2000

Who Exactly Is Living La Vida Loca: The Legal and Political Consequences of Latino-Latina Ethnic and Racial Stereotypes in Film and Other Media

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Recommended Citation
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Who Exactly Is Living La Vida Loca?: The Legal and Political Consequences of Latino-Latina Ethnic and Racial Stereotypes in Film and Other Media

Ediberto Román*

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I. THE LATIN EXPLOSION

"'It's big!' they scream. 'It's new!' they yelp. It's the 'Latin Explosion' and it's got everybody 'Livin' La Vida Loca!'" From the covers of national magazines such as Newsweek,2 Time,3 People,4 and George5 to The Oprah Winfrey Show, popular culture is gushing over the so-called "Latin boom."6 This boom purportedly signals a change for America. The popularly anointed

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* Associate Professor of Law, St. Thomas University, B.A., Lehman College, 1985; J.D., University of Wisconsin, 1988. This work is dedicated in loving memory to Carmen Hemandez. Much thanks to the members of The Journal of Gender, Race & Justice, especially Ms. Anel Dominguez, for cajoling me to participate in the most organized and enlightening conference I've attended. A very special thanks to my "little man," Christian Isaiah Román, for his love, laughter, and beautiful besos. Additional thanks to Professor Lenora Ledwon and Professor Alyce Jean Thomas for their contribution.

1. Ido Ostrowsky, Ricky Martin Not True Representative of Diversity, DAILY BRUIN, July 26, 1999, available at 1999 WL 18807681; see RICKY MARTIN, Livin' La Vida Loca, on RICKY MARTIN (Sony/Columbia 1999).

2. See Brook Larmer, Latino America, NEWSWEEK, July 12, 1999, at 48.


5. See Latin America, GEORGE, July 1999, at 49.

6. Ostrowsky, supra note 1.
leader of this Latin revolution is Ricky Martin. With his splash at the 1999 Grammy Awards show, where he performed Elvis-like gyrations with a Latin flavor and his number one hit Livin’ La Vida Loca, Martin has reportedly lead the cultural arrival of Latinas and Latinos. Time magazine proclaimed, “Latin Music Pops. We’ve seen the future. It looks like Ricky Martin. It sings like Marc Anthony. It dances like Jennifer Lopez. ¡Que Bueno!” In its Latin U.S.A. cover story, Newsweek declared, “Hispanics are hip, hot and making history.”

George magazine noted “[f]rom the conga to NYPD Blue, from the catwalk to Congress, these Latinos have made their mark.” Despite coverage that might at first blush appear to be celebratory, these national news magazines have portrayed these so-called leaders in a manner that differs little from traditional stigmatized characterizations associated with Latinas and Latinos, as well as other subordinated groups in this country.

George devoted a summer issue to the “Latin Explosion,” which featured the various Latino-Latina entertainment stars in sexually provocative images. For instance, the magazine contained a layout entitled, If I were President featuring a photo of television star Daisy Fuentes that could conceivably have been titled, If I were the Playmate of the Year. George also displays other Latina stars such as actress Selma Hayek in similar fashion. The cover of the

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8. Ostrowsky, supra note 1.

9. Farley et al., supra note 3, at 76.

10. Larmer, supra note 2, at 48.


13. There are different views as to what defines a Latina or Latino. Although the Latino-Latina community includes people with diverse backgrounds, origins, skin colors, languages, and religions, the cultural and historical commonalities of the community unify their experiences. See generally Ediberto Román, Common Ground: Perspectives on Latino-Latina Diversity, 2 HARV. LATINO L. REV. 1 (1997).

14. See Latin America, supra note 5.

15. If I were President, GEORGE, July 1999, at 100, 100 (displaying Ms. Fuentes, in a shirt that is half-open, exposing the sides of her breasts).

16. See Bob Morris, Mexican Firecracker, GEORGE, July 1999, at 60, 60-61 (displaying Ms. Hayek straddling a giant firecracker in a stiletto heels, a tube top, and tight capri pants). Photographs by Ellen Von Unwerth. Id.
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George issue that portrays Ms. Hayek and is entitled Latino Power, yet the provocative picture seems to suggest that Latina power only comes from sexual prowess or promise. In a similar fashion, the Time magazine article features a “major player,” Ricky Martin, not at a board meeting or even performing his music, but touching himself. Not to be outdone, Newsweek, in its article on Latinos, shows a group of young Latinas and Latinos hanging out at a trendy Cuban cafeteria dressed in stereotypical gang attire, apparently ready to partake in “La Vida Loca.”

II. EXPLOSION OR EXPLOITATION?

As these images purport to depict, the national print media has decided that Latinas and Latinos have somehow arrived! In this article, I examine whether the media has truly embraced Latinas and Latinos, or simply perpetuated the traditional stereotypes. While a cursory review of these stories and their titles would suggest a Latin renaissance of sorts, a closer examination will reveal otherwise. In fact, this article will demonstrate how this so-called “Latin Boom” appears to be nothing more than a repackaged formula for classic stereotypes. The objectification and commodification of Latinas and Latinos in the Latin Boom continues to support the dominant culture’s already skewed perception of this group—little has changed with these new, glitzy high-profile characterizations. Notwithstanding the widespread exposure, Latinas and Latinos are still largely portrayed as one of the following: (1) the hot-blooded sexy character—the macho man or sultry curvy vixen, (2) the gangster or gang-member, who is almost always a drug dealer, (3) the snazzy entertainer, or (4)


18. See Farley et al., supra note 3, at 75 (displaying Mr. Martin in a half open shirt, massaging his exposed chest). Photographs by Albert Sanchez. Id.


20. In this piece, I will use the terms United States and America interchangeably. I do not intend in any fashion to be offensive to other Americans in the North and South, i.e., Canadians and Central and South Americans.

21. See Steven W. Bender, Entering the Mainstream: Language and Culture of the Latino/a Pop Music Explosion 19 (unpublished manuscript, on file with author) (noting that listeners and critics describe Latin music as “exotic and foreign,” as if it were an imported delicacy). Also, the manuscript observes that many of the portrayals of Latinas and Latinos promote the stereotype of the Latin Lover. Id. at 22.

the immigrant, often an illegal immigrant.\textsuperscript{23}

In an effort to recast society's perceptions, I will attempt to go beyond what some have satirically termed as the "Latin Exploitation" in the hopes of reclaiming Latina-Latino identity.\textsuperscript{24} I seek to confront the use of the dominant stereotypes in the media as they reinforce a biased and untrue perception of reality.\textsuperscript{25} In the same spirit of a number of works on other ethnic imagery,\textsuperscript{26} I seek to transform the perception of Latinas and Latinos away from the characteristic stereotypical portrayals.

This piece, however, will not simply expose the insidious stereotypes of Latinas and Latinos. It will undertake the more involved task of drawing a nexus between the societal prejudice which leads to the stereotyping and the legal and political consequences that result from it.\textsuperscript{27} Specifically, I argue that these media images, myths, metaphors, and stereotypes play a critical role in establishing society's vision of Latinas and Latinos. In other words, these stereotypes serve to reinforce both the characterizations of Latinas and Latinos from the perspectives of both the dominant and the dominated.\textsuperscript{28} These

\begin{itemize}
  \item \textsuperscript{24} On \textit{Saturday Night Live}, the term "Latin Exploitation" was used in lieu of the often used label "Latin Explosion." \textit{Saturday Night Live} (NBC television broadcast, Oct. 18, 1999).
  \item \textsuperscript{25} \textit{But see} Lenora Ledwon, \textit{Zoot Suit: Realism, Romance, and the Anti-Musical-Film as Social Justice, in Screening Justice: The Cinema of Law} (Rennard Strickland et al. eds., forthcoming 2001) (manuscript at 4-5, on file with authors) (describing the possibilities of an enabling, rather than disabling, use of race in popular culture, particularly when the film producer, director or writer is Latina or Latino).
  \item \textsuperscript{28} Professor Juan Perea observes that "the dominant culture was, and remains the culture of white, Protestant, English-speaking Anglo-Saxon Americans." Juan Perea, \textit{Demography and Distrust, An Essay on American Languages, Cultural Pluralism, and Official English}, 77 MINN. L. REV. 269, 270 (1992).
\end{itemize}
stereotypes, in turn, foster and perpetuate two insidious and pernicious effects. First, these stereotypes have an external effect on non-members of the group, reinforcing society's perception or label of Latinas and Latinos as "outsider," "foreigner," or "other." This effect in turn fosters individual and institutionalized hatred and violence. A related external effect is that the stereotypes marginalize the group and silence discourse on issues of importance to the group. The second major insidious consequence of stereotyping, is the internal effect, or the negative effect on the stigmatized. This internal effect attributes a discrediting quality to the victim, which the victim struggles against but may eventually internalize as part of his or her self-image. Thus, the internal effect of stereotyping serves the hegemonic function of having the victim accept his or her negative attributes. The stereotype in essence forces the stigmatized group reflect those qualities that are being stereotyped.

