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Ediberto Román

Florida International University College of Law, romane@fiu.edu

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## Common Ground: Perspectives on Latino-Latina Diversity

Ediberto Román\*

Much of the discussion during the first annual LatCrit conference centered upon coalescing communities. In light of this, I will focus my comments on two points related to achieving that goal.<sup>1</sup> The first is the need to keep sight of our commonalities. The second is the need to go further than merely coalescing our legal community and reach the overall Latino/a community with our message.

With respect to my first point, I would like to pay particular attention to the diversity of the Latino/a community. Some of the symposium authors have noted that the differences in the Latino/a community are so numerous that they may prevent the development of a pan-ethnic or unifying LatCrit theme.<sup>2</sup> For instance, Professor Kevin Johnson correctly pointed out that our differences range from our skin color to our native language and include our immigration history, our politics, and even the ethnic diversities of our surnames.<sup>3</sup> I would go even further and note that we have class,

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\* Associate Professor of Law, St. Thomas University; B.A., 1985, Lehman College; J.D., 1988, University of Wisconsin. I would like to thank the organizers of this symposium for inviting me to speak to the impressive group of scholars attending the symposium. The following is a lightly footnoted version of my address. My views will be from the perspective of a newcomer to the academy.

1 The symposium has been and will hopefully be remembered as a long overdue vehicle for a diverse group to share their views, learn from each other, and develop strategies to further the coalescing of minority communities both in and outside the legal arena.

2 See Kevin R. Johnson, 2 HARV. LATINO L. REV 101 (1997).

3 See also Kevin R. Johnson, *Civil Rights and Immigration Challenges for the Latino Community In the Twenty-First Century*, 8 LA RAZA L.J. 42, 67 (1995).

religious, and perceived racial differences.

While I acknowledge these differences and by no means intend to obscure or belittle them, I believe there is a danger of factionalization created by placing an undue emphasis on these differences. I am concerned over the amount of time and energy we spend on our differences as compared to the time and energy we spend acknowledging our common ground. We should recognize and use as a mobilizing force the fact that our people, irrespective of whether they are of Mexican, Puerto Rican, or other Latin-American heritage, are often similarly situated in terms of, among other things, their socio-economic status and need for political representation. We should use this common ground to develop strategies towards coalition building within the Latino/a communities. We should feel compelled to appreciate the critical need to search for a common ground in order to respond to a race-conscious society<sup>4</sup> and in order to promote changes in that society which will positively affect our people.

To combat racism and inequality in America, we, as Latinos/as, need to develop a notion of panethnicity. We need to unite our people by finding the similarities in our histories. Our people have a long history, particularly in this country, of learning to find a common ground. As Professor Berta Hernández-Truyol in her work on building bridges in the Latino-Latina community advocated:

We can build bridges as we have been doing for years. We are used to being black, white, brown, and every other color and shade . . . We speak Spanish, English, Spanglish, regional dialects and indigenous tongues . . . *We can promote an understanding of differences by engendering*

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4 See Dwight L. Greene, *Justice Scalia and Tonto: Judicial Pluralistic Ignorance and the Myth of Colorless Individualism in Bostick v. Florida*, 67 TUL. L. REV. 1979 (1993).

*understanding of commonalities . . .*<sup>5</sup>

In her book on Asian-American panethnicity, Yen Le Espiritu, points out that panethnic unity is a socially constructed effort to unite people "through the symbolic reinterpretation of a group's common history, particularly when this history involves racial subjugation."<sup>6</sup> The author asks, "How, under what circumstances, and to what extent can groups of diverse national origins come together as a new, enlarged panethnic group?"<sup>7</sup> She concludes that there is a critical need for panethnicity because of "[t]he continuing importance of race and the persistence of racial lumping in American society . . . Pan-Asian unity is necessary if Asian-Americans are to contest systems of racism and inequality in American society . . . ."<sup>8</sup>

As Yen Le Espiritu advocates, I certainly hope we as Latinos/as can come to develop and embrace a panethnic theory, not only in our scholarship but also in our activism. Our communities have far too much in common, both from a historical and cultural perspective, for us not to focus on attempting to develop strategies for coalition building. For instance, Professor Michael Olivas' work on his grandfather's stories addressed three very distinct groups: the Mexicans, the Chinese and the Native Americans.<sup>9</sup> Yet despite their differences, Professor Olivas used each group's history of oppression to demonstrate a common ground.<sup>10</sup>

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5 Berta Esperanza Hernández-Truyol, *Building Bridges -Latinas and Latinos at the Crossroads: Realities Rhetoric and Replacement*, 25 COLUM. HUM. RTS. L. REV. 369, 430 (1994) (emphasis added).

