filing. Somewhat awkwardly, I protested: "Are you sure? It would be very easy for me to ride out there myself." She discarded my obligingness: "Don't be silly. I'll be up there anyway." She put the papers inside a folder, which she briskly pulled out of and packed back into her portfolio.

Thereupon, she gulped down the last sip of milk and stood up. Once she had all of her belongings in hand, she suggested that we take off. I checked my watch and realized that we had to hurry up if we were to make our next meeting.

We hurried to the administrative building. Héctor was waiting for us and led us to the small room that he had "reserved" for us. Don Sergio had already plumped down in his chair, close to María and several other employees. Marta showed up shortly thereafter with her gang of "troublemakers."

Don Sergio requested that we commence right away. "María has to get back home early." He promised that, later on, he would fill in those who were absent or late. María apologized for inconveniencing everyone. Sofia reassured her: "I can't stay out late either." Héctor seconded: "Neither can I; I have business to attend to." One of Marta's cohorts opened his eyes and mouth widely, expressing surprise and disbelief at Héctor's claim.

In very general terms, I explained our legal strategy and the steps we would have to take. Sofia filled in the gaps and clarified some of the heavier stuff. This time, I played the role of interpreter, for her and for myself.

Our audience listened attentively and posed questions only after we finished. Marta appeared to be the person most interested in figuring out exactly what was going on. A few of the others also intervened. Most of them, however, did not say a word.

Sofia then informed the group that we would be holding a press conference at four in the afternoon that coming Monday, which was less than a week away. "We want to make our case before the Housing Authority's board convenes to discuss the matter at six. If you can, please come to both events." She assured them that Pedro, as well as Ricardo, would join us.

When the session was almost over, José made his appearance: "Sorry I'm late. My car broke down." Héctor was mystified: "Come on, man, you don't even have a car!" José retorted at once: "It's my aunt's car, but I was able to fix it." Don Sergio told him that we were about done and promised to update him afterwards. José thanked us all and took a seat. Next, we wrapped up rather hastily.

After María left, we all chitchatted offhandedly. When Sofia announced that she had to split too, I proposed to drive her to her car, which she had parked in a garage a couple of blocks away. We strolled towards my vehicle, while casually conversing about our mothers. (I don't know how we got on the subject.) Upon reaching our destination, I opened the door to the passenger seat for her and she scooted in. I then took the steering wheel and chauffeured her to her automobile. She thanked me for the "escort," leaned over, and pecked a farewell kiss on my right cheek: "Drive safely. *Por la sombrita,*" viz., "take the shady path." I thanked her and started on my way back.

After a few minutes on the highway, I noticed a patrol cruiser tagging me, beaming up, and signaling me to pull over. Though definitely not in the mood, I patiently heeded the command. I stepped out and perceived that my hazard lights were still blinking. The cop pointed at them and angrily interrogated me. "What do you think you're doing?" I began explaining, gesticulating profusely in my habitual manner.

“Well, I just dropped off a friend a few minutes ago. You see, I turned the emergency blinkers on while waiting for her to step out....” Stopping me right in the middle of my sentence, the policeman drew his gun on me and howled: “Put your hands down. Right now!” I slowly did as he ordered and barely moved as I gave him a simpler and shorter explanation.

I often forget to curb my gesturing when police officers confront me. They tend to get nervous when I use my hands too expressively. Others have probably gotten shot under these circumstances.³² A year earlier, I had gone through a similar incident at the airport. That time, as well as this one, the cop finally accepted my story and sent me off, as if he were giving me a break: “You better be more careful next time.”

Though a bit shaken up, I was able to regain my composure and arrive home in one piece. Later that night, some friends gave me a ring and invited me to join them for a “Wednesday Night Special.” Despite my unequivocal refusal, they sped over to my place, lugged me out, and took me to some of the seediest bars in town. We traveled through a world in which there were only *Latin@s*—mostly low-income Puerto Ricans, Dominicans, Cubans, Mexicans, Guatemalans, Salvadorans, Nicaraguans, Panamanians, Colombians, Ecuadorians, Peruvians, or Bolivians, in which the Spanish language was the common currency, in which Caribbean cadences were ubiquitous, and in which everything seemed possible.

At one point, Andrés felt the urge to get a *caneca*—a flask of booze—to sip from while we cruised and perhaps also to defy the stringent liquor laws in force. Our driver, Manuel, spotted a couple of run-down men tottering down the street, stopped the vehicle, and inquired about where we could get some schnapps at this late hour. The fellows looked at each other and brightened up: “Actually, we’re heading to the ‘source’ this very moment. We’ll gladly lead you there if you give us a ride.” Manuel turned to us, raised his eyebrows, and thus sought our guidance. Andrés pursed his lips, shrugged with indifference, opened the door, and waved the guys in—onto our laps. We followed their directions to a run-down and boarded-up house. On the driveway, there were about nine individuals lined up to purchase alcohol from a single hand, which first clenched the cash and only then delivered the goods out of the darkness of a miniscule window. The business ran as a tight ship and, in no time, we had our turn and executed our transaction. Duly provisioned, we zipped away and the party went on; and on and on.

Fortunately, we did not confront any violence anywhere this time around. For the sake of tradition, we had our last *Cuba Libre*, several hours later, at a joint ominously called “*Cirrosis*.” To seal the *soirée*, the waiter offered us fish soup for breakfast. Everyone else gleefully accepted; I passed.

While recovering from this adventure in bed the next morning, I vaguely heard the phone ringing, sluggishly reached over, and picked up. María was on the line. She told me that Johnson had issued a statement. Had he recanted? María vacillated: “I don’t think so. Though significantly apologetic, the document doesn’t really change anything.” She promised to fax a copy to my office as soon as feasible. After she hung

32. See DANY LAFERRIERE, *CETTE GRENADE DANS LA MAIN DU JEUNE NEGRE EST-ELLE UNE ARME OU UN FRUIT?* (1993) (“That Grenade (Pomegranate) in the Hand of the Young Negro, Is It a Weapon or a Fruit?”). The French word “*grenade*” means both grenade and pomegranate. The Spanish or Portuguese “*granada*” and the Italian “*granata*” also have these two meanings.

up, I promptly showered, dressed, grabbed a bite, and shot over to the university. Upon my arrival, the memorandum was already on my desk.

In his statement, Johnson indeed apologized to anyone whom his previous ruling might have offended. Quite predictably, he declared that he had not intended to hurt anyone's feelings. He committed to establishing a "sensitivity program" and clarified that the agency would continue to serve, in Spanish, those people who did not speak English.

While I was reviewing the text, a journalist called. Naturally, he was seeking a reaction. I restrained myself: "This statement is an extremely modest step in the right direction." He wanted to know whether we would desist from the litigation. "The document has a regretful tone; yet it does not rescind the policy. Consequently, the main issue remains." The reporter finally requested a comment on the proposed sensitivity training. "The idea sounds interesting, though I am not sure of exactly what it would entail. We're both going to have to find out from Mr. Johnson himself."

I immediately touched base with Pedro, but was unable to reach Sofia. Her secretary notified me that she had already left for the day and that she would probably not come in at all the following day, which was Friday. Just in case, I left a message, which she did not return until Monday morning. During the evening, I chilled out at home, still recovering from the night before. Though I should have retired early, Gabriel García Márquez's latest novel, *Noticia de un secuestro* ("News of a Kidnapping"),³³ kept me busy into the wee hours of the night.

After a slow and uneventful next day at the university, my sister Isabel, who lived about two hours away, called to invite me to spend the weekend with her, her husband, and their two kids. She adroitly cast off all of my lame excuses and persuaded me to accept. Keeping a full, but not too hectic schedule, we hiked, attended a baseball game, cooked Saturday dinner together, had Sunday lunch at the latest Brazilian restaurant, and visited a museum. I felt so good and so integrated into the family that I almost asked Isabel to adopt me.

Nonetheless, I decided to return to my quarters relatively early on Sunday because I had an intense day ahead of me. In addition to preparing and teaching my "Civil Procedure" class, I had to get ready for the press conference and the hearing. I wanted to go over the complaint, as well as look into the municipal code's sections on the Housing Authority.

Back in my apartment, a day-old bowl of *yucca* cream was waiting for me. I heated it up and slowly savored it while listening to the radio. *La Grande* ("The Great One") was broadcasting reruns of the classic Cuban program from the 50s called "*La tremenda corte*" ("The Tremendous Courthouse.") As usual, the judge was conducting a trial against the shameless Tres Patines, who this time faced charges for breaching his contractual obligation to deliver a turkey to Nananina. The defendant had kept the money and the pet. The court was outraged: "Your poor mother must be ashamed to have a child like you!"

Tres Patines invariably displayed a splendid knack for spontaneously generating confusion. "Are you telling me that my mommy has a son like me?" His interlocutor seemed disconcerted: "Well, yes, Tres Patines." "Are you sure, your honor?" "Of course." Tres Patines, whose name literally and surreally means "three skates," now

33. GABRIEL GARCÍA MÁRQUEZ, *NOTICIA DE UN SECUESTRO* (1996).

went wild: “You know, she never told me. I had no idea. All this time, I thought I was a single child. Oh, my God! I have a brother that I never met. Wait a second: Now, I’m going to have to split the inheritance when she dies!”

A hopeless attempt at elucidation followed: “You’re not understanding me, Tres Patines. When I say that your mother must be embarrassed to have a child like you, I mean *you*. That’s obvious.” The accused simply refused to give in: “Well, no it ain’t, because I am not *like* me. I *am* me. That guy must be someone else.” “Who?” “My bro’!”

The adjudicator was beside himself: “For Christ’s sake, I just told you that I’m not saying that you have a sibling. I explained that that other guy and you are the same person.” Tres Patines was insatiable: “Now you’ve completely messed me up. You’re telling me that I am my own brother. That doesn’t make any sense.” The judge was livid: “What a beast!” The accused always bounced back: “Do you mean me or my bro’?”

As soon as Tres Patines started reminding me of Don Quijote proclaiming “I know who I am,”³⁴ I realized that it was time to tune out and crash. Within five minutes, I brushed my teeth, put on a T-shirt and sweat pants, set the alarm clock, and tucked myself in. Then I prayed for sleep.

The next morning I awoke at five. After tossing once, turning twice, and reciting all the verses of Pablo Neruda’s poem *Barcarola* in my head,³⁵ I resigned myself to the fact that Somnus was done with me. The sky outside my window insinuated a dry autumnal day. I got up, extemporized breakfast, and marched off to work. Preparing for and performing in class that day consumed all of my energy and concentration. Afterwards, I was completely exhausted and spent two hours staring at the papers that I had meant to study in anticipation of the late-afternoon sessions with the media and the housing board, respectively.

As planned, we all arrived early. Ricardo had accompanied Pedro. Sofia seemed a tad out of sorts. I was worried: “Are you all right?” She was stoic and reassuring: “I’m just a little bit tired. I’ll be okay.” The microphones and the cameras were set up. According to the plan, Pedro and Ricardo would lead, making a general statement about the case and articulating their respective organization’s positions. Then the lawyers would take over.

Typically, the presentation for the press and public commenced late. Nonetheless, Pedro and Ricardo were great, individually and as a duo. They had obviously been together on air many times. With considerable *panache*, they made the point that discrimination in the workplace was “plain unacceptable” and that their institutions would stand up and resist.

Following that act, the lawyers stepped in. We were not as photogenic or polished as our predecessors. Nonetheless, we did our best. Sofia deftly, succinctly, and accessibly explained why the agency’s policy was illegal. She handled the questions from the reporters beautifully. I, in turn, hammered at how the ruling humiliated *Latin@* workers. The agency had, to my eyes, posted a sign that read “You are not welcome.”³⁶

34. MIGUEL DE CERVANTES, *EL INGENIOSO HIDALGO DON QUIJOTE DE LA MANCHA* 35 (Part I, Chapter 5) (1940) (“... yo sé quién soy”).

35. PABLO NERUDA, *Barcarola*, *RESIDENCIA EN LA TIERRA* 106 (1973).

36. See *García v. Spun Steak Co.*, 13 F.3d 296, 298 (9th Cir. 1993) (Reinhardt, J.,

I insisted that this offensive practice was part of a widespread trend to force *Latin@s* to submit and assimilate. The overall effect was not only to take away one of their key sources of comfort and unity in a foreign environment, but also and ultimately to annihilate them as a coherent community. The state was trying to tell people who they should be. The law offered clear protection against this kind of threat to civil liberties.