By examining the sociological, political and legal effects of stigma, I seek to demonstrate that while sticks and stones may break bones, words and labels can and do hurt in countless other and equally damaging psychological ways. In the final part of this work, I propose some solutions to the current portrayals of Latinas and Latinos—solutions, which I hope, will begin a dialogue concerning ways to address and rectify the wrongs of marginalizing and

29. The term "outsider" is used to refer to those who are viewed as something other than American citizens or those who do not effectively participate in the political processes, but who are nevertheless affected by its results. Lea Brilmayer, Caroline, Conflicts, and the Fate of the "Inside-Outsider," 134 U. PA. L. REV. 1291, 1316 (1986); see also Richard Delgado & Jean Stefancic, Images of the Outsider in America Law and Culture: Can Free Expression Remedy Systemic Social Ills?, 77 CORNELL L. REV. 1258, 1261 (1992).

30. The term "foreigner" is used here to mean "not only that which is not-American, but also that which is un-American." Natsu Taylor Saito, Alien and Non-Alien Alike: Citizenship, "Foreignness," and Racial Hierarchy In American Law, 76 OR. L. REV. 261, 264 (1997); see Neil Gotanda, Asian American Rights and the "Miss Saigon Syndrome," in ASIAN AMERICANS AND THE SUPREME COURT: A DOCUMENTARY HISTORY 1087, 1095 (Hyung-Chan Kim ed., 1992).

31. An example of the imposition of the "foreigner" or "other" labels occurred when radio celebrity Howard Stern made certain remarks concerning the murder of Tejano music star Selena. Stefanie Asin & R.A. Dyer, Selena's Public Outraged (visited Aug. 31, 2000) <http://www.animaux.net/ster/selena.htm>. Using a purported Mexican accent, Stern mocked and attacked Selena's Mexican fans. Id. What Stern failed to realize was that Selena was American, not Mexican, and her fans were (and are) predominantly U.S. citizens, not Mexican citizens. Anna Haarsager, Selena Biography (visited Aug. 31, 2000) <http://www.hotshotdigital.com/wellalwaysremember/selenabio.html>. This effect consequently promotes and facilitates hatred, and violence—both individual and institutionalized—against Latinas and Latinos.

32. Agustin Gurza, Out of the Picture, L.A. TIMES, Sept. 21, 1999, at B1. Former talk show host Joan Rivers' ignorant and bigoted attempts at being humorous during an appearance on the television slow Politically Incorrect With Bill Maher demonstrates the ease with which the other can be hated. Id. When asked about the lack of minorities on television, Rivers hissed, "Oh, watch 'Jerry Springer,' . . . Watch 'Cops.' I am so sick of this." Id.

33. See Gotanda, supra note 30, at 1096; see also Saito, supra note 30, at 264 (observing that Asian Americans and Arab Americans are also labeled as foreigners in America, and, as with virtually all minorities, are equally stereotyped).
subordinating people of color through stereotyping.

III. THE PORTRAYALS OF LATINAS AND LATINOS IN FILM

While this article could focus solely on the unseemly portrayals of Latinas and Latinos in national print media, because of their prominence, popularity, impact, and impact, this article will also examine portrayals of this group in film. When examining the film industry, irrespective of whether the focus is on a Cuban, Puerto Rican, Mexican, Mexican-American, or a Central or South American character, the themes are the same, and the roles are typically narrow, shallow caricatures that purportedly represent their entire community. If a Latina or Latino is depicted as a romantic interest, he or she is much more likely to be a gang member than a physician. Despite the fact that there are dozens of Latina and Latino law professors, thousands of attorneys with such backgrounds and at least as many in the medical field, a Latina or Latino in a major Hollywood film will almost always be played as a hot-blooded gang member, musician or illegal alien. A Latina or Latino will rarely be portrayed as a working professional such as a physician or attorney, much less as a business leader or government official.

A look at five films will reveal how the film industry characterizes Latinas and Latinos in common stereotyped roles. The five chosen films are among the more popular films that purport to focus on Latinas and Latinos or issues of importance to the group. One of the following four categories is almost always emphasized: hot-blooded lover, gangster, entertainer or immigrant.

The first film examined is the film industry’s, and arguably the dominant culture’s, version of the Latin American dream. It is a tale of the attainment of great wealth despite a life begun in poverty, a classic “Rags to Riches” story—the film is Scarface. It is the story of a Cuban immigrant who flourishes in America, but ironically the title role is played by an Italian-American actor, Al Pacino. What is the key to this immigrant’s success? He assassinates other Cubans and Colombians in order to move up the Latin corporate ladder of cocaine drug-dealing. He is the ambitious, hot-tempered, yet terribly romantic, family-oriented drug lord of Miami. He speaks with a Bronx-like accent, not a Spanish one. He kills, but is perplexed by the consequences he must face. Scarface struggles with his unfulfilled love for a blond white woman, who is

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34. There is a growing interest in the connection between law and popular culture. See generally The Lawyer in Popular Culture (visited Aug. 31, 2000) <http://harlton.law.utexas.edu/1pop/1popbib2.htm>.

35. One of the few instances I can recall is the film Disclosure, where Michael Douglas’ attorney was a Latina. DISCLOSURE (Warner Brothers 1994). While a favorable portrayal, the role was a minor one in the film. Also, in the film My Family, one of the protagonist’s children was a lawyer, yet he was somewhat demonized for being “too white.” MI FAMILIA (MY FAMILY) (New Line Video 1995).

36. SCARFACE (Universal Studios 1983).
the widow of his former Latino drug boss, whom Scarface killed. Scarface’s right-hand man is the love-struck, hot-blooded, Cuban pretty boy, Manny Rivera, played by the only leading actor in the movie who is actually Cuban. Manny fails to protect Scarface in their first drug deal because he is busy talking to and touching a blond white woman in a bikini. Manny’s fall occurs when he is smitten with Scarface’s virginal sister Gina, who in the initial scene of the film is almost child-like, but who next appears in a nightclub having sex in the men’s bathroom. Manny loves Gina; they get married. Scarface is jealous and kills Manny. Gina, in a fit of anger, attempts to seduce Scarface before she tries to shoot him. Unlike most classic American love stories, Scarface ends with blood, gore, cocaine, and murder.

The next film is a Latin film about redemption—a story of forgiveness and of change. Carlito’s Way is a story set in the 1970’s about a Puerto Rican who wants to own a car rental establishment, who is again played again by Al Pacino. The film is purportedly set in Spanish Harlem, on streets filled with stickball players and dancing fools. Carlos Briganti, a.k.a. Carlito, is an ex-con and former heroin dealer known as the “J.P. Morgan of Smack,” but is somehow now impoverished. In one of the first scenes, Carlito meets the new kingpin, Rolando, who is, of course, a Latino. Carlito then has a reunion with his cousin, who is an ambitious drug dealer’s assistant, “mule” or gofer. Carlito’s naive cousin is killed by other Latinos in a drug deal. During that drug deal gone wrong, although initially unarmed, Carlito kills the four Latinos who killed his cousin. Carlito’s right-hand man is Pachanga, an untrustworthy Latino criminal, who eventually betrays Carlito. There are other Latinos in the film, including Sasso, who is a club owner and compulsive gambler.

As with other Latinos in Hollywood, Carlito is also a romantic, who is in love with none other than a blonde white woman. Carlito attempts to ride off into the sunset, but is killed by Benny Blanco, the new up-and-coming young drug dealer, who is, of course, Latino. Carlito’s death is portrayed as inconsequential, because with the next hot-blooded Latino on the way, the stereotypical life of the Latino drug dealer continues.

Hollywood does not exclude Latinas. A popular film on Latina issues and Latina friendship is Mi Vida Loca. The title is not about Ricky Martin’s song but a story of a group of Latinas’ love and friendship. It is Hollywood’s Latin
version of *The Joy Luck Club*. Of course, however, the story revolves around Latina gang members. It is set in Echo Park, Los Angeles, California. While the story is truly about the Echo Park *Locas*, a Latina gang, the film claims that the most important character is Suavecito, a low-rider truck! In this tale, the lead is Sad Girl, a gang member, who fights another gang member and former best friend, Mousey, over the affection of Ernesto, otherwise known as Bullet, the father of both women’s newborn babies. The women eventually bond because their love interest is killed in a drug deal. The women are later mentored by Giggles, who was the first “homegirl” to be incarcerated and who shocks the other homegirls by announcing that she’s getting a job. This movie again confirms “mainstream” America’s stereotypes about Latina and Latino urban gang life.