6 YEN LE ESPIRITU, *ASIAN AMERICAN PANETHNICITY; BRIDGING INSTITUTIONS AND IDENTITIES* 9 (1992).

7 *Id.* at xi.

8 *Id.* at 175.

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

10 See *id.*

In addressing a common ground in the Latino/a community, I part company with some commentators who believe that the Spanish language is a divisive factor in the Latino/a community because many in our community differ in fluency.<sup>11</sup> While I agree that we differ in our fluency, and, in fact, am reminded of it every time I have to resort to Spanglish, I do not agree that our language divides us. On the contrary, I firmly believe, both viscerally and intellectually, that our common native language is extremely important to our culture, and is an essential vehicle for engendering Latino/a pride.<sup>12</sup> As Professor Juan Perea noted, our Spanish language is so central to our community that being deprived of it can lead to an isolation that results in a form of spiritual death.<sup>13</sup> Our emotional ties to our language are pervasive. Indeed, it is not unusual for Latinos/as when congregating to resort to speaking Spanish. We speak Spanish, not because we have to, but because we are proud of our beautiful language and culture. Our language also enriches us by expanding our communicative horizons, namely our ability to transcend our differences and use our commonalities including our history and language to better understand and work with each other.

It is not a coincidence that many of the attacks, both legal and otherwise, that are aimed at our community relate to our native language and the resultant perception of foreignness. Professor Neil Gotanda's work on "the Miss Saigon syndrome"<sup>14</sup> addresses this

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11 See Johnson, *supra* note 2, at 129.

12 See Johnson, *supra* note 3, at 72 (noting that the Spanish language is important to the Latino/a community).

13 Juan F. Perea, *Los Olvidados: On the Making of Invisible People*, 70 N.Y.U. L. REV. 965 (1995) ("'Death by English' is a death of the spirit, the slow death that occurs when one's own identity is replaced, reconfigured, overwhelmed, or rejected by a more powerful, dominant identity not one's own").

14 Neil Gotanda, *Asian American Rights and the "Miss Saigon Syndrome,"* in ASIAN AMERICANS AND THE SUPREME COURT: A DOCUMENTARY HISTORY 1087, 1088 (Hyung-Can Kim ed., 1992) (describing the denial of the existence of racism against Asian Americans as "the Miss Saigon Syndrome." The author notes that the traditional Black-White race paradigm fails to address the unique form of

point by noting that for "other non-whites," i.e., Latinos/as and Asian Americans, there is a distinctive racist component in their interaction with whites.<sup>15</sup> This distinctive component or manifestation of racism reveals itself in a label of "foreignness."<sup>16</sup> Notwithstanding their citizenship status, Latinos/as, as well as other non-whites, are often not viewed as Americans but as foreigners. For instance, despite the 1917 Jones Act's grant of U.S. citizenship to the people of Puerto Rico,<sup>17</sup> to this day many Americans view Puerto Ricans as foreigners.<sup>18</sup> New York Congressman Jose Serrano confirmed this point when he recalled other Congressmen asking him for Puerto Rican coins and stamps, despite the fact that Puerto Rico is not a foreign country, but a U.S. Commonwealth that does not issue its own currency or stamps.<sup>19</sup>

The foreigner label, thus, justifies and facilitates racially discriminatory treatment under the guise of disparate treatment of non-citizens.<sup>20</sup> These nativistic, anti-immigrant and anti-minority efforts are aimed at promoting core Anglo-Saxon culture.<sup>21</sup> The English-only movement is but one example of such a campaign.<sup>22</sup>

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racism against "other non-whites").

15 See Neil Gotanda, *Race, Citizenship and the Search for Political Community Among "We the People,"* 76 OR. L. REV. (forthcoming 1997).

16 See *id.*

17 39 Stat. 951 (1917).

18 See Ediberto Román, *The People of Puerto Rico: The Foreign Citizens,* 76 OR. L. REV. (forthcoming 1997).

19 See *Joint Hearing before the Subcommittee on Native American Insular Affairs of the Committee on Resources and the Subcommittee on the Western Hemisphere of the Committee on International Relations,* 104 Cong. 1st Session, Serial no. 104-56 (1995) (statements of Rep. Serrano).