During my comments, Pedro appeared to be slightly ill at ease. He probably did not want us to focus on these grander themes. Still, he was careful not to undermine me or even express any disagreement; yet I could intuit his apprehension.

One of the reporters noted that, according to the Authority's executive director, some Anglo employees suspected that their *Latin@* colleagues were covertly bad-mouthing them in Spanish and had complained about ostracism. Did I care to comment? I lowered my guard and conceded that common decency requires that we not exclude others and that we generally speak their language in their presence. I expressed skepticism, however, about this conceptualization of the problem or, rather, about this *ex post facto* rationalization. The government could not and should not impose politeness through force. I speculated that the racial tension in the workplace probably anteceded this incident. People usually did not feel hostile or threatened when they heard a foreign language. In a neutral environment, when I overheard someone speak Japanese, which I did not understand at all, my natural reaction was one of awe, not resentment.

Sensing that my response was excessively long, I concluded my exposition hastily and somewhat abruptly. Fortunately, Sofia fielded the final two questions, which focused on particularities of the legal action, and did so in a clever and concise manner. She then pointed out that many of the complainants were in the room and encouraged them to speak their minds if they so wished. No one took advantage of this opportunity, though. Thereafter, Pedro went on stage, thanked the audience, and made himself available for any subsequent inquiries.

The gathering broke up immediately. We all mingled momentarily around a table with non-alcoholic drinks and *hors d'œuvres* that Ricardo had arranged for. Pedro eventually called us all to order and proposed that we head over to the Housing Commission's session.

We took less than ten minutes to reach our destination by foot. A sizeable crowd had gathered in front of the building in which the board was to hold court. Many workers had invited friends and relatives. In addition, community organizations had spread the word quite effectively.

The hearing room was completely packed. Pedro and Ricardo strode in first. Sofia and I tagged along and barely managed to squeeze in. We all stood at the back with many other people. We did not have an open view of the center of action, but could see well enough to follow the proceeding closely.

The chairman, Fred Bremer, first noted that the agenda included several items. Next, he stated that he was fully aware that that day's unprecedented turnout was most certainly due to the contentious "English-only Directive." Accordingly, he proposed moving up the discussion on that issue and, facing no objection from his associates, easily had his way on this procedural point.

dissenting from denial of rehearing *en banc*) ("English-only rules not only symbolize a rejection of the excluded language and the culture it embodies, but also a denial of that side of an individual's personality.").

At the outset, three of the five commissioners expressed their positions. With a slight French accent, Mary Cloutier affirmed that she strongly supported Johnson's actions. "We're in America here; we should speak English. Sometimes the employees communicate in Spanish and you don't know whether they're talking about you. Whenever I have a meeting with the public, I express myself in English." Thomas Hansen declared, for his part, that the regulation at stake infringed upon the rights of the employees and that the agency had an obligation to overturn it. Finally, Jennifer Milano explained that she sympathized with the *Latin@* workers. She underscored that she cherished her own culture too; yet she insisted on the importance of joining the mainstream. "When I was growing up, if we wanted to speak Italian, we would go back home and lock the door."

When the public had its chance to take the stand, many volunteers lined up. Local activist Silvia Cruz reacted to Milano's comment. "I am not going to lock myself up in a closet to speak Spanish and to be who I am." Milano snapped back. "I did not say that you had to hide in a closet. I was just explaining that if you want to get ahead in life, you have to try to work with everybody else, instead of going off on your own." Cruz held her ground. "We can collaborate successfully only on the basis of mutual respect. In fact, I can best contribute to the community when I do my thing, rather than that of others. Assimilation is self-defeating."

At this juncture, the chairman attempted to mediate. "We need not settle this dispute right now. Let's try to move on, since many others want to have their say too." Cruz finished up and was followed by an entire sequence of individuals who criticized the policy. Most represented city or state organizations, but a few simply voiced their own "personal opinion." Three employees also testified. During this round, only an Anglo member of the supervisory staff defended the agency's actions.

David Santos of the *Latin@* Coalition made the last statement. With considerable eloquence, he observed that this neighborhood controversy was part of a roiling national debate on cultural and linguistic difference. He called on people to open up their minds and to make a commitment to tolerance. Opposing ethnic minorities on this issue, he cautioned, entailed endorsing oppression. "To speak against language rights is to speak the language of slavery."

Almost three hours had passed when the chair was finally able to call for a vote on the motion to eliminate the new rule. Hansen, who had moved for the repeal, immediately raised his hands and Rodolfo Sánchez, who had seconded, followed. Somewhat confused, Cloutier quickly glanced around the room and hesitantly put up her finger. Bremer clarified that the issue under consideration was whether to back the proposal at hand and therefore revoke the policy. Cloutier responded: "Oh well, uh, then I'll vote 'yes'." Afterwards, the remaining two commissioners, including the chairman, registered their dissent.

Upon the official announcement that the motion had carried with three in favor and two against, the crowd roared. People applauded, cheered, whistled, and hugged. The chair then tried to regain control of the situation. "Our session must proceed. Several items remain on the agenda. You are all welcome to stay with us, but we will pause for a couple of minutes, in case some of you prefer to exit at this moment." Seizing this opportunity, most of audience promptly headed out. Only the members of the Board and three or four other individuals stayed behind.

Outside the premises and under a pristine and starry night, the spectators regrouped. Pedro improvised another press conference. He expressed his relief and happiness in both English and Spanish. "The nightmare is over. We rejoice at this key victory."

Hopefully the message that linguistic and ethnic discrimination is wrong, as well as illegal, will travel far. Our organization will certainly remain vigilant and alert.” He summoned Ricardo, Silvia Cruz, David Santos, and a couple of the workers, all of whom made bilingual declarations.

A journalist asked whether the organization was planning to withdraw the complaint. Surprisingly, Pedro called on the lawyers to field the question. Sofia yielded to me and I basically reiterated the conclusion that we had previously arrived at. “No. The case is not moot. The Authority might reinstate the policy at some point in the future or some other agency might be tempted to go down the same path. We want a decision on the merits. We will petition the Human Rights Commission and the courts, if necessary, to hold that employers, especially the government, may not violate the language rights of their workforce through this kind of practice.”

After some further discussion on this matter, Pedro took over again. He graciously thanked everyone who had supported the effort and closed the event. “It’s been a long day for many of you and now it’s time to go home.”

Nonetheless, we all hung out for a while in order to celebrate. Marta and her posse managed, on the spot, to produce some beverages and pastries, as well as a boom-box. With *salsa* music humming in the background, several couples started dancing. José came up with a bottle of rum *El barrilito* and went around sharing the elixir.

The festivity lasted, full blast, for about an hour. Then the multitude gradually began to disperse. About half an hour later, I bid everyone good-bye, somewhat ceremoniously. I walked alone towards my car, jumped in, and took off. It was already rather late and the traffic was sparse. In less than half an hour, I was back home. I dropped my keys on the kitchen counter, dragged myself to my room, and collapsed into bed.

The next morning, I picked up the newspaper on my way to work. One of the articles fully reported on the events of the night before. It suggested that Cloutier had cast the deciding vote inadvertently. After the hearing, she apparently told the press that she had voted in error and that she had intended to support the no-Spanish rule. Bremer, in turn, acknowledged the misunderstanding and expressed regret.

When I reached my office, I immediately phoned Sofia. She had already read about the most recent developments and thought through the consequences. “The Board might revisit the issue. The chairman knows that he has enough votes to reactivate the policy.” We were both relieved that we had maintained the suit. We agreed to proceed as if the session of the previous day had never happened.

After this conversation, I struggled through my obligations at the law school. Clearly unprepared mentally or emotionally, I taught a class on preclusion, attended a meeting of the hiring committee, and held office hours. Fortunately, my students and colleagues showed considerable indulgence and went easy on me. Needless to say, that night I slept like a baby.

The following day, the paper brought us baffling, but encouraging, news. It announced that Cloutier had assured that she would not change her vote. She had reportedly stated that she had actually intended to vote against the regulation and that she had made no mistake. Hansen’s plea, underscoring the illegality of the policy, had allegedly swayed her. According to the press, she had claimed that the testimony of civil rights leaders and public officials had also moved her. Finally, Cloutier had asserted that she had listened to everybody and that she was impressed by how respectfully the entire discussion had unfolded. She supposedly still supported the

agency's director, as well as the polemical measure, but believed that he should have consulted the Board in advance.

These and other declarations by Cloutier in the piece sounded bizarre, to say the least. First, she maintained that she had seconded the original motion, though the second had in fact come from Sánchez. Second, she seemed to have maintained both that she supported and that she opposed the directive. Third, her averments during and immediately after the hearing, as well as those of Hansen and Bremer, contradicted her latest assertions as to her original intentions. When confronted by the reporter with this contradiction, Hansen simply smiled and expressed relief. "I guess a win is a win."

Not surprisingly, the Housing Authority filed a motion to dismiss our complaint a week later. It argued that its revocation of the directive had mooted the case. The answer pointed not only to the board's resolution, but also to assurances by the chair that the commissioners would not revisit the issue.

A day later, Sofia met me at my university headquarters so we could figure out how to respond. I invited her in, cleared some books off the more respectable of my two wooden chairs, and offered her a seat. She sat down slowly, but with grace. We quickly agreed to press on with the claim. I opined that we should assert, first, that, Bremer's general pledge notwithstanding, the executive director or the Board itself could reinstate the rule and, second, that other employers might adopt similar measures. Furthermore: "The Human Rights Commission should take a position on this controversial matter in order to clarify what the state of the law is." Sofia endorsed my suggestion and added that we should insist that a violation and an injury had already occurred. "Even if the agency and everybody else could guarantee that they will never sin again, the employees have already suffered discrimination." All of these arguments, when combined, sounded persuasive to us. Nevertheless, we both realized that the adjudicators would feel uncomfortable exercising jurisdiction in the absence of an effective regulation and that our request was a long shot. We therefore just hoped for a miracle. "*Amén.*"

Upon reviewing all the main points one last time, we conversed briefly about how our lives were otherwise coming along. When I brought up the topic of her pregnancy, Sofia told me that she was due in a couple of months and that she was doing "fine." She then offered to write up the memorandum, as well as to file it. Without even trying to object, I thanked her, helped her up, and walked her down to the entrance of the building. Before climbing into her car, she glimpsed back, waved, and threw a parting kiss.

Unfortunately, the Human Rights Commission eventually embraced the Authority's position, rejected our rationale, and dismissed the suit. We appealed to state court, but did not do any better there. After four months, the litigation finally came to an end with a notification slip sent by the tribunal's clerk.

Oddly enough, the notice made me think of Julia de Burgos' poem "Rompeolas,"³⁷ or "Breakwater," whose first two verses read: "I shall build a breakwater with my small happiness . . ." ³⁸ In life, we could expect, at most, such small happiness. We had had ours and perhaps should have settled at that. In fact, even if we had fully succeeded in our quest, we would not have attained plenitude, much as we might have

37. JULIA DE BURGOS, *Rompeolas*, EL MAR Y TÚ 31 (1981).

38. *Id.* ("*Voy a hacer un rompeolas con mi alegría pequeña . . .*").

dimensions of our allotted contentment. To my mind, this “we” encompassed the workers, their relatives, their supporters, their lawyers, as well as their community as a whole. A determination on the merits would have enabled us to fight more efficaciously against any recurrence of language discrimination; yet it would not have precluded linguistic or cultural oppression from resurfacing in more subtle or altogether different forms. More significantly, it would not have contributed much to addressing the daunting problems of inequality, poverty, unemployment, exploitation, crime, violence, miseducation, disenfranchisement, alienage, and despair that face *Latin@s*. We all appeared to be waging an un-winnable war and exerting ourselves merely to prevail in a few modest battles. Burgos’ stanza ends, similarly, on an unmistakably sad note. “I want the sea not to know of the sorrows that run through my chest.”³⁹

Meanwhile, I plunged into the pointless exercise of asking whether the whole ruckus had been worth it. What had we spent and what had we obtained in return? Suddenly, it dawned upon me that I was probably the only one among us to harbor such doubts or to pose such questions. Don Sergio, Marta, María, and the rest of the crew would probably never step back in this way to contemplate whether the toil was worth their time; nor would Pedro, Ricardo, Sofía, or the grassroots organizers. None of them would ever consider surrender as an option. Instead, they all instinctively jumped in and slugged it out, from one confrontation to the next. They seemed to have a bond and devotion to the cause and the community that I lacked. This reflection made me feel an outsider and a loner.