The next film, *American Me*, is based on a true story, and evidently Hollywood’s story, of the Mexican-American experience, a story of male camaraderie and culture. The lead character is Santana, played by Edward James Olmos. Santana is a convicted gang leader who speaks in rhymes and earned great respect for killing a jailhouse rapist. Santana eventually excels in the criminal world and is appointed head of the “Mexican Mafia” in Folsom Prison. Other characters include Santana’s father, who was a gang member, and Pachuco, who also speaks in rhymes. Santana’s father hates him because Santana may be the by-product of the rape of Santana’s mother by white sailors. Santana’s mother, Esperanza, is also portrayed as a hot-blooded woman who is eventually crushed by life’s tragedies. There is also J.D., a white man who believes he is Mexican. J.D. is the gang member who eventually dethrones Santana. Mundo is also a Mexican-American character, a gang member who eventually carries out the murder of Santana. Once again, this movie shows the death of the lead Latino character at the hands of a fellow Latino leading to the rise in power of a white man.

The last film is the only balanced film examined. It is written and directed by a brilliant Latino, Gregory Nava. This story is truly a tale about a Latino family. A film almost exclusively played by actual Latina and Latino actors, it is the only story examined that does not focus on gangs, drugs, or lust. The movie is entitled *Mi Familia*, or *My Family*. It is not only an excellent film about a Mexican-American family living in the U.S., but it is of significant cultural and historical importance. Indeed, it is one of the few films that even

43. *Id.*
44. *Id.*
45. *Mi Familia* (MY Family), supra note 35.
addresses the tragedy of Operation Wetback of the 1950s. Yet even this film has its stereotypes. Chucho, played by Esai Morales, is the Pachuco leader of the gang known as the Apostles. He is a drug dealer who kills another Latino gang member with a switchblade and is eventually killed by a police officer. Then there is Jimmy, who is a repeat convict and responds to the various losses in life with violence. Finally, there is Guillermo, who is somewhat demonized for going to law school, and is accused of trying to be white, and, of course, falls in love with a blond white woman. Even a well-intentioned movie such as Mi Familia plays into the stereotypical roles, proving that these characterizations continue to plague the Latino-Latina community even from within.

While some of these films have extremely powerful performances, films such as American Me nonetheless depict a series of stigmatizing portrayals. It is in light of these portrayals that a series of questions arise. Why are young Latinos virtually always depicted as gang members or drug dealers? Why do Latinos always fall in love with blond white women? Why are Latinas always so hot-blooded? Why are Latinos always love struck? These questions for the filmmakers could go on and on, but a couple of questions for the reader may be appropriate at this point: How many Latinas and Latinos have you met? How many were gang members, drug dealers, entertainers, or hot-blooded for that matter?

Obviously, there are many other films that address issues about Latinas and Latinos. Some movies, such as And the Earth Did Not Swallow Him, Selena, Stand and Deliver, and El Norte are worthy of credit for more positive portrayals. Yet, all too often, films about Latinas and Latinos perpetuate stereotypes. To name but a few, such films include: (1) Born in East L.A., (2)


47. Id.

48. And the Earth Did Not Swallow Him (Kino International 1994).

49. Selena (Warner Studios 1997).

50. Stand and Deliver (Warner Studios 1987).


Mambo Kings,\textsuperscript{53} (3) Colors,\textsuperscript{54} (4) El Mariachi,\textsuperscript{55} (5) El Super,\textsuperscript{56} (6) Hanging with the Homeboys,\textsuperscript{57} (7) La Bamba,\textsuperscript{58} (8) The Mark of Zorro,\textsuperscript{59} (9) The Milagro Beanfield Wars,\textsuperscript{60} (10) The Perez Family,\textsuperscript{61} (11) Short Eyes,\textsuperscript{62} (12) West Side Story,\textsuperscript{63} (13) Boulevard Nights,\textsuperscript{64} (14) Blood In Blood Out,\textsuperscript{65} and (15) Desperado.\textsuperscript{66} Notably, the films that perpetuate stereotypes about Latinas and Latinos significantly outnumber the films with positive portrayals of such characters.

IV. STIGMA, MYTHS, AND STEREOTYPING

In his book entitled Stigma, sociologist Erving Goffman notes that "society establishes the means of categorizing persons and the complement of attributes felt to be ordinary and natural for members of each of these categories."\textsuperscript{67} He observes that the term "stigma" is an attribute of the stigmatized that is deeply discrediting.\textsuperscript{68} Labeling a person with a stigma signifies that that person "is not quite human."\textsuperscript{69} Through the assignment of stigma to certain groups, society exercises a variety of discriminatory practices, which effectively, and often subconsciously, reduce the life chances of the stigmatized persons.\textsuperscript{70} According

\begin{itemize}
\item \textsuperscript{53} Mambo Kings (Warner Brothers 1992).
\item \textsuperscript{54} Colors (Metro-Goldwyn Mayer 1988).
\item \textsuperscript{55} El Mariachi (Columbia-Tri Star Studios 1992).
\item \textsuperscript{56} El Super (New Yorker Films 1979).
\item \textsuperscript{57} Hanging with the Homeboys (New Line Studios 1991).
\item \textsuperscript{58} La Bamba (Columbia-Tri Star Studios 1986).
\item \textsuperscript{59} The Mark of Zorro (Twentieth Century Fox 1940).
\item \textsuperscript{60} The Milagro Beanfield Wars (Universal Studios 1988).
\item \textsuperscript{61} The Perez Family (Metro-Goldwyn Mayer 1995).
\item \textsuperscript{62} Short Eyes (Paramount Pictures 1977).
\item \textsuperscript{63} West Side Story (Metro-Goldwyn Mayer 1961).
\item \textsuperscript{64} Boulevard Nights (Warner Studios 1979).
\item \textsuperscript{65} Blood In Blood Out (Hollywood Pictures 1993).
\item \textsuperscript{66} Desperado (Columbia-Tri Star Studios 1995).
\item \textsuperscript{68} Id. at 3.
\item \textsuperscript{69} Id.
\item \textsuperscript{70} Id. at 5.
\end{itemize}
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to stigma theory, society constructs an ideology to explain the stigmatized group’s inferiority and rationalize society’s animosity towards it, animosity which is based on the differences highlighted by the stigma. The stigmatizing perspective subtly invites the viewer–society–to justify the stigmatizing viewpoint as “natural, universal, and beyond challenge”; it marginalizes other perspectives to bolster its own legitimacy in defining narratives and images. Likewise, to stereotype is to impose a trait or characterization that may be true of some members of a group upon all member of the group. Thus, both stigma and stereotype have the effect of promoting discrediting attributes as reality.

Critical race scholars have similarly observed that Americans maintain a deep uncertainty as to what they are, and they attempt to resolve that strife by using markers, myths, and metaphors to define minorities and label them as outsiders. American society uses these myths or metaphors as a gauge to determine whether the minority is a “real” American. These myths or stereotypes form a complex web of narratives that “encapsulate the world visions and historical sense of a people or a culture.” These narratives reduce centuries of experience to “constellations of compelling metaphors.” After years of absorbing aggregating myths and compounding falsehoods, America’s mainstream can only see what matches their preconceived notions of how minorities should behave and live.

In a compelling work by Professor Margaret Russell on the depiction of blacks in cinema, she describes the stereotypical depiction of blacks as part of

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71. See, e.g., Sheila T. Murphy, The Impact of Factual Versus Fictional Media Portrayals on Cultural Stereotypes, 560 ANNALS AM. ACAD. POL. & SOC. SCI. 165 (1998) (describing a study which indicated that being exposed to stereotypic portrayals cue internal personal attributions of blame with regard to unrelated events).

72. GOFFMAN, supra note 67, at 5-6.


75. See Murphy, supra note 71, at 168; see also Jeng Fen Mao, Comment, The Racial Implications of The Telecommunications Act of 1996: The Congressional Mandate of Neighborhood Purity, 41 HOW. L.J. 501, 530 (1998) (“Programs that stereotypes [sic] minorities in a contrite manner are solidified into the audience’s minds . . . [and] will be interpreted by audiences as truth”).


77. Id.


79. Id.
the “dominant gaze.” The dominant gaze refers to “the tendency of mainstream culture to replicate, through narrative and imagery, racial inequalities and biases which exist throughout society.” The powerful and evil genius of the gaze “lies in projecting stereotypes and biases as essential ‘truths.’” Truths which mainstream America believes and which minorities battle in their day-to-day lives.