20 See Gotanda, *supra* note 14, at 1095-1098.

21 See Juan F. Perea, *Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English,* 77 MINN. L. REV. 264, 269 (1992).

22 See *id.* See also Greg Pierce, *Inside Politics,* WASH. TIMES, Aug. 12, 1996, at A6 ("Congressional Republicans are ready to cast some veto bait into the political seas in order to make President Clinton look bad," one "booby trap" will be a bill to make English the nation's official language). See, e.g., H.R. 123,

As demonstrated by Senate Bill 356 (S. 356),<sup>23</sup> which declares English as the official language of the United States, this government has recently attempted to exclude linguistic minorities, which will often be Latinos/as and Asian-Americans, from participation in the democratic process, including the right to vote.<sup>24</sup> This effort, if successful, will further alienate and marginalize Latinos/as as well as other non-English-speaking non-whites.

The attacks on our language and consequently on our culture, however, are not limited to legal institutionalization of racism. Social perceptions also often center on our language. For instance, consider the imagery that comes to mind when hearing a person speak Spanish or even a native Spanish speaker's accent when speaking English. If we are honest with ourselves, we would recognize that the image engenders visions of a foreign, possibly illegal, poorly educated person. Further, upon hearing us speak Spanish or seeing our Spanish surnames, it is far from unusual for Latinos/as to be asked the proverbial question, "Where are you from?"<sup>25</sup> For those of us who naturally respond with our place of birth, which is often one of the fifty states, we are again asked, "But where are you really from?" Even the filthy slurs directed at us often refer to our language.<sup>26</sup> Irrespective of where we come from, how we look, or whether we can speak Spanish, few Latinos/as

105th Cong., 1st Sess. (1997) (stating in its legislative findings that an English-only law is needed "in order to preserve unity in diversity").

23 S. 356, 104th Cong., 1st Sess. (1995).

24 See *Language of Government Act of 1995: Hearings on S. 356 before the Senate Governmental Affairs Committee*, 104th Cong., 1st Sess. (1995) (statement of Professor Juan Perea) (noting that one of the many harms of S. 356 is that it implicitly "repeals the 1975 Amendments to the Voting Rights Act. By denying equal voting rights to American citizens . . .").

25 See Gotanda, *supra* note 14, at 1096.

26 See, e.g., Margaret E. Montoya, *Máscaras, Trenzas, y Greñas: Un/Masking the Self While Un/Grading Latina Stories and Legal Discourse*, 17 HARV. WOMEN'S L.J. 185 (1994) (recalling her childhood education where "the use of Spanish was frowned upon and occasionally punished. Any trace of an accent when speaking English would be pointed out and sarcastically mocked").

would not understand the slurs that we have all too often heard, but which self-respect prevent me from repeating. Such language-based attacks are used to attempt to differentiate us from the rest of "American" society.<sup>27</sup>

Our common ground with respect to the Spanish language directly relates to another commonality -- our common history of imperialistic exploitation. Spanish imperialism provides us with our greatest common ground. This history of imperialism stripped our ancestors of not only their languages, but their lands and culture -- and even led to genocide.<sup>28</sup> Eighteenth Century revolutionaries such as Simón Bolívar successfully fought against colonial oppression, but did not reject the goal of a united Latino/a community. In fact, Bolívar tirelessly fought for Latino/a coalition building.<sup>29</sup> The dreams of Bolívar and other freedom fighters such as San Martín to establish a federation of Latin American people, however, ultimately were defeated by the need for related people to literally wave their own flags.<sup>30</sup> Thus, Bolívar's vision of La Gran Colombia succumbed to petty factionalism.<sup>31</sup>

Our history of colonial oppression affected all our people, whether it is the five hundred years of imperialism that the Puerto Rican people have endured,<sup>32</sup> the Spanish and American conquests

27 See Sheri L. Johnson, *The Language and Culture (Not to Say Race) of Peremptory Challenges*, 35 WM. & MARY L. REV. 21 (1993) (addressing the issue of the knowledge of a foreign language as a means to remove prospective jurors). See also *Hernandez v. New York*, 500 U.S. 352 (1991) (upholding the use of peremptory challenges to strike Spanish-speaking Latino jurors because they might not accept the Spanish translation of testimony by an interpreter in a trial of a Latino defendant); *Pemberthy v. Berger*, 19 F.3d 857 (3d Cir. 1994) (sanctioning discrimination against foreign language speakers by holding that peremptory challenges based on foreign language ability do not violate the equal protection clause).