While conversing with Sofía on the telephone about the outcome, I remembered the makeshift picnic with the employees and realized that I had not seen any of them since. Sofía insisted on the worthiness of the effort and then mused out loud: “*Así es la vida*.” “Such is life.” I responded with the rhyming *cliché*, “*Triste y sufrida*,” which means (approximately) “sad and full of suffering.” Nonetheless, I was not despondent; only a bit melancholic. Sofía signed off with a revolutionary “*hasta siempre*,” or “until always” (*verbatim*),⁴⁰ and then hung up. I instantly knew that I would never hear from her again. And what troubled me the most was that I had entirely forgotten to ask whether everything had gone well with her new baby.

39. *Id.* (“*No quiero que sepa el mar, que por mi pecho van penas.*”).

40. “*Hasta siempre*” suggests not only a farewell until the next encounter, but also the commitment to stay with the person permanently. A more adequate translation might therefore be “forever with you.” The expression contrasts with the phrase “*hasta nunca*,” “until never again,” with which the speaker declares that she does not want to see her interlocutor ever again. Carlos Puebla popularized the words “*hasta siempre*,” especially among partisans of the left, when he dedicated the song *Hasta siempre, comandante* to Ernesto “Che” Guevara. Recently, Chilean writer Marcela Serrano published a novel entitled *HASTA SIEMPRE, MUJERICITAS* (2004), which reconstructs Louisa May Alcott’s novel *Little Women* and perhaps alludes to Puebla’s lyrics.

III. "THE REST IS SILENCE"⁴¹

*Somos livres e este é o inferno.*⁴²

After drafting the preceding text, I melted down vertiginously and slept for two days without interruption. An odd nightmare just awakened me.

I am on death row with three other convicts. Two of them, a man and a woman, decide to request, as their last wish, permission to dance in public. They begin rehearsing their macabre waltz and ask the remaining two of us to watch carefully and to make suggestions on how to improve the act. The rehearsal and the whole idea strike me as pathetic; yet I do not say a word. Suddenly, it occurs to me that we should all actually try to escape the prison. Only the other non-dancer agrees and joins me in the effort. Curiously enough, I have no master plan and simply propose walking out the door, which is neither bolted nor locked. The two of us thus step out into the interior patio of a building resembling the Alhambra, where families, merchants, and strollers go about their business and pay us no mind. We finally reach the street and run into another crowd that doesn't seem to care. The ease of our escape surprises me. I then tell my partner that we have to part ways so as to avoid apprehension.

Thereafter, I head towards my apartment with extreme care, fully aware that the police will start their search there. I solely intend to pick up my belongings before searching for a reliable hideout. As I race down the road, I unexpectedly become a different person. The dream is no longer about me. The new protagonist finally arrives home. Upon seeing him, his girlfriend reacts with surprise, uneasiness, and fright. He realizes that she doesn't support him and that she might even turn him in. Her reaction and reception sadden him. Nonetheless, he does not confront her and merely continues his course. Afterwards, he joins a clandestine meeting of his political partisans, who apparently sit in the national legislature. One of them proposes to seek the annulment of the capital verdict. He explains to another one not only what law is, but also that the parliament may enact a statute to eliminate the effects of the judgment. The main character, who used to be me, perceives that this faction will probably accomplish nothing and that he will have to remain a fugitive for a long time.

Still sweating, I brood over the *motifs*. I enumerate them systematically: death, rituality, voyeurism, estrangement, improvisation, farewell, persecution, transpersonalization, betrayal, politics, law, solidarity, disillusionment, and hopelessness. The overlap with the themes of my tale becomes evident. To calm down, I swig down a glass of water and remind myself that I am safe now, beyond the reach of any of my previous worries or demons. I resolve to disregard the dream, to stick to my original strategy, and, accordingly, to comment.

As I noted earlier, I have no intention to interpret the narration. My readership should take the piece on face value and resist any temptation to find underlying symbols, implicit theories, or subliminal messages. They should run through my

41. WILLIAM SHAKESPEARE, *HAMLET*, act 5, sc. 2.

42. CLARICE LISPECTOR, *A PAIXÃO SEGUNDO G.H.* 128 (1995) (translation: "We are free and this is hell.").

explanations listening in the back of their minds to the voice of Tom Zé interpreting the delicious Brazilian song “Tô”:

Eu tô te explicando pra te confundir,
Eu tô te confundindo pra te esclarecer,
Tô iluminado pra poder cegar,
Tô ficando cego pra poder guiar.⁴³

I offer the following reflections not as clues to decode the story, but rather as my own personal, spontaneous, and perhaps confusingly illuminating, reactions. Hopefully, actually certainly, the reader will have impressions of her own.

I don’t mean to imply in any way that we can’t have a relatively objective conversation about these issues. Even though it is futile to argue about what the tale is really telling us, it is crucial to have an intense debate on difference, integration, assimilation, respect, tolerance, alienation, and so forth. Deciding these matters is not an utterly subjective endeavor. We should be able to defend certain positions by appealing to reason, moral sentiment, or common decency and to reject others as incoherent, ultimately unpersuasive, irremediably evil, or plain preposterous. Admittedly, I have just popped open a nasty can of worms—or rather a Pandora’s box—and yet have no intention of dwelling on this matter. I simply wanted to forestall a crucial misunderstanding. Without further ado, let me give you my side of the story.

In 1943, Pablo Neruda proclaimed: “*Si ustedes me preguntan qué es mi poesía, debo decirles: no sé; pero si le preguntan a mi poesía, ella les dirá quién soy yo.*”⁴⁴ To my eyes, Neruda is suggesting the following: First, a work stands on its own. Further, the author should not feel compelled to analyze it and, at any rate, has no privileged access to it. Finally, the *opus* reveals the essence or soul of its creator.

I would make all of these claims my own. Either directly or circuitously, I have already endorsed the first two sentences. The third one I would like to affirm now. My tale is—indeed explicitly, though not exclusively—about me. It exposes me, much as I may have distanced myself from the narrator and despite the latter’s evasiveness. I’ll set aside my sensation of nakedness, as well as of vulnerability, and address the most intimate aspects of the account head on. Such an exercise in honesty, or rather in self-flagellation, will perchance enable me to move on.

Upon reconsideration, the narrator strikes me as someone who is drowning. He has a hard time keeping up with his responsibilities as a teacher, scholar, attorney, friend, brother, uncle. Thus, he recalls my nightmarish capital convict. He also resembles that character in that he doesn’t seem to have any real friends. He doesn’t interact, at a profound level, with anybody. He symbolizes the “loneliness that roams. No rocking can hold it down. It is alive, on its own.”⁴⁵

43. TOM ZÉ, *Tô*, on 4 BRAZILIAN CLASSICS: THE BEST OF TOM ZÉ (David Byrne, compiler) (1990) (“I’m explaining so as to confuse you. I’m confusing you so as to enlighten you. I’m illuminated so as to be able to blind. I’m going blind so as to be able to guide through.”) (written by Tom Zé & Elton Medeiros).

44. Hernán Loyola, *Canónico, disperso, completo*, EL PAÍS Jul. 10, 2004 (quoting Pablo Neruda during a poetry reading in 1943) (translation: “If you ask me what my poetry is, I must tell you that I do not know; yet if you ask my poetry, she will tell you who I am.”)

45. TONI MORRISON, *BELOVED* 274 (1987).

His passivity is also remarkable. He waits for others—such as Pedro, his sister, or his drinking buddies—to drag him into action. Even while in the midst of things, he manages to stay in the background, as a *voyeur*. Coincidentally, his resemblance to the “man of my dreams” in this regard is similarly remarkable. Furthermore, he obviously has strong feelings for Sofia, but lacks the capacity to articulate them. Does he love her? How could he know, if he doesn’t open up? How could he ever tell her, when he is not even able to ask her how her pregnancy went? Perhaps he yearns, deep down, to be the child of the motherly Sofia. Maybe he actually fancies himself the baby that she is carrying. If anything in the story had an ulterior meaning, it would certainly be the out-of-the-blue conversation that he has with her about their respective mothers. As he waits for her in the cafeteria, moreover, he unmistakably evokes the words of Roland Barthes: “*Quand on attend quelqu’un dans un café, on est toujours symboliquement dans la position de l’enfant qui attend sa mère.*”⁴⁶

The narrator appears to dread the question “who am I?” most acutely. He abruptly turns off the radio as soon as Tres Patines’ nonsense comes too close for comfort to Sargento Getúlio’s existential affirmation: “*Agora eu sei quem eu sou.*”⁴⁷ The poor soul is desperately looking for a sense of belonging: with his relatives, with his colleagues, with his ethnic fellows. He faces a situation that objectively parallels that of my nightmare, but he seems to agonize more visibly than his onirical counterpart.

Ultimately, our *raconteur* suffers from alienation within an alienated community. While he doesn’t even perceive his own estrangement, he understands that of his ethnic group all too well. He constantly brings up the issue, often at the expense of legal and political effectiveness. The narrative invites the reader to reflect upon, above all, the tribulations of this linguistic collectivity.

Despite constituting the largest minority in the United States, *Latin@s* remain invisible.⁴⁸ The Anglo majority, even at its most progressive, often overlooks them or fails to acknowledge their presence. When it reluctantly talks about discrimination and makes the obligatory gestures of contrition, it focuses on African Americans, occasionally also on Native Americans. It seldom gives a thought to *Latin@s*, partly because they do not fit into the traditional racial categories.⁴⁹ In a racially dualist universe, those who are neither white nor black simply do not exist. Of course, racial

46. *Resonance: Roland Barthes* (Radio France International broadcast May 14, 2006) (presentation by Benoît Ruelle) (translation: “When one is waiting for someone at a café, one is always symbolically in the position of the child that waits for his mother.”).

47. JOÃO UBALDO RIBEIRO, SARGENTO GETÚLIO 154 (1982) (translation: “Now I know who I am.”).

48. See Kevin R. Johnson, *Los Olvidados: Images of the Immigrant, Political Power of Noncitizens, and Immigration Law and Enforcement*, 1993 BYU L. Rev. 1139 (1993); Juan F. Perea, *Los Olvidados: On the Making of an Invisible People*, 70 N.Y.U. L. Rev. 965 (1995); 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, 1372–1384 (1997).

49. See generally Ángel R. Oquendo, *Re-imagining the Latino/a Race*, 12 HARV. BLACKLETTER L.J. 93 (1995) (reprinted in *THE LATINO CONDITION: A CRITICAL READER* (Richard Delgado & Jean Stefancic eds., 1998)).

dualism, as the other face of dualist racism,⁵⁰ undermines those whom it does acknowledge, but condemns to the wrong side of the divide, and who must therefore also exist invisibly, in their own way.⁵¹

In the chronicle, invisibility affects, most dramatically, the workers who speak no English; yet it impinges upon everybody else. Notwithstanding their fluency in the official tongue, Marta and *compañía* cannot really communicate with, let alone secure the respectful consideration of, their Anglo “superiors” or coworkers. They viscerally remonstrate against the incapacity of the latter, in general, to appreciate their perspective and, specifically, to understand how the contested policy offends them. In a manner of speaking, they stand the closest to the cultural frontier and, hence, bear the brunt of the official act of disrespect. With the exception of Hansen and the *Latino* Sánchez, the board basically demonstrates equal indifference and ends up quashing the directive only by mistake. Legislatures and courts have not shown much more empathy on this front.⁵²

The illegal status of some members of the community explains this phenomenon of neglect to some extent. When the government doesn’t count *Latin@s*, *Latin@s* don’t count. While the census authorities officially do not take illegal alienage into consideration,⁵³ they undoubtedly underestimate people who recurrently fall between the cracks and who painstakingly steer clear of anyone who might have any connection whatsoever to the dreaded *migra*. Nonetheless, this explanation merely points to the nose of the camel under the tent. Well over ninety percent of *Latin@s* reside legally in the United States. State officials and others undermine the collectivity not simply by failing to tabulate its numbers, but mostly by refusing to recognize its existence, let alone its needs and plight. In this sense, they barely distinguish between legals and illegals or between citizens and foreign residents.