After viewing the history of ethnic depiction of Mexicans, African Americans, Asians, and Native Americans, two prominent scholars have concluded that negative ethnic imagery carries a tremendous amount of social weight. They concluded that when stereotypes are used, the stereotyped group does not recognize the stereotype at the time as a form of discriminatory bias and prejudice but only recognizes the wrongs decades or centuries later. Society simply accepts the currently imposed version of a group’s attributes with little realization that they are false. Thus, such negative myths or metaphors have a social effect. They establish an order and a vision to fit individuals into the requirements created by the myths. Accordingly, while stereotyping in film and other media may at first blush appear to be innocuous, such metaphors as the hot-blooded lover, gang member or illegal immigrant help shape how society perceives a group that it considers as outsiders, and thereby justifies treating such groups as different or foreign.

80. Russell, supra note 73, at 57.
81. Id.
82. Id.
83. Delgado & Stefancic, supra note 29, at 1276.
84. Id. at 1277.
85. Id.
86. Id.
87. Peter Margulies, The Mother with Poor Judgment and Other Tales of the Unexpected: A Civic Republican View of Difference and Clinical Legal Education, 88 N.W. U. L. Rev. 695, 709 (1994) (stating that Anglo society “has never viewed Latinas as participants in the polity, but has typically relegated them to the caricatured role of the ‘hot-blooded’ female”).
88. See, e.g., Adeno Addis, Recycling in Hell, 67 Tul. L. Rev. 2253, 2258 (1993) (linking the “devaluation of the lives of African Americans in one sphere . . . to a process of devaluation in other spheres”).
V. THE INSIDIOUS AND PERNICIOUS LEGAL AND POLITICAL EFFECTS OF STEREOTYPING

A. The External Effects

Why should we be concerned with stereotypes? We need to be concerned about stereotypes because of their insidious and pernicious effects. These effects are both external, which affect societal perceptions, and internal, which affect the self-perception of those stigmatized. The first of the two primary concerns addressed here is that stereotypes directly effect society's perception of Latinas and Latinos. This is what I call the external effect. This outward effect of stereotyping perpetuates the presumption that Latinas and Latinos are outsiders, members of a community that is something other than American. As a result these outsiders are labeled as foreign and are to be treated differently than the rest of Americans. As Professor Kenneth Karst observed:

[c]itizenship and membership . . . form[ ] the components of an exceedingly complex problem in America. Although every citizen could claim a basic set of legal rights, some of these citizens would almost certainly remain outsiders. Actual membership was determined by additional tests of religion, perhaps, or race or language or behavior, tests that varied considerably among segments and over time. Each generation passed to the next an open question of who really belonged to American society. 89

This notion of foreignness has been explored by several critical race scholars including Neil Gotanda, 90 Kevin Johnson, 91 and Natsu Taylor Saito, 92 and, to some extent, myself. 93 Professor Gotanda noted the attribute of outsider or foreigner in his ground-breaking article, The Miss Saigon Syndrome. 94 He

90. See Gotanda, supra note 30, at 1088.
92. See Saito, supra note 30.
94. Gotanda, supra note 30, at 1096.
observed that "within the United States, if a person is racially identified as African American or White, that person is presumed to be legally a U.S. citizen and socially an American, however, these presumptions are not present for Asian Americans, Latinos, Arab Americans, and other non-Black racial minorities." Rather, there is the opposite presumption that these people are foreigners, or, if they are U.S. citizens, that their racial identity includes a foreign component. In Professor Natsu Jenga Saito’s work, she argues that the "model minority myth and its yellow peril underside" promotes "the portrayal of Asian-Americans as perpetual outsiders," which in turn fosters discrimination and violence. Examining the attacks on Judge Ito during the O.J. Simpson murder trial, Professor Saito reminds readers of the ease with which Asian-Americans are portrayed as foreign. In my work, I examine the anomalous status of the inhabitants of Puerto Rico. I have argued that the United States has endowed the inhabitants of Puerto Rico with citizenship status, but also with alien status, by denying them representation in Congress or the right to vote for the Presidency.

In the view of society, these Americans who are labeled as foreigners can and should be treated differently than the collective "us." And American psyche purports that to be an American is to be superior. As Professor Juan Perea observed, "Persons who speak English with a ‘foreign-sounding’ accent regularly are assumed to be ‘less intelligent’ than persons who speak English

95. Id.

96. Id.


98. See Clocks & Counters, ARIZ. REPUBLIC, Apr. 4, 2000, at A2 (explaining how New York State Senator Alfonse D’Amato ridiculed Judge Lance Ito by using a mock Japanese accent on a nationally syndicated radio show); see also Frank H. Wu, Changing America: Three Arguments About Asian Americans and the Law, 45 AM. U. L. REV. 811, 817 (1996) (arguing that although Judge Ito is a judicial figure, and therefore presumed “neutral” in the racially charged O.J. Simpson trial, he was unable to keep his own race from being disparaged).


100. Román, supra note 93, at 3.

101. Id.

102. Id.
with a more socially accepted [American] accent.\textsuperscript{103} Due to accent, language ability, color, and other characteristics,Latinas and Latinos are often viewed by society as inferior.

The disparate treatment of Latinas and Latinos stemming from the stereotypical designation as the outsider or foreigner has a long history of practice within the public institutions of this country. Historically, “[the label] ‘American’ connotes Anglo-European heritage, Christian or western religious traditions, and belief in representative democracy.”\textsuperscript{104} This notion is deeply rooted in this country’s colonial history, and it was at the genesis of that history that the myth of American homogeneity became institutionalized with the perception of a “white identity.”\textsuperscript{105} As John Jay observed in 1787 in \textit{The Federalist Papers}, “Providence has been pleased to give this one connected country to one united people—a people descended from the same ancestors, speaking the same language, professing the same religion, attached to the same principles of government, very similar in their manners and customs.”\textsuperscript{106} Indeed, from the very genesis of Europeans’ conquest of America, myths about indigenous peoples defined the relationship between the Europeans and the indigenous peoples.\textsuperscript{107} Richard Slotkin observed, “The basic factors in the physical and psychological situation of the colonists were the wildness of the land[,] . . . the absence of strong European cultures on the borders[,] and the eternal presence of the native people of the woods, dark of skin and seemingly dark of mind, mysterious, bloody, cruel, devil worshiping.”\textsuperscript{108} In fact, the religious fervor which justified the nineteenth and twentieth century’s imperialistic notion of manifest destiny was premised on the need to civilize the savages.\textsuperscript{109} Similarly, “[r]acial myths about Mexicans appeared as soon as Mexicans began to meet Anglo American settlers in the early nineteenth century. The differences in attitudes, temperament, and behavior were supposed to be genetic.”\textsuperscript{110} As Professor Efren Rivera Ramos described, “the ethos of the


\textsuperscript{104} Saito, \textit{supra} note 30, at 268.

\textsuperscript{105} Id. at 268-69.

\textsuperscript{106} \textit{The Federalist} No. 2 (John Jay).


\textsuperscript{108} Slotkin, \textit{supra} note 78, at 3, 18.

\textsuperscript{109} Román, \textit{supra} note 93, at 1-3.

\textsuperscript{110} Joan N. Moore, \textit{Mexican-Americans I} (1970).
times was a certain ingrained notion of an inherent ‘right’ to expand\textsuperscript{111} “the mission of conducting the political civilization of the modern world,” by taking that civilization “into those parts of the world inhabited by unpolitical and barbaric races.”\textsuperscript{112}

Shortly after the U.S. conquest of the mainland, imperialistic overseas expansion became a focus. After America’s victory in the Spanish-American War, the debate about the expansion was not on the morality of the endeavor, but on what was to be done with the inhabitants of the foreign islands.\textsuperscript{113} Central to this debate was concern over which foreign inhabitants appeared to resemble Americans—in other words, White Americans.\textsuperscript{114} If they were perceived as non-white they were different and should be treated as such.\textsuperscript{115} Specifically, the debate centered on which of the two major post Spanish-American war possessions, either the Philippines or Puerto Rico, should be considered part of the United States and whether their inhabitants should be afforded some form of United States citizenship.\textsuperscript{116} Stereotypical perceptions of Latinas and Latinos played a dominant role during the congressional debates on the status of the acquisitions.\textsuperscript{117} The focal point of the debate was whether the United States would weaken itself with mongrelization.\textsuperscript{118} In 1909, Representative James Slayden argued against accepting Puerto Ricans because “we are of different races . . . we are mainly Anglo-Saxon, while they are a composite structure, with liberal contributions to their blood from Europe, Asia, and Africa. They are largely mongrels now.”\textsuperscript{119} Eventually, Puerto Ricans were granted U.S. citizenship and the island formally became a territory of the United States because unlike Filipinos, Puerto Ricans were characterized as predominantly White.\textsuperscript{120} Filipinos were portrayed as “physically weaklings of low stature, with black skin, closely curling hair, flat noses, thick lips, and