28 See generally, EDWARD W. SAID, *CULTURE AND IMPERIALISM* 62, 89 (1994).

29 See JOHN ROTHCHILD, *LATIN AMERICA: YESTERDAY AND TODAY* 118 (1997).

30 See *id.* at 139.

31 See *id.* at 128.

32 See RONALD FERNANDEZ, *THE DISENCHANTED ISLAND* (1992).

of Mexican territories,<sup>33</sup> or the remnants of imperialism lingering throughout the Caribbean, Central America, and South America.<sup>34</sup> Often our ancestors, as is the case in Puerto Rico,<sup>35</sup> were subjugated to colonial oppression twice over, once by the Spanish and again by Europeans or Americans. Notwithstanding our need to appreciate our differences, our native language and our history of exploitation should bring us together.

In addition to promoting factionalism, if we do not accept our common ground, we may actually contribute to the marginalization of our fellow Latino/a people. As I believe this is a particularly appropriate forum, I would like to illustrate my point by telling a story.<sup>36</sup> Not that long ago after a basketball game with some of my family members, one of my younger family members pointed out, in much more colorful language,<sup>37</sup> "We have to beat the other team."

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33 See Olivas, *supra* note 9, at 427.

34 See RONALD FERNANDEZ, *CRUISING THE CARIBBEAN: U.S. INFLUENCE AND INTERVENTION IN THE TWENTIETH CENTURY* (1994); THEODORE ROOSEVELT, *COLONIAL POLICIES OF THE UNITED STATES* (1937); James Bradley Thayer, *Our New Possessions*, 12 HARV. L. REV. 404 (1899).

35 See JOSE A. CABRANES, *CITIZENSHIP AND THE AMERICAN EMPIRE* (1979); HON. JUAN R. TORRUELLA, *THE SUPREME COURT AND PUERTO RICO: THE DOCTRINE OF SEPARATE AND UNEQUAL 1* (1985); EDIBERTO ROMÁN, *EMPIRE FORGOTTEN: THE UNITED STATES' COLONIZATION OF PUERTO RICO (PRODAMATIONS VERSUS PRACTICE)* (1997) (unpublished manuscript, on file with author).

36 See Richard Delgado, *Legal Story Telling: Story Telling for Oppositionists and Others: A Plea for Narratives*, 87 MICH. L. REV. 2411 (1988); Richard Delgado, *On Telling Stories in School: A Reply to Farber and Sherry*, 46 VAND. L. REV. 665 (1993); Richard Delgado, *The Imperial Scholar's Reflections on a Review of Civil Rights Literature*, in *CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT* (Crenshaw et al. eds., 1996); Jerome M. Culp, Jr., *You Can Take Them to Water but You Can't Make Them Drink: Black Legal Scholarship and White Legal Scholars*, 1992 U. ILL. L. REV. 1021.

37 I have taken literary license to edit the quoted material so as to protect the not so innocent and to more civilly convey my message.

I asked, "Why?" He answered, "They are Dominicans."<sup>38</sup> I asked, "Why does that matter?" He responded because "they are different and they think they're better than us." Maybe it should not have, but the statement shocked me. The last time I checked, the cultural, political, and socio-economic status of the Puerto Rican and Dominican communities, especially in New York, is extremely similar. Thus, instead of recognizing our commonalities, my family members were happy to engage in and perpetuate a distinct form of self-hate. I caution Latino/a scholars from engaging in a more sophisticated and yet more harmful form of this type of divisiveness.

Irrespective of his or her nationality, when a Latino/a walks in New York, non-Hispanics typically consider the person a Puerto Rican. If he or she is in Los Angeles, he or she has to be Mexican. With the desperate state most of our people are in with respect to education, poverty and political representation, should we focus on our differences? As Yen Le Espiritu notes, one function of panethnicity is that it provides the competitive advantages of large-scale identities.<sup>39</sup> While our differences may make a panethnic goal illusory, if we continue to differentiate ourselves we may in effect Balkanize ourselves.