My audience may be falling asleep with this relatively abstract discussion. Well, now is a good time to wake up, perhaps with an excessively concrete example. Before my premature demise, Anglos frequently viewed my name as extremely strange and unusual. At times, they charitably referred to it as “exotic.” I had to repeat it and domesticate it incessantly. Even when anglicized, it still sounded bizarre, often female. Senders regularly addressed my letters to a Mrs. or Ms. While clerking in California, I actually ran across a Ninth Circuit opinion that decided an appeal by Ángel Zamora

50. *Id.* at 99–100.

51. *Cf.* RALPH ELLISON, *INVISIBLE MAN* (1952).

52. “As of 2003, twenty-three states had enacted some form of English language legislation.” *Maldonado v. City of Altus*, 433 F.3d 1294, 1324 n.3 (10th Cir. 2006) (Seymour, concurring in part and dissenting in part) (citing Kenya Hart, *Defending Against A “Death by English”*: *English-Only, Spanish-Only, and a Gringa’s Suggestions for Community Support of Language Rights*, 14 *BERKELEY LA RAZA L.J.* 177, 178–79, 187 (2003)). Federal circuit courts have rejected claims against English-only directives in the workplace. *See, e.g.*, *García v. Spun Steak Co.*, 998 F.2d 1480 (9th Cir. 1993); *García v. Gloor*, 618 F.2d 264 (5th Cir. 1980). *But cf. Maldonado* 433 F.3d at 1294.

53. “The Census Bureau does not ask about legal (migrant) status of respondents in any of its survey and census programs.” U.S. Census Bureau, Question and Answer Center, https://ask.census.gov/cgi-bin/askcensus.cfg/php/enduser/std_alp.php (search for the following phrase enclosed in quotation marks: “Does the Census Bureau collect data on the number of unauthorized migrants?”).

and that assumed that the appellant was a woman.⁵⁴ (Even though I signaled the mistake during *en banc* review, the Court failed to rectify and, to this very day, the error stands uncorrected as proof not only of my point here, but also of the enormous distance that exists between appellate tribunals and the parties in interest.⁵⁵ *Pero esos son otros diez pesos.*⁵⁶)

Recently, a friend pointed out that the Social Security Administration in fact classifies “Ángel” among the most popular names in the United States.⁵⁷ The moniker ranks thirty-first on the 2006 list, even ahead of more traditional common denominators, such as “Kevin,” “Robert,” “Thomas,” or even “José.”⁵⁸ It places first in the state of Arizona and third in Nevada and California.⁵⁹ Nonetheless, it sounds weirder to an Anglo ear than not only any of its English counterparts, but also French names that don’t even make the ranking, such as “François.” (Your spellchecker will accept “François,” but not “Ángel.”) From my present vantage point, I can vividly imagine hundreds of thousands of my namesakes living in *Latin@* neighborhoods all over the country, far beyond the radar screen of my acquaintances in the cultural mainstream. Anglos generally have no clue about the forty-five-million-strong collectivity that exists around them, solely because they have no conscious contact with it. They rarely see or notice who is cleaning their houses or offices, caring for their kids or elders, driving their buses, fixing their cars, building their edifices, packing their groceries, delivering take-out, cooking their food, picking up their trash, preparing their produce, or fixing up their clothes.

The wild night out in the story illustrates how *Latin@s* live a world apart from the rest of the nation.⁶⁰ They inhabit a microcosm of underdevelopment within the technologically and economically most advanced country on the planet. These men and women travel into the land of milk and honey each morning, do their jobs, and return

54. *Ángel Zamora v. Local 11, Hotel Employees and Restaurant Employees International Union (AFL-CIO)*, 817 F.2d 566 (9th Cir. 1987) (“Ángel Zamora . . . appeals the denial of her motion for attorneys’ fees after obtaining the relief requested in the main action.”). The tribunal, most significantly, not only upheld the claim that the union had violated Title I of the Labor-Management Reporting and Disclosure Act by refusing to provide for translation at meetings, but also empowered Zamora to seek attorney’s fees.

55. *See id.*

56. Translation: “But those are another ten bucks,” *viz.*, “that’s a separate matter.”

57. Popular Baby Names, Social Security Online, <http://www.ssa.gov/cgi-bin/popularnames.cgi>.

58. *Id.*

59. Top 5 Names for Births in 2006 by State, Social Security Online, http://www.ssa.gov/OACT/babynames/state/top5_2006.html.

60. In the notorious town of El Cenizo in Southwest Texas, Chicanos expressed their linguistic and cultural identity not within the informal contours of the *barrio*, but rather within the institutions of a municipality in which they constituted an overwhelming majority. They declared Spanish “the predominant language” and adopted a “Safe Haven Ordinance” prohibiting the city “from disclosing, investigating, or requesting information concerning a resident’s immigration status.” María Pabón López, *The Phoenix Rises from El Cenizo: A Community Creates and Affirms a Latino/a Border Cultural Citizenship through its Language and Safe Haven Ordinances*, 78 DENV. U. L. REV. 1017, 1017–1021 (2001). They immediately faced the wrath of nativists. *Id.*

to their homelands in the evening. If they are on the night-shift, then they merely invert this routine.

By the way, I find it curious that one rarely ever runs into an Anglo in *salsa* joints, such as the one described. Across the Atlantic, Europeans show up at these clubs on a regular basis. White folks in the United States seem to have a hard time warming up to this kind of *Latin@* music or dance, whether as an appealing cultural manifestation or as a curious piece of exotica. They appear to associate this stuff with an underclass that they want no part of.

Please don't take me to be glorifying the manner in which Europe deals with race and difference. The European continent, needless to say, has demons of its own: both past and present. Most French or German citizens wouldn't be caught dead in an Algerian or a Turkish hangout, which might (in turn) intrigue an Anglo from the United States. *Vive la difference!* Or shall we say: *Plus ça change, plus c'est la meme chose?*⁶¹ Naturally, we may spin off the same idea dialectically: "*denn dies neue drückt vielmehr das Ungleichwerden des Gleichen und das Gleichwerden des Ungleichen aus.*"⁶² Whatever

My detractors may object that the U.S. majority has no clue about or interest in anything coming from outside the national borders, whether from Latin America or elsewhere. They may add that few folks in the United States devote much energy to learning foreign languages, cultures, or geographies. Indeed, this attitude surprised me upon my arrival. In college, people went way out of their way to avoid the language requirement. The administration granted a waiver only to those students who demonstrated, on a specialized test, that they lacked the capacity to learn a foreign language. Though perfectly capable, many of my classmates not only took the exam, but also spent endless hours figuring out how to "fail" it, by answering "the right questions wrong," in order to avoid the "drag" of taking a language course.

A Senegalese colleague of mine once complained that only in the United States did most intellectuals speak only their native tongue. Such a state of affairs, he insisted, would be unimaginable anywhere else. Abroad, almost any educated person could express herself in a second language, frequently even in a third one. In a conference in Chicago, he met a couple of top Kant scholars who did not know any German at all and assumed that the primary and secondary literature worth reading would be available in English. He simply could not believe, moreover, that none of the international law scholars that he had run into was fluent in a foreign language.

Touché. Nonetheless, I have two reactions. First, U.S. cultural provincialism merely responds to domestic and international realities. The United States has transcontinental dimensions, so its citizens may travel far, literally and figuratively, without leaving their country. When they do cross the national frontier, they readily find people who speak their language—courtesy of two centuries of Anglo-Saxon imperialism—in airports, train stations, hotels, restaurants, entertainment venues, business centers, laboratories, and universities. Under such circumstances, anyone would have little motivation to become conversant with other cultures. Second, the ignorance intensifies

61. ALPHONSE KARR, *LES GUÊPES* 305 (6th ed. 1862) (translation: "The more things change, the more they remain the same.").

62. GEORG W.F. HEGEL, *PHÄNOMENOLOGIE DES GEISTES* 127 (1986) (emphasis in original) (translation: "For this new one expresses instead the *differentiation of what is the same* and the *equalization of what is different.*").

and often becomes an aversion *vis-à-vis* Latin America. Most Anglos in the United States know much more about Europe than about the southern continent. They would instinctively feel more comfortable around a recently arrived Dutch or Dane, than around a homegrown *Latina* or *Latino*. Many of my U.S. American acquaintances had taken some Spanish in grade school only because they had no choice and, at any rate, did not dip in too deeply or continue their studies. Those who had opted to immerse themselves in another language had mostly preferred French or even German.

Law schools, for their part, offer many more European than Latin American courses and exchange programs. Mine was no exception in this regard. When we had visitors from our partner institutions in France, we would customarily find three or four Francophone colleagues for a welcome dinner: no sweat. Once, I invited a prominent Argentine scholar and was not able to find a single faculty member who spoke Spanish fluently. Incredible as it may sound, I would have had no problem drumming up a *quorum* of German speakers.

The ethnic elite in the United States shows itself ignorant not innocently or randomly, but rather selectively and discriminatorily. It actually displays an aggressive or hostile ignorance towards *Latin@* culture. It ultimately refuses to “recognize” *Latin@s*, in the sense defined by Georg W.F. Hegel, introduced to analytic philosophy by Isaiah Berlin, and popularized in North America by Charles Taylor.⁶³ Taylor elucidates:

The recognition I am talking about here is the acceptance of ourselves by others in our identity. We may be “recognized” in other senses—for example, as equal citizens, or right bearers, or as being entitled to this or that service—and still be unrecognized in our identity. In other words, what is important to us in defining who we are may be quite unacknowledged, may even be condemned in the public life or our society, even though all our citizen rights are firmly guaranteed.⁶⁴

Of course, the demand of a right to difference simply carries the claim to equality to its ultimate consequence.⁶⁵ A society cannot really treat a person equally if it does not

63. See, e.g., HEGEL, *supra* note 62, at 145 (“Self-consciousness exists *in* and *for* itself inasmuch as and to the extent that it exists in and for itself for another; *i.e.*, it exists only as recognized.”) (emphasis in original). Within analytic philosophy, Isaiah Berlin was already employing the Hegelian notion of “recognition” to formulate a right of groups back in 1969. ISAIAH BERLIN, *FOUR ESSAYS ON LIBERTY* 157–158 (1969) (“I may feel unfree in the sense of not being recognized as a self-governing individual human being; but I may feel it also as a member of an unrecognized or insufficiently respected group . . .”).

64. Charles Taylor popularized this use in his 1992 essay “The Politics of Recognition.” Charles Taylor, *The Politics of Recognition*, in *MULTICULTURALISM AND “THE POLITICS OF RECOGNITION”* (1992).

65. Taylor practically acknowledges as much:

When this kind of denial takes place, or seems to do so in the eyes of a minority group, it is hard and sometimes impossible for the members of that minority group to feel that they are really being given an equal hearing. . . . In this way, a prolonged refusal of recognition between groups in a society can erode the common understanding of equal participation on which a functioning liberal democracy crucially depends.

Taylor, *supra* note 64, at 190.

acknowledge her particularity. The most basic recognition of the “other” as an equal in worth and dignity is lacking.

The referenced “invisibilization” process thus acquires various layers of complexity. In the first place, the *hegemon* doesn’t know that the subaltern is there. Furthermore, he couldn’t care less. Worst of all, he is partially aware of his narrow-mindedness and indifference, but maintains his attitude because he believes or wants to believe that there is nothing worth knowing or caring about. He is ultimately trying to convince himself and express his disdain.

English-only initiatives, whether as statutes, constitutional provisions, or workplace policies, certainly fail to appreciate the value of diversity as evoked by Justice Lewis F. Powell’s plurality opinion for the U.S. Supreme Court in *Regents of the University of California v. Bakke*.⁶⁶ They thwart the flourishing of multifarious cultural communities, as well as the integration of ethnically diverse immigrant groups.⁶⁷ Nonetheless, one should transcend this multiculturalist objection in order to formulate an anti-subordination critique. The norms in question reflect not simply the failure to cherish diversity, but also the will to subordinate specific subgroups.

When an employer in the United States bids the Swedes in his workforce not to speak Swedish, for example, he may be underestimating the merits of multiculturalism. Perhaps he does not fully grasp that the accommodation of the foreigners might be feasible, as well as beneficial to his enterprise and to society. In contrast, when he orders his *Latin@s* workers to stick to English, he may very well be expressing a more generalized refusal to recognize and attempting to keep down this particular collectivity. He may not change his basic position even if he ever developed a more multiculturalist attitude, all in all. In this sense, his mindset may not differ much from that of his peers or that of the political establishment.