\begin{footnotes}
\item[112] \textit{Id.} at 286-87 (quoting John W. Burgess, \textit{RECONSTRUCTION AND THE CONSTITUTION 1866-1876}, at ix (1923)).
\item[113] \textit{Id.} at 285-87.
\item[114] \textit{Id.}
\item[115] \textit{Id.}
\item[116] In \textit{Scott v. Sanford}, 60 U.S. 393 (1857), the U.S. Supreme Court established the precedent for disparate treatment of inhabitants of the United States based on racial bias.
\item[117] \textit{Id.} at 732.
\item[118] Rivera Ramos, \textit{supra} note 111, at 285-87.
\end{footnotes}
large, clumsy feet." Representative Sereno Payne characterized Puerto Ricans differently; using census reports, he illustrated that the "whites[,] . . . generally full blooded white people, descendants of the Spaniards" in Puerto Rico outnumbered the combined total of "negroes" and "mulattoes" by nearly two to one. Meanwhile, Congressmen viewed Filipinos as "nonwhite," and, therefore, uncivilized and un-American. When comparing Filipinos to Puerto Ricans, Representative Thomas Spight noted "[h]ow different the case of the Philippine Islands, 10,000 miles away. . . . The inhabitants of the Philippines belong to three sharply distinct races—the Negrito race, the Indonesian race, and the Malayan race." Spight then concluded that the Filipinos have nothing in common with Americans and centuries could not assimilate them. Representative John Dalzell likewise stated that he was unwilling "to see the wage-earner of the United States, the farmer of the United States, put upon a level and brought into competition with the cheap half-slave labor, savage labor, of the Philippine Archipelago." Other representatives apparently shared this sentiment; Dalzell's comments were greeted by loud applause in the House. Similarly, Representative George Gilbert warned against "open[ing] wide the door by which these negroes and Asiatics can pour like the locusts of Egypt into this country." Senator William Bate similarly stated:

Let us not take the Philippines in our embrace to keep them simply because we are able to do so. I fear it would prove a serpent in our bosom. Let us beware of those mongrels of the East, with breath of pestilence and [a] touch of leprosy. Do not let them become a part of us with their idolatry, polygamous creeds, and harem habits.

This stereotyping of Puerto Ricans and Filipinos was not limited to Congressional debate. Scholars also contributed to the xenophobia. In a series of articles published in the Harvard Law Review, this fear of foreigners prevailed. One writer noted:

121. 33 Cong. Rec. 1940 (1900) (quoting from a report by the Philippine Commission to the President).
123. Román, supra note 93, at 15.
125. Id.
127. Id.
128. Id. at 2172 (statement of Rep. Gilbert).
129. Id. at 3616 (statement of Sen. Bate).
130. See Gabriel A. Terrasa, The United States, Puerto Rico and the Territorial Incorporation Doctrine: Reaching a Century of Constitutional Authoritarianism, 31 J. MARSHALL L. REV. 55, 56 (1997) (noting that racism by politicians and scholars led to a plan to maintain the new territories as "dependencies," which were not due the same constitutional protections as the states).
Our Constitution was made by a civilized and educated people. It provides guaranties of personal security which seem ill adapted to the conditions of society that prevail in many parts of our new possessions. To give the half-civilized Moros of the Philippines, or the ignorant and lawless brigands that infest Puerto Rico, or even the ordinary Filipino of Manila, the benefit of such immunities... would... be a serious obstacle to the maintenance there of an efficient government.\(^\text{131}\)

Another writer argued that "[w]hat was appropriate in the case of some territories might not be in other cases. A cannibal island and the Northwest territory would require different treatment."\(^\text{132}\) Eventually these concerns and other more legitimate ones\(^\text{133}\) led Congress to decide to treat the two territories differently. The Jones Act of 1916\(^\text{134}\) promised independence to the Philippines, and the Jones Act of 1917 granted a subordinated form of U.S. citizenship to the people of Puerto Rico.\(^\text{135}\)

Recent manifestations of the foreigner label is evidenced by the English-only movement.\(^\text{136}\) This movement is championed by an organization called U.S. English, whose goal is to establish English as this nation's official language.\(^\text{137}\) According to this group, the decline of English and the ascent of

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133. See Cabranes, supra note 120, at 30-32 (noting that more legitimate concerns included proximity, economic considerations, and the Puerto Ricans' lack of resistance to invasion and occupation).


135. See Jones Act of 1917, ch. 145, 39 Stat. 951, 953 (1917) (conferring U.S. citizenship on all "citizens of Porto[sic] Rico" as that term was defined in the Foraker Act). However, even the initial grant of U.S. citizenship did not come without confusion. The Jones Act of 1917 did not make any provision for persons born in Puerto Rico after the passage of the Act. *Id.* The Immigration and Nationality Act of 1952 generally resolved this confusion:

All persons born in Puerto Rico on or after April 11, 1899, and prior to January 13, 1941, subject to the jurisdiction of the United States, residing on January 13, 1941, in Puerto Rico or other territory over which the United States exercises rights of sovereignty and not citizens of the United States under any other Act, are hereby declared to be citizens of the United States as of January 13, 1941. All persons born in Puerto Rico on or after January 13, 1941, and subject to the jurisdiction of the United States, are citizens of the United States at birth.


137. *Id.* at 9.
other languages results from a failure to assimilate. They believe that the ability to speak English is proof of one's loyalty to this country. As Professor Martinez has observed, if a person, including a Latina or Latino, fails to speak English that person has not assimilated and is therefore necessarily disloyal. Professor Perea similarly concluded that "official English is a movement fueled by prejudice and fear directed at Hispanics." Other characterizations of the outsider or foreigner have also had the external effect of justifying individual and institutionalized violence. Two recent individualized race-based murders of Asian-Americans were justified by the murderers because the victims were "chinks," "Viet Cong," or "Vietnamese." Despite the unseemliness of such thinking, most of us suffer from similar biases. Looking at relatively recent news events that incidently were caught on film illustrates our own perceptions of foreignness. The attacks on Reginald Denny and Rodney King repulsed us; these incidents caused a national outcry, and criminal prosecutions of the attackers were widely reported by the media. Yet, a short time after those events, another attack was caught on film which resulted in little or no public outcry. During a stop by California police, a camera captured individuals who "appeared" to be Latino fleeing from a vehicle, and officers viciously striking two victims and forcibly pulling a woman out of her vehicle. Society at large did not object, nor did

138. Id. at 10; see also Bender, supra note 21, at 7-8 (noting that Latino singers such as Ricky Martin, Marc Anthony, and Enrique Iglesias did not achieve real success and fame until the release of English songs, indicating an "unwillingness of the American public to accept Spanish as a legitimate language of mainstream communication"). Bender also observes that Enrique Iglesias is labeled as a Latino singer, though he is from Spain and has lived in Miami since the age of nine. Id. at 13. Apparently, the ability to sing in Spanish qualifies one to be labeled a Latino, thus reinforcing the traditional stereotypes.


140. Martinez, supra note 136, at 10.

141. Perea, supra note 28, at 278.

142. Saito, supra note 30, at 310 (quoting from articles addressing the effects of the "Asian-as-foreigner" stereotype on criminal prosecutions).

143. See Anthony V. Alfieri, Defending Racial Violence, 95 COLUM. L. REV. 1301 (1995) (analyzing the "racialized" defense used by attorneys for the two African American men charged with dragging Reginald Denny, a white man, out of his truck and beating him during the L.A. riots).

144. Kenneth B. Noble, The Endless Rodney King Case, N.Y. TIMES, Feb. 4, 1996, at 5 (detailing the numerous trials and proceedings stemming from the attack).

145. Id.


147. Id.
it demand justice, because it perceived these individuals, without any evidentiary basis other than they "appeared" to be Latino and fleeing, to be illegal immigrants.\textsuperscript{148} Apparently, we felt we did not need to care.