The last point I want to address concerns my views on the role of a LatCrit legal theory. In particular, my comments relate to a question posed by Professor Rene Nuñez, who noted that the authors in this symposium represent some of the elite in the Latino/a community and for that matter in legal academia.<sup>40</sup> Professor Nuñez asked, how do Latino/a legal scholars address the rest of our community? In an effort to provide a response to this question, I

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38 My younger family member was not referring to any religious affiliation of the other team, but to the fact that he believed that they were from the Dominican Republic.

39 *ESPIRITU*, *supra* note 6, at 10.

40 While Professor Nuñez referred to this group as the top 2% of our community, I note that the number of Latino/as in the legal academy, largely because of the efforts of Professor Michael Olivas, is much larger.

draw reference to Professor Jerome Culp's work on the different roles of scholarship and jurisprudence.<sup>41</sup> My vision of LatCrit theory briefly acknowledges the role of scholarship and jurisprudence, but focuses on community activism.

In academic circles, when one speaks of scholarship, one speaks of scholarly legal publications. While such writing is obviously important for reform as well as for professional self-preservation, I would take the term scholarship a step further. As true students of the law, we have a status in society that gives us a forum, and as Latinos/as we have an obligation to use our status to affect our communities. I, therefore, strongly support becoming more active by getting our voices heard beyond traditional modes of legal discourse. There are scores of communication mediums, such as newspapers and non-legal journals whose markets are largely, if not exclusively, focused on the Latino/a community. They range from *El Diario* in New York to *El Nuevo Herald* in Miami. We can promote change and encourage debate by addressing our views to a wider audience; we can let our communities know that there are people of color challenging and attempting to reform traditional American norms; we can let them know we are struggling with the issues we are addressing in this symposium. Both academia and the community at large can be enriched by this effort.

There is a critical need for our voices to be heard. When pending legislation or litigation, such as *Hopwood v. Texas*,<sup>42</sup> will affect our community, we should have established means to ensure that society hears our voices.<sup>43</sup> When such important developments arise, we need to mobilize widely, including interested students,

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41 Jerome McCristal Culp, Jr., *Toward A Black Legal Scholarship: Race And Original Understandings*, 1991 DUKE L.J. 39; Jerome McCristal Culp, Jr., *Autobiography and Legal Scholarship and Teaching: Finding the Me in the Legal Academy*, 77 VA. L. REV. 539 (1991).

42 78 F.3d 932 (5th Cir. 1996), *cert. denied*, 116 S.Ct. 2581 (1996)

43 While the *Hopwood* decision struck down the University of Texas Law School's admission program and significantly challenges the face of public higher education, the United States Supreme Court denied the certiorari petition. *See id.*

professors in other disciplines, and community groups, to be prepared to engage in the democratic process. We can engage in everything from letter-writing campaigns to protests on the steps of the Supreme Court.

Professor Culp poignantly noted that our job as progressive scholars is to figure out how to talk to and help our communities.<sup>44</sup> Our roles as leaders require us to engage our communities. We must take advantage of our status not only to challenge the elite mode of legal thought, but also to speak for and assist our communities. The means by which this can be attempted are virtually countless. For instance, at St. Thomas University in Miami, professors have engaged minority communities through programs such as an immigration clinic where, under the supervision of faculty, second and third year law students represent indigents on immigration and domestic relations matters; and the street law program, where law students and faculty teach rudimentary civics and legal principles to inner-city high school students and juveniles and adults incarcerated in state penal facilities.<sup>45</sup> With something as basic as street law, professors and students have not only taught civics but, particularly the minority participants, have served as role models and living proof of the rewards of the investment in the mind through higher education. Legal scholars have spoken to their communities in other ways, such as through the economic development program established at the City University of New York<sup>46</sup> or through clinics representing institutional persons such as the one at the University of

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44 Jerome McCristal Culp, Jr., *Latinos, Blacks, Others, and the New Legal Narrative*, 2 HARV. LATINO L. REV. 479 (1997).

45 See, e.g., ROBERT L. HAYMAN, JR. AND NANCY LEVIT, JURISPRUDENCE 383 (1994) (describing a hypothetical street law class).

46 In the C.U.N.Y. program, faculty and students work with the local community groups to promote small business economic development in the inner-city.

Wisconsin.<sup>47</sup> Be it through street law, representation of the indigent, economic development, or a host of other potential mediums, Latino/a scholars should engage our people. Hopefully without being too officious, these are the views of a newcomer.

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47 At Wisconsin's Legal Assistance to Institutionalized Persons Program, faculty and students represent institutionalized persons in state and federal penal and mental institutions.