Why on earth, one may ask, does the national majority in the United States disregard and despise *Latin@s* and their culture in this manner? In part, it shows *Latin@s* the contempt that it displays to all poor migrant groups. It reacts more extremely against *Latin@s*, first, because it sees their numbers growing exponentially and therefore feels swamped by them.⁶⁸ More significantly, however, the enmity stems from the perception of *Latin@s* as a conquered nation and from the consequent urge to assert hegemony or control over them.⁶⁹

66. 438 U.S. 265, 315 (1978) (“The diversity that furthers a compelling state interest encompasses a far broader array of qualifications and characteristics of which racial or ethnic origin is but a single though important element.”).

67. See Cristina M. Rodríguez, *Language Diversity in the Workplace*, 100 NW. U.L. REV. 1689 (2006).

68. See Huntington, *supra* note 19, at 32 (“In this new era, the single most immediate and most serious challenge to America’s traditional identity comes from the immense and continuing immigration from Latin America, especially from Mexico, and the fertility rates of these immigrants compared to black and white American natives.”).

69. Samuel P. Huntington underscores the “the unique characteristics and problems posed by contemporary Hispanic immigration.” *Id.* “Contemporary Mexican and, more broadly, Latin American immigration is without precedent in U.S. history.” *Id.* At least with respect to Mexicans, he recognizes that the difference stems in part from their “historical claim to U.S. territory.” *Id.* “Almost all of Texas, New Mexico, Arizona, California, Nevada, and Utah was part of Mexico until Mexico lost them as a result of the Texan War of Independence in 1835–

The narrator alludes to the history of military and then social siege against the two largest and earliest *Latin@* peoples—*viz.*, *Chicanos* and Puerto Ricans. U.S. society brought these *pueblos* in by war and conquest. It militarily attacked, invaded, and colonized them. They therefore did not just move in; rather the United States engulfed them as it forcefully expanded the confines of its territory throughout the nineteenth century. It orchestrated wide-ranging campaigns to destroy their culture.⁷⁰ Subsequent Spanish-speaking communities certainly did not undergo annexation and colonization, but they emerged from nations that suffered neo-colonialism and often even direct or indirect armed involvement by the United States, such as Cuba, the Dominican Republic, Guatemala, Nicaragua, and Panama. Once “inside,” *Latin@s* became an underclass, systematically regarded and treated as *conquistad@s*.⁷¹

Against this backdrop, Anglos have taken action—private, public, subconscious, conscious, subtle, and blatant—to uphold and legitimate their dominance. The political leadership, the wealthy, the economically powerful, the academic elite, the *bourgeoisie*, the working poor, the unemployed, and the *Lumpenproletariat* have all, in some measure or another, contributed to this effort. They have jointly and separately strived to enshrine their language and culture as the norm and to contain *Latin@s*, who might resist, rebel or even reclaim the land. They have, accordingly, branded and quelled as subversive any attempt to establish this alternative cultural perspective on the national territory.⁷²

Latin@s should not *apendejarse* or recoil in the face of metropolitan aggression. They should instead stand up and fight back, as Don Sergio and his troops did in their own way. Any kind of retreat would bring about further oppression and eventually the risk of cultural extermination.

I know what my detractors will say: “This guy is not only exaggerating, but also dwelling on ancient history. The situation is not as extreme today.” Well, let me remind everybody that just last year the U.S. Congress overwhelmingly approved and the President endorsed the construction of a 700-mile “wall of shame” at the Mexican border in order to shut off Latin America.⁷³ The project is an exercise in futility, will damage the environment, and will probably never be fully carried out.⁷⁴ Still, it

1836 and the Mexican-American War of 1846–1848. Mexico is the only country that the United States has invaded, occupied its capital . . . and then annexed half its territory. Mexicans do not forget these events. Quite understandably, they feel that they have special rights in these territories.” *Id.*

70. See generally ALBERT CAMARILLO, *CHICANOS IN A CHANGING SOCIETY: FROM MEXICAN PUEBLOS TO AMERICAN BARRIOS IN SANTA BARBARA AND SOUTHERN CALIFORNIA, 1848–1930* (1979); Ángel R. Oquendo, *Liking to be in America: Puerto Rico’s Quest for Difference within the United States*, 14 DUKE J. COMP. & INT’L L. 249 (2004).

71. See generally Oquendo, *supra* note 70.

72. See, e.g., Huntington, *supra* note 19 (“The extent and nature of this immigration differ fundamentally from those of previous immigration, and the assimilation successes of the past are unlikely to be duplicated with the contemporary flood of immigrants from Latin America. This reality poses a fundamental question: Will the United States remain a country with a single national language and a core Anglo-Protestant culture? By ignoring this question, Americans acquiesce to their eventual transformation into two peoples with two cultures (Anglo and Hispanic) and two languages (English and Spanish).”).

73. David Stout, *Bush, Signing Bill for Border Fence, Urges Wider Overhaul*, N.Y. TIMES, Oct. 27, 2006, at A16.

74. See Mario Vargas Llosa, *El muro de mentiras*, EL PAÍS, Oct. 22, 2006.

constitutes an official endorsement of the hatred expressed by the vigilantes who have taken up arms against a perceived invasion from the south.⁷⁵

It also reeks of imperial hubris and epitomizes the Anglo campaign to sever *Latin@s* from their Latin American roots. The barrier ineluctably brings the Warsaw Ghetto Wall to mind; for everyone knows all too well who is going to end up actually building the structure.

Moreover, the neocolonial posture towards Latin America has generally intensified of late,⁷⁶ and so has hostility towards *Latin@s* in the United States.⁷⁷ Finally, U.S. colonialism in Puerto Rico has remained essentially the same for over a century to this very day. Four million *Latin@s* on the island continue subject to the unilateral command of the government of the United States; they have no electoral rights within the federal political institutions that determine the supreme law of their land.⁷⁸ The U.S. Supreme Court has even refused them full equality, vis-à-vis their fellow citizens on the mainland, in the distribution of government entitlements.⁷⁹

When specifically confronting oppression against *Latin@s*, one should therefore shift beyond a general anti-subordination stance into a decolonization standpoint. One can thus better make sense of and respond to the repression in question. The majority's acts frequently seek not to subdue *Latin@s* along the same lines as their fellow disenfranchised minorities, but rather to colonize or maintain their imperial grip over them in a quite specific manner. Not surprisingly, the same policy may take a completely dissimilar signification as the underlying context varies. Accordingly, language coercion against *Latin@s* resembles, but also differs significantly from that against, say, Indonesians. It specifically represents the continuation the nineteenth-century colonial project to conquer Spanish-speaking territories and peoples.

75. See, e.g., John M. Broder, *Immigration, From a Simmer to a Scream*, N.Y. TIMES, May 21, 2006, available at 2006 WLNR 22864357 ("Toward the end of 2004, a citizen army known as the Minutemen arose to patrol a border its organizers said had been surrendered to illegal immigrants."); Charlie LeDuff, *Poised Against Incursions, a Man on the Border, Armed and Philosophical*, N.Y. TIMES, Aug. 14, 2006, at A16 ("Britt Craig . . . is a member of the Minuteman Project, a group of civilians dedicated to fighting illegal immigration from Mexico.").

76. The government of the United States recently embraced the first and only military coup in Latin America against a democratically elected regime since the region's democratic turn twenty years ago. See Juan Forero, *Uprising in Venezuela: The Government, Venezuela's Chief Forced To Resign, Civilian Installed*, N.Y. TIMES, Apr. 13, 2002, at A1. In the last decade, the bulk of U.S. aid to Latin America has supported military and police programs. See ADAM ISACSON, JOY OLSON & LISA HAUGAARD, *BELOW THE RADAR: U.S. MILITARY PROGRAMS IN LATIN AMERICA, 1997-2007* (2007), http://www.ciponline.org/facts/below_the_radar_eng.pdf. In general, the U.S. authorities rely on strategic and ideological considerations in order, alternatively, to prop up or undermine regimes throughout the continent in a way that would be unimaginable with respect to a region considered an equal, such as Western Europe.

77. See Jennifer Woodard Maderazo, *Hate Crimes Against Latinos Increase, Tied to Debate*, VIVIR LATINO, May 17, 2006, <http://vivirlatino.com/2006/05/17/hate-crimes-against-latinos-increase-tied-to-debate.php>.

78. See, e.g., Ángel R. Oquendo, Book Review, 55 J. LEGAL EDUC. 416 (2005) (reviewing PEDRO A. MALAVET, *AMERICA'S COLONY: THE POLITICAL AND CULTURAL CONFLICT BETWEEN THE UNITED STATES AND PUERTO RICO* (2004)).

79. *Harris v. Rosario*, 446 U.S. 651 (1980) (per curiam).

As a result, public and private initiatives against *Latin@s* usually ride on pre-existing prejudices and adhere to precedents or patterns. They thus tend to take form more rapidly and more intensely than measures adopted against other downtrodden immigrants. For instance, the reaction to the presence of Spanish in the workplace is often immediate and vehement, whereas the reaction against Indonesian might be rather delayed and diffuse. Furthermore, attacks against *Latin@* culture generally do not remain isolated instances, but rather lead to further incidents and perhaps even broader societal action. When cast in territorial or colonial terms, cultural discrimination ordinarily entrenches itself. The prospect of integrating *Latin@s* along with other ethnic groups, such as the Irish or Italians, and attaining peace is, therefore, relatively remote.⁸⁰

I previously maintained that the progression towards a decolonization paradigm will help not only to comprehend, but also to combat the linguistic suppression of *Latin@s*. From the outset, the move will teach *Latin@s* what strategies they should avoid in their struggle. As a first lesson, they will learn to see assimilation as capitulation, rather than as a solution. If they were to assimilate and renounce their tongue, they would be merely culminating the colonization process and collectively committing cultural suicide. Secondly, *Latin@s* must wake up to the fact that they have to take the initiative themselves in order to find a way out of their predicament. They may work with the existing public and private establishment; yet they should not expect it spontaneously to bring about their salvation.

Other strategies would prove wrongheaded in this context. For instance, an augmentation in the appreciation of the benefits of cultural diversity would not do; for the ethnic elite displays metropolitan hostility toward *Latin@s*, not simply an unawareness of their potential contributions.⁸¹ An open-ended, anti-subordination approach would similarly miss the mark. Even if *Latin@s* overcame their poverty, as well as their marginality, and attained the level of economic integration of the groups that migrated from Europe starting at the end of the nineteenth century, they would not necessarily escape their colonial predicament. The situation of Catalans and Basques in Franco's Spain demonstrates that a relatively wealthy people may also suffer colonialist exploitation at the hands of the national majority.⁸² In a most extreme and improbable scenario, in which the United States significantly reduced the marginalization of its minorities generally by radically altering the way in which it distributed and produced wealth and privileges, the imperial animosity towards *Latin@s* might survive.

80. Cf. Huntington, *supra* note 19, at 32 (Americans "have overlooked the unique characteristics and problems posed by contemporary Hispanic immigration. The extent and nature of this immigration differ fundamentally from those of previous immigration, and the assimilation successes of the past are unlikely to be duplicated with the contemporary flood of immigrants from Latin America.").

81. A policy of multiculturalism might end up treating *Latin@s* as identical to other immigrant groups and neglecting their difference. Charles Taylor reports that French Canadians often feel that they find themselves in such a situation. "As a federal policy, multiculturalism is sometimes seen as a device to deny French-speaking minorities their full recognition, or even to reduce the importance of the French fact in Canada to that of an outsized ethnic minority." Taylor, *supra* note 64, at 162.

82. See generally RAYMOND CARR, MODERN SPAIN 1875–1980 at 155–72 (1980).

Therefore, the *Latin@* quest for recognition should differ from that of other economically disadvantaged immigrants. It should aim mostly for the respect of difference, rather than for equal rights, and focus on collective over individual aspirations. In this sense, *Latin@s* resemble Canada's *Québécois* and aboriginals, as described by Charles Taylor. These two Canadian collectivities, unlike other groups, have not pressed for a "policy of multiculturalism" or for a guaranty of "equality between individuals."⁸³

This may be a good solution for certain categories of citizens who seek recognition as such; but for minorities who define themselves as historic societies and want this acknowledged, it cannot serve. If the principle of equality of individuals is taken as ruling out such a recognition of distinct societies, then in effect the answer to the aspirations of some groups is being defined so as to exclude others—in this case *Québécois* and aboriginal.⁸⁴

Similarly, *Latin@s* should seek self-determination as a distinct, historical, and linguistic collectivity, not as an assortment of ethnically divergent individuals. They should perceive and present themselves as ethical community, sharing a concrete *ethos*, rather than as an exuberant ethnic group.