The external effect of violence facilitated by the stereotypes of the foreigner is not limited to individualized attacks. Perhaps the most infamous example of American institutionalized violence against minorities during this century is the decision during World War II to intern Japanese-Americans, as well as Japanese immigrants. The United States Supreme Court ruling in \textit{Korematsu v. United States}\textsuperscript{149} shows how even American citizens may be treated as aliens when they are viewed as something other than the collective "us." In \textit{Korematsu}, the Supreme Court allowed U.S. citizens who were of Japanese ancestry to be incarcerated in internment camps.\textsuperscript{150} U.S. citizens of German or Italian decent were not sent to internment camps, even though the U.S. was at war with Germany and Italy.\textsuperscript{151} This distinction demonstrates that the label of citizen is not dispositive of the rights one has if one is perceived to be a foreigner. The \textit{Korematsu} court endorsed a governmental decision to incarcerate all those perceived to be the foreign enemy,\textsuperscript{152} relying only on stigmatizing labels to define the term. Similarly, Latinas and Latinos have been shot, beaten, and even killed by citizens and police claiming to be justified in their actions by reasons other than their racial classification of the victims.\textsuperscript{153}

The stereotyping of Latinas and Latinos as foreigners also justifies violence against the foreigner as necessary and even desirable.\textsuperscript{154} Notice the current popular depictions of illegal immigrants as Mexicans who have illegally crossed the border, despite the fact that at least as many illegal immigrants are the result of individuals overstaying their visas.\textsuperscript{155} A classic example of the current anti-foreigner fever and the potential consequences of such labeling is California's attempt to implement Proposition 187, which would have denied illegal aliens access to government-funded social services including health care and education.\textsuperscript{156} The campaign to pass Proposition 187, and its characterization of Latinas and Latinos as foreigners, played a consequential

\begin{enumerate}
\item[148.] In the aftermath of the 1994 earthquake in Los Angeles, Representative Dana Rohrabacher purportedly was able to determine that Latino-Latina recipients of earthquake aid were illegal immigrants because "[w]hen I walked down the street, I didn't hear anyone speaking English." Patrick J. McDonnell, \textit{Two Legislators Call for Cutting Off Quake Aid to Illegal Immigrants}, \textit{L.A. TIMES}, Jan. 29, 1994, at 24.
\item[149.] 323 U.S. 214 (1944).
\item[150.] \textit{Id.} at 217.
\item[151.] \textit{Id.}
\item[152.] \textit{Id.}
\item[153.] See Kwei Yung Lee, \textit{ supra} note 22.
\item[154.] \textit{Id.} at 443-48.
\item[155.] \textit{STEPHEN H. LEGOMSKY, IMMIGRATION AND REFUGEE LAW AND POLICY} 955 (2d ed. 1997).
\end{enumerate}
role in former California Governor Pete Wilson's re-election campaign. Television advertisements emphasized Wilson's support for the proposition as they depicted "shadowy Mexicans" crossing the border in large numbers. Much of the support voiced for the proposition used loaded pejoratives such as "those little f—kers" and even suggested that California may become "a third world country" or "annexed." Obviously, Proposition 187, though facially neutral, centered on the issue of race and proponents gained support by stirring the fear of the foreigner. While some may suggest that appropriate immigration limits are warranted, if Proposition 187 was implemented further stereotyping and stigmatizing of Latina and Latino immigrants would likely result with profound negative effects. There is a well-founded historical basis for fearing this result.

In 1954, the United States Government initiated "Operation Wetback," the campaign to deport undocumented Mexicans. During this massive campaign over a million Mexican immigrants, as well as U.S. citizens of Mexican ancestry, and perhaps other Latinas and Latinos, were deported. The Mexican-American community was directly affected by this campaign because it was "aimed at a racial group, which meant that the burden of proving one's citizenship fell totally upon people of Mexican descent. Those unable to present such proof were arrested and returned to Mexico."

Similarly, if Proposition 187 were implemented, authorities could presume that those of Mexican ancestry and even other Latinas and Latinos were illegal; this presumption could lead to the denial of benefits and related deprivations for Latinas and Latinos unless they could prove citizenship. Such negative consequences have resulted from provisions of U.S. Immigration Laws that permit sanctions against those who employ undocumented persons. In fact, the U.S. Commission on Civil Rights has found "no doubt that the employer


158. Johnson, Magic Mirror, supra note 91, at 1144.

159. Id.

160. Id. at 1143-45.

161. Id.

162. Unz, supra note 157.

163. GARRA, supra note 46, at 227-32; see also SAMORA, supra note 46.

164. GARRA, supra note 46, at 227.

165. Johnson, Magic Mirror, supra note 91, at 1138; see also Noriega, supra note 23, at 415.

166. See GARRA, supra note 46, at 231; SAMORA, supra note 46, at 52.

sanctions have caused many employers to implement discriminatory hiring practices.”

Similarly, Dean Kevin Johnson, in the context of nativism, noted that the biases in immigration laws have an impact far beyond provoking mere dislike. Johnson asserts that, if given a chance, the U.S. will deny rights and benefits to minority citizens and residents just as they do to foreigners. He also observes that modern immigration laws have disparate racial impacts and these laws stem from nativism which affects our politics and laws. In another of his works, he argues that viewing Latinas and Latinos as outsiders facilitates movements on limiting birthright citizenship. He observes that “much of the vehemence of the anti-immigrant sentiment in the modern United States can only be attributed to racial prejudice.”

In a similar vein, the portrayal of minority groups as the “other” or as “foreign” also facilitates the identification of such groups as the enemy. Professor Taylor Saito supports this point by looking to the Alien and Sedition Acts of 1798, as well as the Alien Enemies Act and the Alien Friends Act, which allowed the government to deport aliens. The Sedition Act went as far as permitting deportations of any foreign-born critics. Professor Juan Perea likewise concluded that “the American identification of foreign origins with disloyalty to the United States and its form of government has been a prominent theme throughout American legal history.” The characterization of the foreigner as the enemy also obviously influenced government decision to intern Japanese-Americans during World War II. Other examples of institutionalized hatred and violence include this country’s exclusionary naturalization laws. As Professor Ian Haney López observed in his book, America’s fear of and hate for those other than whites manifested itself for well


169. Johnson, Magic Mirror, supra note 91, at 1116.

170. Id.


172. Johnson, Racial Hierarchy, supra note 91, at 347.

173. Id. at 349.

174. Saito, Model Minority, supra note 97, at 81.

175. Alien and Sedition Act of 1798, ch. 74, 1 Stat. 596 (1798); see also Perea, supra note 103.

176. Alien Enemy Act, ch. 58, 1 Stat. 577 (1798); see also Kenneth L. Karst, Paths to Belonging to the Constitution and Cultural Identity, 64 N.C.L. REV. 303, 315 (1986).

177. Alien Friends Act, 1 Stat. 570 (1798).

178. See Saito, Model Minority, supra note 97, at 81.

179. Perea, supra note 103, at 855.

180. Saito, Model Minority, supra note 97, at 82.

over a century through national citizenship law. In an effort to restrict citizenship on the basis of race, the 1790 Naturalization Act established a regime to determine whether one could become a citizen and limited naturalization to “any alien, being a free white person who shall have resided within the limits and under the jurisdiction of the United States for the term of two years.” In two cases, In re Ah Yup, and In re Saito, federal courts held that Asians were of the “Mongolian race” and therefore were excluded from naturalization. The Supreme Court of California similarly observed that “persons of the Mongolian race are not entitled to be admitted as citizens of the United States.” Until 1870, only a “free white person” could be naturalized. It was only after the Civil War that Congress added “persons of African descent” to the list of those who may be naturalized. It was not until 1952 that other non-whites could be naturalized. Professor Haney López studied United States naturalization laws from 1790 to 1952, the period when only “white” and African-descended immigrants were allowed, by law, to be naturalized as citizens. These racially restrictive laws narrowed the type of people who could immigrate to the United States, thereby shaping “the pool of physical features now present in this country.” Thus, the great vision of a white America, which many would argue still permeates federal policy in the immigration field, had its roots in the genesis of the United States.

Another important effect of stereotypes and stigma on society is that they foster presumptions in law about the stereotyped, particularly presumptions about the stereotyped person’s inability to assimilate. A classic example of the use of such presumptions is in the United States Supreme Court decision

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182. Id. at 1.


184. Id.

185. In re Ah Yup, 1 F Cas. 223, 1878 U.S. App. LEXIS 1593, at **9 (C.C.D. Cal. 1878) (noting that the defendant was of Chinese descent).


187. Ah Yup, 1878 U.S. App. LEXIS 1593, at **5; see also Saito, 1894 U.S. App. LEXIS 2281, at **3.

188. In re Hong Yen Chang, 24 P. 156, 157 (Cal. 1890); see also In re Takuji Yamashita, 70 P. 482 (Wash. 1902).


190. Haney López, supra note 181, at 44.


192. Haney López, supra note 181, at 44.

193. Id.
In *Hernandez*, the Court considered whether exclusion from a petit jury because of bilingualism and arguably associated traits of national origin violated the Equal Protection Clause. The Court ultimately allowed the peremptory exclusion of bilingual Latinas and Latinos from juries considering Spanish-language testimony. Professor Juan Perea noted that “[t]he *Hernandez* opinion reveals that the Court’s discourse and its understanding with respect to the ethnic and linguistic differences between Americans are inadequate.” Perea argues that the government’s concern over Spanish-speaking jurors stems from fears that Spanish-speaking jurors would reject an official interpreter’s version of testimony and by doing so could undermine jury deliberations. In reaching its conclusion, the Court in *Hernandez* presumes that native Spanish speaking jurors are so different than the rest of “us” that they could not be trusted with accepting directions from the trial court to accept only the official version of the testimony.