The proposed paradigmatic shift will encourage *Latin@s* to pressure U.S. society to decolonize their community. Inasmuch as *Latin@s* (unlike the *Québécois*) are not concentrated in a particular territory of the United States,⁸⁵ but mostly spread out and mixed in throughout the country, they can hardly aspire to end colonization by becoming a nation-state, which international law espouses as the standard decolonization option.⁸⁶ Hence, they should strive, to the extent feasible, to evolve into a self-standing and thriving collectivity within the United States. They may thus not only recapture their sense of self-worth and belonging but also start addressing the immense problems of destitution and exclusion that they face.

In order to build a decolonized community, which autonomously determines its own destiny and which is no longer subject to the dictates of imperial authority, *Latin@s*

83. Taylor, *supra* note 64, at 194.

84. *Id.*

85. "Hispanics," Huntington admonishes, "have tended to concentrate regionally: Mexicans in Southern California, Cubans in Miami, Dominicans and Puerto Ricans (the last of whom are not technically immigrants) in New York." Huntington, *supra* note 19, at 35. "Demographically, socially, and culturally, the *reconquista* (re-conquest) of the Southwest United States by Mexican immigrants is well underway." *Id.* at 42 (emphasis in original). Even the alarmist Huntington, however, avoids asserting that the concentration is sufficient to support a secessionist claim. "A meaningful move to reunite these territories with Mexico seems unlikely," he admits. *Id.*

86. See G.A. Res. 1514/XV, ¶ 5, U.N. Doc. A/RES/1514/XV (Dec. 14, 1960) ("Declaration on the Granting of Independence to Colonial Countries and Peoples": "Immediate steps shall be taken, in . . . all . . . territories [that] have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom."). Of all *Latin@s*, perhaps only Puerto Ricans living on the island may realistically exercise the standard decolonization option. See Oquendo, *supra* note 70, at 249.

must first imagine such an entity. They should, by all means, start such an imagination exercise by focusing on their shared history. They should continue by embracing and developing their common culture, which manifests itself most evidently in their language. They may thus participate in and contribute to the broader U.S. society through their ethnic community.⁸⁷

Latin@s should visualize in their past not just oppression and despair, but also resistance and survival. They should find inspiration and rejoice over having somehow managed to escape their destruction as a people. They have almost miraculously survived recurrent attempts to assimilate and culturally obliterate them. In this respect, they have shared the fate of the Native American community, though they have certainly not confronted as much bloodshed and genocidal assault. Against all odds, *Latin@s* have been able to cultivate their Latin American roots and develop an identity that has allowed them to resist the aggression. Just as African Americans seek to base their self-understanding on their resurrection from slavery, *Latin@s* should trace their identity back to their rebirth from colonial subjugation.

This endurance and resilience in the face of colonial coercion provides a foundation for the unity that Celia Cruz and Willie Colón set to music, remember?

Latinos en Estados Unidos,
ya casi somos una nación.
Venimos de la América India,
Del negro y del español....
Latinos en Estados Unidos,
vamos a unirnos, vamos a unirnos
¡Claro que si!⁸⁸

Of course, the song itself points to a second source of consolidation.

Que en la unión está la fuerza
y al pueblo respetan y le dan valor.
No dejes que te convengan.
Que no se pierda el idioma español.⁸⁹

The lyrics may sound a tad trite, but the message comes across loud and clear. Against all external pressure, *Latin@s* must maintain the Spanish language in order to attain unification and nationhood.

The Spanish language is indeed a central part of the shared heritage of *Latin@s*.⁹⁰ Of course, not all *Latin@s* speak Spanish. As the preceding narrative highlights, many

87. Similarly, “French Canadians over the last century have been members of the broader Canadian society through being members of *la nation canadienne-française*.” Taylor, *supra* note 64, at 199 (emphasis in original).

88. CELIA CRUZ & WILLIE COLÓN, *Latinos en los Estados Unidos*, on CELIA Y WILLIE (Fania Records 1981) (translation: “*Latinos* in the United States, we are almost a nation. We come from the indigenous America, from the African and the Spaniard. . . . *Latinos* in the United States, let us unite, let us unite! Of course!”).

89. *Id.* (translation: “In unity there is power. People will be respected and valued. Don’t let them convince you. Don’t lose the Spanish language.”).

90. See Cameron, *supra* note 48, at 1364–67; Oquendo, *supra* note 49; Juan F. Perea,

do not. Nonetheless, they usually take pride in and invariably have some connection (even if just historical) to the language.⁹¹ If not their own, Spanish is the language of their family, their parents, their grandparents, or their great-grandparents.

In this sense, most groups identify staunchly with and often define who they are through their tongue. Therefore, an onslaught on a particular language ordinarily emasculates the people who speak it. Not surprisingly, a metropolitan regime usually represses the language, as the core and symbol of the culture, of its colonized subjects.⁹²

In the case of *Latin@s*, language constitutes them as a community. They have substantially different national backgrounds—Mexican, Puerto Rican, Cuban, Dominican, Guatemalan, Salvadoran, Nicaraguan, and so on—and share only their generic Latin American roots. The common and difficult-to-define Latin American culture takes its most tangible form in the Spanish tongue. As the narrator in the story most readily realizes, the campaign to exterminate the Spanish language cannot but aim at annihilating the *Latin@* community itself.

Just as the white majority has focused on complexion to “denigrate” African Americans, it has zeroed in on the Spanish tongue to disparage *Latin@s*. It has, to be sure, also attacked *Latin@s* for their skin color—for the brownness some have inherited from their indigenous ancestors and the blackness others derive from their African forbears. Nonetheless, the lightning rod for *anti-Latin@* sentiment in the United States has been language. In constructing a single category for this abundantly diverse group of peoples, U.S. society has obsessively concentrated on their common linguistic heritage. It is no coincidence that the derogatory term applied across-the-board to all *Latin@s* is “spic,” which underscores not the way *Latin@s* look, but the way in which they speak, or rather “spic.” The Anglo majority often refers to them, less disparagingly though awfully inaccurately, as “Spanish.” The Spanish language is their badge of “otherness”. Even when *Latin@s* express themselves in English, their “brand” often manifests itself in the form of an accent.⁹³

Indeed, *anti-Latin@* fervor has coalesced politically in the English-only movement.⁹⁴ This political operation portrays *Latin@s* as dangerous because of their

Killing Me Softly, with His Song: Anglocentrism and Celebrating Nouveaux Latinas/os, 55 FLA. L. REV. 441, 445 (2003).

91. “Spanish retention is . . . bolstered by the overwhelming majorities (between 66 percent and 85 percent) of Mexican immigrants and Hispanics who emphasize the need for their children to be fluent in Spanish.” Huntington, *supra* note 19, at 38.

92. See, e.g., Oquendo, *supra* note 78, at 417 (“Upon invading Puerto Rico in 1898, the U.S. government . . . attempted to eradicate the culture and the language.”). In his dissent in *Garcia v. Spun Steak*, Judge Stephen Reinhardt highlights additional instances, including the “harsh repression of Catalan and the Basque language in Spain under the dictatorship of Francisco Franco. . . . Other more current examples include the repression of the Ukrainian, Georgian, and Belorussian languages by the former Soviet government; the current repression of the Albanian language in Kosovo (formerly part of Yugoslavia); and the extended repression of the Kurdish language in Turkey. . . .” 13 F.3d 296, 299 n.3 (9th Cir. 1993) (en banc) (Reinhardt, J., dissenting).

93. See generally Mari J. Matsuda, *Voices of America: Accent, Antidiscrimination Law, and a Jurisprudence for the Last Reconstruction*, 100 YALE L. J. 1329 (1991).

94. See *Spun Steak*, 13 F.3d at 296 (“Unfortunately, the growth of the immigrant population and the present mood of anti-immigrant backlash mean that English-only rules are likely to become more prevalent.”).

language.⁹⁵ The English-only movement denounces the Spanish tongue as a threatening foreign influence that must be eradicated. Make no mistake: the objective is to preserve cultural purity and specifically to force *Latin@s* to renounce their identity and embrace the dominant culture.⁹⁶

African Americans have begun to take pride in their blackness as a first step towards becoming aware of a vibrant *ethos* of resistance and solidarity.⁹⁷ Similarly, *Latin@s* must learn to celebrate their language if they are to find strength in their shared identity.⁹⁸ The process of rediscovering the Spanish language might take them back to the first involuntary “immigrants” or even farther back to their ancestors south of the border. They might find renewed meaning in their history, in their culture, in their struggle against oppression both in the United States and in Latin America.

The imaginary exercise under consideration should be both backward and forward looking. *Latin@s* should, accordingly, appreciate their past resurgence against imperial terror, as well as envisage a continuation of the struggle into the future, hopefully with a higher degree of awareness and effectiveness. Similarly, they should visualize how language has fundamentally contributed to their current cohesion and how it might support the constitution of a prospective self-determining community.

On this last point, it is crucial to contemplate how to renew the Spanish language within the *Latin@* community. The children should learn Spanish, not only because in many cases doing so helps their learning in general, but also because they will thus be able to secure a sense of belonging. The adult population should also have the possibility of benefiting from this educational process: in centers of adult education, in unions, in church organizations, in prisons, in rehabilitation programs. The point is not to create a pre-requisite to membership in the *Latin@* community, but rather to open up a path towards a common identity. The idea is not to compel *Latin@s* to learn Spanish, but simply to offer them a chance to reconnect with their roots. An effective campaign of diffusion of the Spanish language could bring *Latin@s* together.

My critics will undoubtedly think that this suggestion borders on insanity. While U.S. Americans are complaining about too much Spanish in the country,⁹⁹ I am saying that there is not enough. Actually, I am not recommending merely an increase in quantity, but rather in quality. Some years ago, National Public Radio reported that

95. See, e.g., Huntington, *supra* note 19, at 40 (“Despite the opposition of large majorities of Americans, Spanish is joining the language of Washington, Jefferson, Lincoln, the Roosevelts, and the Kennedys as the language of the United States. If this trend continues, the cultural division between Hispanics and Anglos could replace the racial division between blacks and whites as the most serious cleavage in U.S. society.”).

96. See, e.g., *id.* at 32 (“Will the United States remain a country with a single national language and a core Anglo-Protestant culture? By ignoring this question, Americans acquiesce to their eventual transformation into two peoples with two cultures (Anglo and Hispanic) and two languages (English and Spanish).”).

97. Cornel West calls for the re-discovery of the *ethos* culture that I refer to. See CORNEL WEST, RACE MATTERS 15 (1994).

98. See Huntington, *supra* note 19, at 38 (“Spanish retention is also bolstered by the overwhelming majorities (between 66 percent and 85 percent) of Mexican immigrants and Hispanics who emphasize the need for their children to be fluent in Spanish.”).

99. See *id.* at 40 (“Massive Hispanic immigration affects the United States in two significant ways: Important portions of the country become predominantly Hispanic in language and culture, and the nation as a whole becomes bilingual and bicultural.”).

Latin American companies in Miami were having a hard time finding people in the local population with an advanced command of the Spanish language and that they were therefore hiring many of their key employees in Latin America. Offering *Latin@s* the chance to improve their Spanish proficiency might, accordingly, enhance their job prospects, in addition to their self-esteem.

The goal, of course, should not be to construct a Tower of Babel on North American soil. *Latin@s* should, by no means, be discouraged from learning English. Contrary to the pervasive opinion in the United States, it is possible to learn more than one language. And mastering the English language is obviously crucial for *Latin@s*. It is the passport to social, political, and economic survival.¹⁰⁰ Moreover, it may be an instrument for *Latin@s* to feel more at home in the Spanish language. “*Pues el estudio y conocimiento de otras lenguas,*” as Miguel de Unamuno notes, “*adelanta el estudio y la mejora de la nuestra.*”¹⁰¹ Johann Wolfgang von Goethe goes even further: “*Wer fremde Sprachen nicht kennt, weiß nichts von seiner eigenen.*”¹⁰²

The advocates of mainstreaming would certainly remonstrate against my proposal. They would not be placated, even if in the unlikely event that they conceded that learning Spanish does not necessarily impede the mastery of the English language. They would point to the danger of increased divisiveness and recommend—all my warnings notwithstanding—the assimilation of *Latin@s*.¹⁰³ Such a path, however, is not an option. The reason is not solely that *Latin@s* will not give up their cultural distinctness, but also that the Anglo majority will probably never fully accept them as part of the mainstream. Partly as a consequence of the cited colonial backdrop, the ethnic elite today fences out—discreetly but unequivocally—even those *Latin@s* prepared to repress their cultural identity.