Another external effect of stereotyping is that it facilitates the silencing or marginalizing of the group and issues that are of importance to the group. The portrayal of a minority need not be officially endorsed under the law; the subjugation may start when the majority merely perceives the minority as being outside the norm. For instance, the stereotyping of German Jews as exploitative and criminal prompted treating them “as a lesser class of persons” leading to their eventual near annihilation.

The foreigner or outsider label marginalizes Latinas and Latinos to such an extent that they become invisible in the American political landscape. The words of Ralph Ellison ring eerily true when used to describe a Latino:

I am an invisible man. No, I am not a spook like those who haunted Edgar Allan Poe; nor am I one of your Hollywood-movie ectoplasm. I am a man of substance, of flesh and bone, fiber and liquids—and I might even be said to possess a mind. I am invisible, understand, simply because people refuse to see me. Like the bodiless heads you see sometimes in circus sideshows, it is as though I have been surrounded by mirrors of hard, distorting glass. When they approach...

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195. *Id.*

196. *Id.* at 372.


198. *Id.* at 21.


200. *Id.* at 42.

201. *Id.*
me they see only my surroundings, themselves, or figments of their imagination—indeed, everything and anything except me.202 Simply stated, Latinas and Latinos are neither seen nor heard because we are perceived as something other than American. Therefore, we do not matter to the American psyche. We are invisible.

The recent national uproar over the release of eleven Puerto Rican individuals convicted of sedition and related crimes ironically demonstrates how Latinas and Latinos are made invisible. In September 1999, President Clinton offered clemency to fourteen jailed members of the Puerto Rican independence organization known as the Armed Forces of National Liberation.203 Eleven accepted the offer after renouncing violence or the advocacy of violence to reach their aims.204 This clemency deal resulted in a national debate, with features on all the network television news programs and weekly shows such as Meet the Press.205 Subsequently, the U.S. Senate, in a 95-2 vote, denounced the President’s clemency deal, and some Republican leaders even accused the administration of blocking FBI testimony at a hearing on the deal.206 The House of Representatives, in a 311-41 vote, similarly condemned the clemency offer.207 The President even had to publicly deny that the clemency deal was a politically-motivated maneuver to assist his wife’s expected Senate candidacy in New York.208

The truly interesting aspect of this political debate was that it marked the first time in recent memory where issues of Puerto Rico’s autonomy were almost addressed. Despite the fact that for over a century, Puerto Rico has existed under the colonial control of the United States,209 few in legal, academic, or political circles have ever addressed the issue.210 The clemency issue did not rise to the national forefront because of concerns about human rights, international law, equality, or justice. The issue, touching on Puerto Rico’s self-determination, was now a concern for Americans because they now believed they could be affected by the clemency deal. No one discussed the four million American citizens who endure a disenfranchised and subordinated citizenship status, but only in the context of the danger to “true” Americans.

204. Id.
205. Id.
206. Senate Denounces Puerto Rico Clemency Deal, MIAMI HERALD, Sept. 15, 1999, at 10A.
207. Clinton: No Politics Involved, MIAMI HERALD, Sept. 10, 1999, at 18A.
208. Id.
210. Román, supra note 93, at 15.
America cared because now these eleven "terrorists" could one day bomb us. Not once were the U.S. citizen inhabitants of Puerto Rico treated as members of the collective "us." They are outsiders whose issues only concern us when they may threaten us. This marginalizing effect is likely the same reason why Americans have little concern over the U.S. naval bombings of an island named Vieques, located off the coast of Puerto Rico, inhabited by thousands of U.S. citizens.\(^{211}\) As Representative Dan Burton recently voiced, "Try convincing your constituents to accept that having uranium-coated bombs dropped within a few miles of their homes, schools, hospitals and public parks is acceptable."\(^{212}\) Despite the Representative's compassionate remarks, few in Congress, academia, the media or anywhere else concerned themselves with the problem of "those people."

A related marginalizing effect of the foreigner label is being treated as a guest in someone's home despite the fact that you are home.\(^{213}\) The treatment of Representative Luis Gutierrez of Illinois a few years ago illustrates this point.\(^{214}\) After attending a Puerto Rican Affirmation Day tribute to the 743 Puerto Rican soldiers killed and the 2,797 wounded in the Korean War,\(^{215}\) Representative Gutierrez, who is of Puerto Rican ancestry, was prevented from entering the nation's capitol by a security officer.\(^{216}\) In addition to accusing Representative Gutierrez of presenting false Congressional credentials, the officer shouted, "Why don't you and your people just go back to the country you came from?"\(^{217}\) While the issue has gone virtually unnoticed on the national level, the Chicago Tribune poignantly observed, "For Puerto Ricans, it is a peculiar part of the American experience to be treated as a foreigner in your own land. To be told with scorn to go back to your own country, when you're already there."\(^{218}\) The treatment of Representative Gutierrez is a classic example of the absurdity and offensiveness of the foreigner label. This is because on the footsteps of the U.S. Capitol, a police officer essentially directed a U.S. Congressman to go back to the United States.\(^{219}\) In an earlier work, I examined this and other similar incidents and concluded that the foreigner label results in the inhabitants of Puerto Rico, who are U.S. citizens, being treated

\(^{211}\) Id.

\(^{212}\) Maurice Ferre, Either It's the Republic of Puerto Rico or Statehood, MIAMI HERALD, Nov. 1, 1999, at 9B.

\(^{213}\) See Saito, supra note 30, at 307.


\(^{215}\) Id.

\(^{216}\) Id.

\(^{217}\) Id.

\(^{218}\) Jackson & de la Garza, supra note 214.

\(^{219}\) Román, supra note 93, at 4.
as inferior to other U.S. citizens.\textsuperscript{220} These American citizens are endowed with the immutable characteristics of aliens as well as citizens.\textsuperscript{221} As a result they are treated differently, face with hatred, and do not enjoy the full compliment of rights that other U.S. citizens enjoy.\textsuperscript{222}

**B. The Internal Effect**

The second major legal and political consequence of stereotyping is its effect on the stigmatized or stereotyped. This is what I describe as the internal effect. Here, stereotyping serves the hegemonic function of having the stigmatized accept the stigma. In his book on stigma, Erving Goffman observes that while the stigmatized individual tends to hold the same beliefs about identity that we do, “he may perceive, usually quite correctly, that whatever others profess, they do not really ‘accept’ him and are not ready to make contact with him on ‘equal grounds.’”\textsuperscript{223} More importantly, Goffman notes that the stigmatized may even begin to accept the discrediting quality of the stigma.\textsuperscript{224} The stigmatized:

\begin{quote}
has incorporated from the wider society [the standards that] equip him to be intimately [aware] of what others see as his failing, inevitably causing him, if only for moments, to agree that he does indeed fall short of what he really ought to be. Shame becomes a central possibility, arising from the individual’s perception of one of his own attributes as being a defiling thing to possess, and one he can readily see himself as not possessing.\textsuperscript{225}
\end{quote}

The role that stereotyping has on minorities’ self-image is well documented.\textsuperscript{226} In 1967, President Lyndon B. Johnson appointed Illinois Governor Otto Kerner to head a Commission to investigate, among other things, the way in which the white media depicted minorities in its coverage of the civil disturbances during the 1960s.\textsuperscript{227} The Kerner Commission concluded that the media failed to depict

\begin{flushleft}
\textsuperscript{220} Id. at 3.
\textsuperscript{221} Id.
\textsuperscript{222} Id. at 15 (noting that inhabitants of Puerto Rico, unlike other U.S. citizens, only have limited rights under the constitution).
\textsuperscript{223} GOFFMAN, supra note 67, at 7.
\textsuperscript{224} Id.
\textsuperscript{225} Id.
\textsuperscript{227} U.S. COMM’N ON CIVIL RIGHTS, WINDOW DRESSING ON THE SET: WOMEN AND MINORITIES IN TELEVISION 1 (1977) (citing Kerner Commission Report of the Advisory Commission on Civil Disorders 1 (1968)).
\end{flushleft}
the frustrations of minorities that engaged in the disturbances. In 1970, the United States Commission on Civil Rights concluded that racism resulted in the pervasive "perception of Whites as the only normal Americans." In 1977, the United States Civil Rights Commission recognized the role television played in forming such perceptions, and conducted a study of the portrayal of minorities on network television. The study concluded that when minorities were depicted on television they were usually shown in "token or stereotyped roles." Two years later, the Commission concluded in another study that racial stereotyping had in some instances "actually intensified." A 1993 study by an Advisory Committee to the U.S. Civil Rights Commission concluded that the unfair portrayal of minorities in electronic and print media has produced negative self-images for people of color. Recent critical legal articles have argued that stereotypical portrayals of minorities in the media serve to reinforce negative beliefs minorities hold about themselves. "The overwhelming research literature suggests that media distortions that negatively impact the self-esteem of African-American children may preclude them from achieving self-actualization or 'impede their ability to realize their personal and academic potential in American society.'