Even if full assimilation were possible, it would not be desirable. Undeniably, diversity is a positive value for society as a whole. Furthermore, *Latin@s* must survive as a distinct group not only to demand restitution for foregoing and ongoing subjugation, but also to recover their stolen sense of self. They must reinvigorate and repossess their distinct identity in order to overcome their marginality. Subjecting them to homogenization would amount to the culmination of their colonial oppression. It would be the final declaration that their perspective is not worth preserving.

The exaltation of the *Latin@* linguistic and cultural perspective does, to be sure, entail some risks. It could lead to chauvinism if espoused in an irresponsible manner. It must, therefore, be adopted in a constructive, rather than destructive, spirit. *Latin@s* should learn from their colonial experience and consciously pursue a position of equality, not superiority, vis-à-vis others. They should become knowledgeable and enthusiastic regarding their language and culture, without disparaging those of other

100. See Perea, *supra* note 90, at 445.

101. MIGUEL DE UNAMUNO Y JUGO, *Comunidad de la lengua hispánica*, in LA RAZA VASCA Y EL VASCUENCE; EN TORNO A LA LENGUA ESPAÑOLA 165, 172 (1974) (translation: “For the study and knowledge of other languages advances the study and the improvement of our own.”)

102. JOHANN WOLFGANG VON GOETHE, *KUNST UND LITERATUR*, 12 WERKE 1015 (1981) (translation: “He who knows no foreign languages, understands nothing about his own.”).

103. Samuel P. Huntington, for example, warns that “Mexicans and other *Latinos* have not assimilated into mainstream U.S. culture, forming instead their own political and linguistic enclaves—from Los Angeles to Miami—and rejecting the Anglo-Protestant values that built the American dream. The United States ignores this challenge at its peril.” Huntington, *supra* note 19, at 30 (emphasis added).

groups. If the latter similarly embraced the notion of mutual respect, it would be possible to achieve a higher unity, that is a unity that preserves (rather than crushes) difference.

In the best (though hardly likeliest) scenario, the Spanish language might spill over into the non-*Latin@* neighborhoods. This development could be nothing but a boon to the larger U.S. society. The diffusion of the Spanish language throughout the United States would not attenuate but rather enhance the appreciation of the English language, as previously stressed. In addition, the widespread mastery of a second language, such as Spanish, among U.S. citizens might increase their awareness of the world of diversity outside as well as inside their own borders. They might thus be better positioned to meet the challenges presented by foreign and domestic pluralism. The United States might even become—both at home and abroad—less hegemonic and oppressive and more tolerant and noble.

During my lifetime, I devoted considerable scholarly and lawyerly energy—with not too impressive results—to the preservation and propagation of the Spanish language in the United States. Conceivably, I made my most significant contribution to the cause as a consumer. Every time the government or a business offered its services in Spanish, I would take advantage of the opportunity. I confess to having self-serving reasons: Spanish-speaking attendants tended not only to be extremely efficacious (often overeducated), as well as friendly, but also to have no difficulty at all with my name. Yet my actions simultaneously sought to increase, to a modest degree, both the demand for and the availability of this option.

Once, however, my strategy backfired. I got an Anglo operator, whom I barely understood. He had probably falsely claimed full fluency on his job application. Nevertheless, I continued speaking Spanish because I did not want to offend him and because I firmly believe in *español para todos*.¹⁰⁴ We took forever to complete the transaction. Thereupon, he thanked me with a sweet, hesitant, and heavily accented voice: “*Muchas gracias por su paciencia con mi español.*”¹⁰⁵

Undoubtedly, my *nemeses* will take me to task for glorifying a language that itself arrived to Latin America along with a colonial crusade. I cannot but acknowledge this truth, which confirms Walter Benjamin’s aphorism: “*Jedes Dokument der Zivilisation ist zugleich auch ein Dokument der Barbarei.*”¹⁰⁶ José Emilio Pacheco beautifully captures the irony of basing Latin American identity on the tongue of the *Conquistador*.

*Ni azteca ni español: criollo. Por tanto
el primer hombre de una especie nueva.
Y halló su identidad en el idioma
que vino con la cruz hecha de espadas.*¹⁰⁷

Once again, Pablo Neruda leads the way out of the dilemma.

104. Translation: “Spanish for all” (proposed constitutional amendment).

105. Translation: “Thank you for your patience with my Spanish.”

106. WALTER BENJAMIN, *GESCHICHTSPHILOSOPHISCHE THESEN* (1940) (translation: “Every document of civilization is at the same time a document of barbarism.”).

107. JOSÉ EMILIO PACHECO, *Francisco de Terrazas*, in *FIN DE SIGLO* 62, 62–63 (1984) (translation: “Neither Aztec nor Spanish: *Creole*. Therefore the first man of a new species. And he found his identity in the language that came with the cross made of swords.”) (literally).

*Qué buen idioma el mío, qué buena lengua heredamos de los conquistadores torvos . . . Por donde pasaban quedaba arrasada la tierra . . . Pero a los bárbaros se les caían de las botas, de las barbas, de los yelmos, de las herraduras, como piedrecitas, las palabras luminosas que se quedaron aquí resplandecientes . . . el idioma. Salimos perdiendo . . . Salimos ganando . . . Se llevaron el oro y nos dejaron el oro . . . Se lo llevaron todo y nos dejaron todo . . . Nos dejaron las palabras.*¹⁰⁸

Indeed the Spaniards took the gold, but left the treasure of the Spanish language behind. *Latin@s* must continue to cherish their tongue, while remembering that it came to them blended in a stream of blood and tears. Undeniably, they have to learn to approach the English language in the same way. Furthermore, the modest and regional Castilian vernacular underwent a radical transformation upon its expansion throughout the Iberian Peninsula and, especially, into the New World. The indigenous peoples of Latin America left their indelible imprint on what eventually became the Spanish language. Similarly, the English language has changed dramatically and will continue to do so as it travels through and finds a place within the *barrios* all over the United States.

Other objectors might protest, more generally, that *Latin@s* should connect with their national rather than with their regional group. They should, in other words, pursue recognition as Mexicans, Puerto Ricans, Guatemalans, and Cubans; not as *Latin@s*. I would first deny the implication that these alternatives mutually exclude each other. A person may seek to actualize herself both as Colombian and as *Latina*,¹⁰⁹ in addition to as a woman, lesbian, and revolutionary. Moreover, the *Latin@* category should be preserved for instrumental and reflexive reasons. On the one hand, *Latin@s* may most effectively wage political battles jointly, rather than separately. Think back to the age-old adage, which Celia Cruz and Willie Colón invoked in their previously quoted piece: “*En la unión está la fuerza.*”¹¹⁰ On the other hand, *Latin@s* have become a coherent collectivity precisely in virtue of their common colonial experience in the United States. Their pre-existing cultural and linguistic affinity stems, in turn, from the encounter of their Latin American ancestors with the Spanish Empire. Colonialism has often created tragically real nations out of radically different peoples, perhaps most conspicuously in Africa.

Maybe I should make another related point: Why not? Technically, Latin America comprises Spanish, Portuguese, and even French America, although ordinary usage often identifies the concept exclusively with the first of these units.¹¹¹ Accordingly,

108. PABLO NERUDA, CONFIESO QUE HE VIVIDO: MEMORIAS 73–74 (1974) (translation: “How great is my language, which we inherited from the grim *Conquistadors* . . . Wherever they passed, they ravaged the land . . . Yet, from their boots, beards, helmets, and horseshoes, the barbarians dropped, like tiny stones, the luminous words that stayed shining behind . . . the language. We ended up losing . . . We ended up winning . . . They took the gold and left us the gold . . . They took everything and left us everything . . . They left us the words.”).

109. See Huntington, *supra* note 19, at 40–42 (“A 1992 study of children of immigrants in Southern California and South Florida [found that the] largest percentage of Mexican-born children (41.2 percent) identified themselves as ‘Hispanic,’ and the second largest (36.2 percent) chose ‘Mexican.’”).

110. Translation: “In unity there is strength.” See Cruz & Colón, *supra* note 88.

111. See ÁNGEL R. OQUENDO, LATIN AMERICAN LAW vi–vii (2006).

while the term “*Latin@*” ordinarily refers to the descendants of the Spanish-speaking nations of the Western Hemisphere,¹¹² it could expand to encompass, inter alia, Brazilians, *Québécois*, as well as Haitians, who may express themselves, respectively, in Portuguese, French, and Haitian *Créole*. The inclusion of these relatively small groups and their languages would certainly render the full history, as well as linguistic identity, of *Latin@s* more complex. It would not, however, destroy the cohesiveness of the community, inasmuch as the experiences of the various peoples of Latin American roots in the United States parallel each other considerably.

The process of imagining a decolonized, self-directed community on the initial basis of a shared history and language requires, as I have already insinuated, not just solitary contemplation, but also protracted and concerted action. It involves, in particular, taking such an imaginary perspective and thereupon resisting English-only campaigns before the legislature, in court, within administrative agencies, and on the streets. First, *Latin@s* must insist on the centrality of language to their collective existence and argue that the challenged measures entail a substantial disparate impact, in addition to constituting discriminatory treatment. Second, they must expose the policies as part of the historical colonization crusade against them.

Regarding the first claim, courts sometimes completely miss the link between language and identity. In *García v. Gloor*, for instance, the Fifth Circuit repeatedly describes the use of Spanish by a bilingual *Latino* employee as a mere preference or choice.¹¹³ The judges refuse to regard the contested English-only rule as, in itself, discriminatory or even as having any significant impact on *Latin@s*. They liken the challenged directive to a smoking ban that happens to affect members of one race more than others.¹¹⁴ In *García v. Spun Steak*, the Ninth Circuit acknowledges “that an individual’s primary language can be an important link to his ethnic culture and identity,” but classifies the “choice” of language as a privilege whose denial does not produce a significantly adverse effect.¹¹⁵ The Panel finds that the disputed policy might not adversely affect even employees who are unable to speak any English at all.¹¹⁶

The *Spun Steak* tribunal relies on *Gloor* to hold that the fact “that the affected employee can readily observe” the rule implies that there “is not disparate impact.”¹¹⁷ In his dissent from the denial of rehearing on *en banc* in *Spun Steak*, Judge Stephen Reinhardt responds forcefully.

This analysis demonstrates a remarkable insensitivity to the facts and history of discrimination. Whether or not the employees can readily comply with a discriminatory rule is by no means the measure of whether they suffer significant adverse consequences. Some of the most objectionable discriminatory rules are the least obtrusive in terms of one’s ability to comply: being required to sit in the back of a bus, for example; or being relegated during one’s law school career to a portion of the classroom dedicated to one’s exclusive use. See *McLaurin v.*

112. See generally Oquendo, *supra* note 49.

113. 618 F.2d 264, 268–271 (5th Cir. 1980).

114. *Id.* at 270.

115. 998 F.2d 1480, 1487 (9th Cir. 1993), *reh’g denied*, 13 F.3d 296 (9th Cir. 1993).

116. *Id.*

117. *Id.* (quoting *Gloor*, 618 F.2d at 270).

Oklahoma State Regents, 339 U.S. 637 (1950). Nonetheless, the majority focuses narrowly upon the ability to comply, substituting its own unenlightened conception of discriminatory impact for that adopted by the EEOC on the basis of its store of knowledge, wisdom and experience in the field of employment discrimination.¹¹⁸

Reinhardt underscores the profound relation between language and identity.