The effect of stereotyping on the stigmatized can be aptly characterized as the success of white hegemony. Nineteenth century social and political theorist Antonio Gramsci defined hegemony as "the 'spontaneous' consent given by the great masses of the population to the general direction imposed on social life by the dominant fundamental group." "A dominant culture enjoys [the fruits of] hegemony when the dominant culture's point of view becomes 'common sense' to both the dominant and subordinated groups." "Under hegemonic conditions, the subordinate groups 'wear their chains willingly.' Condemned to perceive reality through the conceptual spectacle of the ruling class, they are unable to recognize the nature and extent of their own

228. Id. at 10.
230. U.S. Comm'n on Civil Rights, supra note 227, at 3.
231. Id.
233. Minn. Advisory Comm'n to the U.S. Comm'n on Civil Rights, Stereotyping of Minorities by the News Media in Minnesota 35 (1993).
234. Worthy, supra note 226, at 533-35.
235. Id. at 536 (quoting from Camille O. Cosby, Television's Imageable Influences: The Self-Perceptions of Young African-Americans (1994)).
236. Worthy, supra note 226, at 536-37.
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Hegemony creates scenarios where “opposition and difference are co-opted rather than silenced, and often modified and stripped of their critical content,” thereby leaving the subordinate group in the same, if not worse, situation and continues the cycle of stigmatization.

In many ways, stigma and stereotyping are more insidious and dangerous than classic overt discriminatory practices. Instead of inciting or provoking opposition it causes both the dominant and the dominated to become convinced “that the existing order . . . is satisfactory.” In light of the fact that Latinas and Latinos are inundated with negative reinforcement from film, television and print media, there is good reason to believe that this group will become complicit in embodying the characterizations the dominant culture has assigned. In effect Latinas and Latinos will become experts in their discrediting attributions, believing that the dominant gaze accurately depicts them.

VI. SOLUTIONS? TEARING DOWN THE VEIL OF IGNORANCE BY TELLING OUR OWN STORIES

Scholars have made many proposals to address racism and stereotyping. These proposals have ranged from regulating derogatory speech to assimilating into White America. Solutions, such as assimilation or regulating speech, prove to be unrealistic and legally burdensome; however, I look to embrace our stories and begin to tell them the way they should be told—in our own voice. As a first major step in confronting stereotypes, our stories should be told by those who have personally lived the Latino-Latina experience. We should support those who show balanced and accurate


240. Jaramillo, supra note 238, at 213 (quoting HOWARD WINANT, RACIAL CONDITIONS 29 (1994)).


242. For those Latina and Latino readers, I ask that you recount, if you can, the times that you or those close to you have accepted the dominant gaze about our nationalities, color, intellect, musical aptitude, or other socializing trait.

243. The author is aware that there is a whole field of “Legal Storytelling” which forms a part of the Law as Art movement. See generally JURISPRUDENCE: CONTEMPORARY READINGS, PROBLEMS, AND NARRATIVES (Robert L. Hayman & Nancy Levit eds., 1994); see also GARY BAGNALL, LAW AS ART (1996).

244. Worthy, supra note 226, at 550.


246. Scholars have suggested a host of other remedies. See, e.g., Perea, supra note 103, at 805 (suggesting that “national origin” protection of Title VII should include alienage).

247. Greene, supra note 78, at 2043.
depictions of Latinas and Latinos in the United States.248

As Professor Charles Lawrence reminds us, “the hardest work to be done in the struggle against white supremacy must be done within and among communities of color.”249 Among his proposed tasks, he concludes that we must understand the complex interrelatedness of our racial subjugation, confront our own racist beliefs and the ways we perpetuate white supremacy, and resist constructions of race that divide and demean us.250 Consequently, as Latinas and Latinos, we must become active participants in the formation of the perceptions of our own people.

This proposal for Latino-Latina storytelling is in the spirit of philosophers Jacques Derrida and Jean-Francois Lyotard’s notions of Justice.251 According to Derrida, justice is an “incalculable demand to treat the other on the other’s terms.”252 In other words, “[t]o address oneself in the language of the other is, it seems, the condition of all possible justice.”253 For Lyotard, the dominant group’s idea of justice may silence subordinate persons.254 When this results, according to Lyotard, a “differend” results, which is an experience that arises “when there is a conflict between two conceptions of justice, and there is an effort to judge an individual who does not hold the foundational views of the regime that stands in judgement on him.”255 As Professor Martinez observed, the narrative by the affected subordinate group “provides a language for minorities to communicate harms.”256 In this piece, I seek to promote similar notions of justice by providing a voice, a distinctively Latino voice, which vehemently demands that Latinas and Latinos must not be defined in the demeaning stereotypical ways that are now common in popular culture.

Professor Gerald Lopez argues that “[w]e need more novels, more short stories, more plays. We need more telenovelas, more concerts, more feature-length movies. We need more histories, more biographies, more memoirs, in print and on the small and large screen. We need more ethnographies, more surveys, more impossible-to-categorize-but-illuminating accounts of Latino

248. Cf. Delgado & Stefancic, supra note 29, at 1280-81 (arguing that, as a subordinate group, one can think, talk, read, and write one's way out of bigotry only to a limited extent).


250. Id. at 828.


252. Id.

253. Id.


255. Id.

256. Id. at 686.
life." Accordingly, balanced works, such as those of Gregory Nava, should be applauded, as well as honestly critiqued. As Professor Robert Chang proposed in his call for Asian-American scholarship, Latina and Latino scholars, and also as those of us in other fields, must do our part to tell our stories. Accordingly, we must reclaim our identities in journals, op-eds, in our classrooms, and even in children's books. Many of us have stories that are filled with great achievement. We must ensure that the stories told about us are truly our own, and not what the dominant culture believes to be reality. We should feel proud and obligated to tell our version of reality, our American stories.

In that vein, I will begin and end here with my own story. I was very fortunate not to be coopted by societal perceptions of Latinos, specifically of Puerto Ricans. Neither Juan Epstein of Welcome Back Kotter, nor Chico of Chico and the Man, nor Cheech Marin of Up in Smoke defined my identity. A Latina by the name of Carmen Hernandez is the reason that my identity and my pride in my culture is well-grounded. Though born the eldest daughter of seventeen children and taken out of school in second grade, she ensured that her son would always know the promise and power of education when faced with struggles or strife. I can recall her encouraging words, "No te preocupes mi hijo, tu tienes un gran porvenir." Loosely translated, it meant, "Never worry, your future will be bright."

So, it is with great pride that I attempt to honor her and my culture with every word I put to paper, with every class I teach, and every presentation I make. Despite the considerable force of stigma, I know that with every professional effort I undertake, I challenge the dominant culture's perceptions of Puerto Ricans. I relish my small part in deconstructing society's portrayals.

258. See Martinez, supra note 254, at 702-06 (arguing for the "outsiders or minorities" use of the narrative in order to challenge constructions of reality).
260. See, e.g., Román, supra note 13.
261. Professor Steven Bender observes that Latin music may serve as a vehicle to develop unity and pride among Latinas and Latinos—a pan-Latino identity of sorts. See Bender, supra note 21, at 16.
262. Id. (noting that in the "LatPop" music genre, the Latin influence typically comes from the vision of the dominant culture, as the executives, writers, producers, and those with creative control are white).
264. Chico and the Man (NBC Studios 1974).
265. CHEECH & CHONG'S UP IN SMOKE (Paramount Pictures 1978).
While like Scarface,\textsuperscript{266} Carlito,\textsuperscript{267} and Santana,\textsuperscript{268} I may have been born poor in Spanish Harlem, unlike the prototypical portrayal of a Latino, I am well-educated, a former Wall Street attorney, and now a law professor and scholar. I have never been in a gang, I am not a drug dealer, I cannot carry a tune, and, despite mighty efforts, I am not even that hot-blooded.\textsuperscript{269}

\begin{footnotesize}
\begin{enumerate}
\item See supra Part II.
\item Id.
\item Id.
\item I certainly hope that my wife would beg to differ, at least in some respects.
\end{enumerate}
\end{footnotesize}