Language is intimately tied to national origin and cultural identity: its discriminatory suppression cannot be dismissed as an “inconvenience” to the affected employees Even when an individual learns English and becomes assimilated into American society, his native language remains an important manifestation of his ethnic identity and a means of affirming links to his original culture English-only rules not only symbolize a rejection of the excluded language and the culture it embodies, but also a denial of that side of an individual’s personality.¹¹⁹

Reinhardt notes that “the imposition of an English-only rule may mask intentional discrimination on the basis of national origin.”¹²⁰ He points to “the widespread tactic of using language as a surrogate for attacks on ethnic identity” and concludes that “the urge to repress another’s language is rarely, if ever, driven by benevolent impulses.”¹²¹

The Equal Employment Opportunity Commission (EEOC), for its part, acknowledges that the “primary language of an individual is often an essential national origin characteristic.”¹²² It explicitly underscores the heavy impact that permanently effective English-only rules have on non-native speakers.

A rule requiring employees to speak only English at all times in the workplace is a burdensome term and condition of employment Prohibiting employees at all times, in the workplace, from speaking their primary language or the language they speak most comfortably, disadvantages an individual’s employment opportunities on the basis of national origin.¹²³

The Commission notes that these measures may actually “create an atmosphere of inferiority, isolation and intimidation based on national origin, which could result in a discriminatory working environment.”¹²⁴ It accordingly presumes a violation of Title VII and commits to scrutinizing these directives.¹²⁵ The agency authorizes employers to “have a rule requiring that employees speak only in English at certain times,” only if they can show that the rule is justified by “business necessity.”¹²⁶

118. *Spun Steak*, 13 F.3d 296, 298 (9th Cir. 1993).

119. *Id.*

120. *Id.*

121. *Id.* at 298–299; see also *Gloor*, 618 F.2d at 268 (“Language may be used as a covert basis for national origin discrimination.”).

122. 29 C.F.R. § 1606.7(a) (2007).

123. *Id.*

124. *Id.*

125. *Id.*

126. § 1606.7(b).

The Commission has consistently embraced this approach throughout the years not only in its regulations and compliance manuals, but also as part of its litigation strategy.¹²⁷ In *Spun Steak*, however, the Ninth Circuit rejects this “long standing position.”¹²⁸ Impressed by the analysis in *Gloor*, the Court concludes that the administrative guideline “contravenes” the policy under Title VII “that a plaintiff in a disparate impact case must prove the alleged discriminatory effect before the burden shifts.”¹²⁹ Judge Robert Boochever dissents from his brethren precisely on this point.¹³⁰ Similarly, Judge Reinhardt firmly disagrees with the holding: “In overriding the EEOC’s determination that such rules are generally discriminatory, the *Spun Steak* panel subverted one of the basic goals of Title VII of the Civil Rights Act of 1964, the elimination of discrimination on the basis of national origin.”¹³¹

In *Maldonado v. City of Altus*, the Tenth Circuit most recently endorses the Commission’s determination and acknowledges the heavy and disparate impact of directives banning the use of foreign languages in the workplace.¹³² It specifically relies on “evidence that the English-only policy created a hostile atmosphere for Hispanics in their workplace.”¹³³ Even though the panel follows *Gloor* and *Spun Steak* in referring to Spanish as a merely “preferred language” of *Latin@s*, it goes so far as to accept an inference of hostility.

Here, the very fact that the City would forbid Hispanics from using their preferred language could reasonably be construed as an expression of hostility to Hispanics. At least that could be a reasonable inference if there was no apparent legitimate purpose for the restrictions [;] . . . hostility would be a reasonable inference to draw from a requirement that an employee calling home during a work break speak only in English Plaintiffs presented evidence that the English-only policy extended beyond its written terms to include lunch hours, breaks, and even private telephone conversations, if non-Spanish-speaking co-workers were nearby. Absent a legitimate reason for such a restriction, the inference of hostility may be reasonable.¹³⁴

127. See Rodríguez, *supra* note 67, at 1737–38.

128. *García v. Spun Steak Co.*, 998 F.2d 1480, 1489 (9th Cir. 1993), *reh’g denied*, 13 F.3d 296 (9th Cir. 1993).

129. *Id.* at 1490. “By and large,” Cristina M. Rodríguez reports, “the district courts in other circuits have followed the *Gloor* and *Spun Steak* lines of analysis.” Rodríguez, *supra* note 67, at 1731. Nonetheless, Rodríguez recognizes that many federal tribunals have instead embraced the approach of the Equal Employment Opportunity Commission, discussed *infra*. See *id.* at 1732–38. Moreover, the recent Tenth Circuit’s decision in *Maldonado v. City of Altus*, 433 F.3d 1294 (10th Cir. 2006), significantly breaks with *Gloor* and *Spun Steak* and may very well signal a sea change in the trial adjudication of these claims.

130. See *Spun Steak*, 998 F.2d at 1490–91.

131. *Spun Steak*, 13 F.3d at 296–97 (en banc).

132. *Maldonado*, 433 F.3d at 1304–06.

133. *Id.* at 1304.

134. *Id.* at 1305.

The Court readily rejects the business necessity justification in general and notes that “Defendants conceded that there would be no business reason for” applying the rule to “lunch hours, breaks, and private phone conversations.”¹³⁵

Maldonado ultimately reckons that the contested directive may support even a claim of intentional discrimination under the Fourteenth Amendment, Title VII, 42 U.S.C. § 1981, and 42 U.S.C. § 1983. “To begin with,” the judges explain, “the disparate impact of the English-only rule (creation of a hostile work environment) is in itself evidence of intent.”¹³⁶ They then reach their bolder conclusion.

Here, Plaintiffs can rely on more than just that inference. First, there is evidence that management realized that the English-only policy would likely lead to taunting of Hispanic employees Also, a jury could find that there were no substantial work-related reasons for the policy (particularly if it believed Plaintiffs’ evidence that the policy extended to non-work periods), suggesting that the true reason was illegitimate. Further, the policy was adopted without prior consultation with Hispanic employees, or even prior disclosure to a consultant to the City who was conducting an investigation of alleged anti-Hispanic discrimination during the period when the English-only policy was under consideration. Finally, there is evidence that during a news interview the Mayor referred to the Spanish language as “garbage.”¹³⁷

The Court thus faces up to the reality that a prohibition against Spanish may not only severely impact, but also directly discriminate against *Latin@s*.

Danny V. Maldonado and his co-workers almost brought the Tenth Circuit to visualize the contested English-only rule in the context of past imperial domination of *Latin@s*. In *Maldonado v. City of Altus*, the judges ultimately connect the controversial directive to the backdrop of oppression against *Latin@s* in the town, noting the subsequent “taunting of Hispanic employees,” the antecedent “anti-Hispanic discrimination,” as well as “evidence that during a news interview the Mayor referred to the Spanish language as ‘garbage.’”¹³⁸ Unfortunately, the Court fails to link the policy to the history of domination against *Latin@s* in the nation as a whole or specifically to *colonial* subjugation. It thus remains within the anti-subordination paradigm and shies away from taking a decolonization approach. Nonetheless, plaintiffs attained a remarkable victory against all odds. I wish I had lived to see it.

Inevitably, the endeavor to imagine and build a decolonized and self-governing community will demand offensive, as well as defensive, engagement. *Latin@s* will have to develop institutions to address numerous issues that affect their lives, such as education, culture, economics, environment, agriculture, labor, justice, transportation, security, health, and immigration. Organizations in many of these areas already exist, but they operate in a fragmented and uncoordinated manner. *Latin@s* must synchronize, expand, and streamline this institutional framework. This kind of project will evidently take an enormous amount of collective energy and time.

Of course, I am not deluding myself into believing that *Latin@s* will easily triumph in the battle to preserve their culture and attain self-determination, let alone that

135. *Id.* at 1307.

136. *Id.* at 1308.

137. *Id.*

138. *Id.*

Anglos will gladly open up to this prospect. I know that U.S. society will not readily embrace multiculturalism, much less renounce subordination and colonization. As they fight for decolonization, *Latin@s* must acknowledge that their struggle will perhaps continue *per saecula saeculorum* and that their chances of playing the role of the proverbial slaves or the *prolétariat*, who attain full recognition and liberation for all, are slim at best. The heyday of German Idealism and Historical Materialism has long passed. Still, *Latin@s* may envision their effort, even if doomed, as “an act of ultimate defiance,”¹³⁹ or rather resistance.

I probably owe it to my readership to discuss my passing and yet have utterly no desire to do so. Believe it or not, I loathe the center of attention. For this reason, I never celebrated my birthday, not even as a child. I was born in July, a month during which school was off and my family vacationed, far away, with my maternal relatives. So we didn’t have my classmates or neighborhood *amigos* around and, in any case, didn’t have a house of our own to entertain guests. On my birthday, my parents and siblings—as well as whichever aunt, uncle, cousin or grandparent happened to be with us—typically congratulated me and presented me with a token gift during breakfast. Frankly, skipping the festiveness, the crowd, the racket, the cake, the candles, the *piñatas*, and even the presents suited me just fine and I eventually developed a strong aversion to the whole celebratory ado.

Coincidentally, a friend of mine once found out that we had the same *cumpleaños*.¹⁴⁰ When she suggested that we organize a party together, I stopped her right in her tracks and explained my idiosyncrasy. In response, she falsely claimed that she shared my attitude and proposed that we put an anti-birthday party together. I acquiesced, *à contre cœur*,¹⁴¹ and recommended commemorating Ernest Hemmingway’s suicide, which happened precisely on the same day. Much to my disappointment, she did not desist from her plan and even embraced my idea. In the end, the event felt like a birthday *fête* and made me miserable.

Once again, I digress. Please accept my apologies. I can’t help myself. My simple point is that my readers shouldn’t expect me to say much about my demise. “The reports of my death,” in any case, were “greatly exaggerated”¹⁴² and I don’t want to make a bad situation worse. Suffice it to say that I suddenly collapsed in the aftermath of a hairy *habeas corpus* suit, precisely while I was trying to catch up on my long neglected article. I was sitting at my desk in my university office and my upper body fell flat on a pile of texts, papers and manuscripts. Afterwards, the physician reported “heart failure,” though she should have diagnosed a clear case of *karōshi*: death from overwork.¹⁴³ Maybe she did not in order to protect my employer from liability. “Just because I’m paranoid doesn’t mean that the conspiracies around me aren’t real!”

My next of kin were shocked and devastated, especially my mom, who loves me dearly and melodrama almost as much. In all honesty, I was relieved to break away

139. DERRICK A. BELL, JR., *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* 12 (1992).

140. Translation: “Birthday.”

141. Translation: “Against the heart” (literally); “Despite myself” (figuratively).

142. WILLIAM TRUFANT FOSTER, *ARGUMENTATION AND DEBATING* 97 (1917) (quoting Mark Twain’s cablegram to the Associated press on June 2, 1987).

143. See Takashi Haratani, *Karōshi: Death From Overwork*, *ENCYCLOPEDIA OF OCCUPATIONAL HEALTH AND SAFETY*, ILO (Jeanne Mager Stellman ed., 4th ed. 1998).

from my existential, financial, professional, and sentimental worries. Thereafter, I landed neither in heaven nor in hell, but rather in an eerie state of uncertainty. Perhaps I find myself in purgatory. Anyway, no one has informed me why I am here or for how long: maybe to do what I am doing for as long as it takes?¹⁴⁴

I sit on a dilapidated lounge in front of an ancient desk, loaded with stationery. The library that surrounds me reminds of the *Biblioteca de Babel*: “*iluminada, solitaria, infinita, perfectamente inmóvil, armada de volúmenes preciosos, inútil, incorruptible, secreta.*”¹⁴⁵ It offers absolutely no technology, though. Not far from my workspace, a hefty *divan*, a modest kitchenette, and a lifeless bathroom keep me company.

Since my arrival, I have been writing nonstop, striving to complete this work so I can send it to my man Pancho with a request to have it published. Who knows whether this joint offers regular mail service? Even if it does, my beloved Pancho is no Max Brod; quite the opposite, actually. He might therefore end up burning my papers against my express will. Of course, I am no Franz Kafka, so the loss would be no real tragedy.

144. I can identify with the Roman poet Ovid, Publius Ovidius Naso, during his banishment in a remote village on the edge of the Black Sea. “I speak to you, reader, as one who lives in another century, since this is the letter I will never send.” DAVID MALOUF, *AN IMAGINARY LIFE* 18 (1978). “I am dead. I am relegated to the region of silence. All I can do is shout.” *Id.* at 27.

145. JORGE LUIS BORGES, *La Biblioteca de Babel*, in *FICCIONES*, 2 OBRAS COMPLETAS 61 (1989) (translation: “illuminated, solitary, infinite, perfectly immovable, armed with precious volumes, useless, incorruptible, and secret”).