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### What If John Calmore had a Latino/a Sibling?

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**SCHOOL OF LAW**

**What if John Calmore had a Latino/a Sibling?**

Richard Delgado & Jean Stefancic

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# WHAT IF JOHN CALMORE HAD A LATINO/A SIBLING?\*

RICHARD DELGADO\*\* AND JEAN STEFANCIC\*\*\*

*Over the course of a long career, John Calmore has addressed a host of issues having to do with housing for minority communities, particularly African Americans. These issues include redlining (refusal to extend credit or insurance for housing in black areas), segregation, and substandard municipal services. Although Calmore's work is pathbreaking, the body of housing law scholarship to which he is a principal contributor often devotes scant treatment to housing and land use issues facing Latinos. The following Article outlines what some of those issues are and puts forward an agenda for future scholarship in this area.*

INTRODUCTION .....	770
I. HOUSING AND LAND USE ISSUES AFFECTING LATINOS .....	771
A. <i>Substandard Housing</i> .....	772
1. <i>Texas Colonias</i> .....	772
2. <i>Migrant Housing</i> .....	775
B. <i>Hazleton and Its Counterparts</i> .....	776
C. <i>Restoration of Traditional Lands in the Southwest</i> .....	777
1. <i>Reies López Tijerina and the Tierra Amarilla Land Revolt</i> .....	778
2. <i>The General Accountability Office Report on Western Land Claims</i> .....	779
3. <i>Lobato v. Taylor and Southern Colorado Land Rights</i> .....	780
4. <i>Puerto Rico</i> .....	781
II. BEYOND THE BLACK-WHITE BINARY OF RACE: A FRAMEWORK FOR ADDRESSING LATINOS' HOUSING AND LAND ISSUES .....	782
A. <i>The Relevance of Latino History: A Brief Review</i> .....	782
B. <i>Latino Legal History</i> .....	783

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C. <i>Ramon, Suzie, and a Moonlit Night: Using Postcolonial Theory To Interpret the Latino/a Condition, Including Housing</i> .....	785
1. Race: The Triple Taboo.....	787
2. Revisiting Latino Housing and Land Use Issues in Light of the Group's History and Social Construction.....	788
CONCLUSION.....	789

## INTRODUCTION

Over the course of a long career, John Calmore has proven himself a brave and noble “integration warrior,”<sup>1</sup> particularly for African Americans in the area of housing. The author of major articles on the Fair Housing Act,<sup>2</sup> hypersegregation, and the meaning of integration<sup>3</sup> in an increasingly multiracial world, Professor Calmore’s voice is the most impressive addressing housing law issues for minorities of color.

Partly because he stands so far ahead of everyone else, he has no real counterpart<sup>4</sup> among Latinos, even though this group faces serious housing problems of its own. If Professor Calmore had such a Latino counterpart, what issues might he or she address? What should be on the agenda of a future Latino “Juan or Juanita Calmore” when that community develops its own version of him?

Professor Calmore has been commendably ecumenical in his concerns, integrating consideration of nonblack groups into his housing law scholarship at a number of points. Unlike some race scholars,<sup>5</sup> he is free of

1. See John O. Calmore, *Random Notes of an Integration Warrior*, 81 MINN. L. REV. 1441 (1997).

2. 42 U.S.C. §§ 3601–31 (2000).

3. See, e.g., John O. Calmore, *Fair Housing and the Black Poor: An Advocacy Guide*, 18 CLEARINGHOUSE REV. 606 (1984); John O. Calmore, *Fair Housing vs. Fair Housing: The Problems with Providing Increased Housing Opportunities Through Spatial Deconcentration*, 14 CLEARINGHOUSE REV. 7 (1980); John O. Calmore, *North Carolina's Retreat from Fair Housing: A Critical Examination of North Carolina Human Relations Council v. Weaver Realty Co.*, 16 N.C. CENT. L.J. 154 (1987); John O. Calmore, *Race/ism Lost and Found: The Fair Housing Act at Thirty*, 52 U. MIAMI L. REV. 1067 (1998) [hereinafter Calmore, *Lost and Found*]; John O. Calmore, *Racialized Space and the Culture of Segregation: "Hewing a Stone of Hope from a Mountain of Despair"*, 143 U. PA. L. REV. 1233 (1995); John O. Calmore, *Spatial Equality and the Kerner Commission Report: A Back-To-The-Future Essay*, 71 N.C. L. REV. 1487 (1993).

4. By “counterpart,” we mean a Latino or Latina performing similarly impressive work in the area of Latino/a housing problems. At times, we will refer to the imaginary counterpart as Calmore’s “sibling.”

5. See, e.g., Juan F. Perea, *The Black/White Binary Paradigm of Race: The “Normal Science” of American Racial Thought*, 85 CAL. L. REV. 1213 (1997) (developing an extended argument for the proposition that traditional U.S. race discourse incorporates such an unspoken structure); Richard Delgado, *Rodrigo's Fifteenth Chronicle: Racial Mixture, Latino-Critical Scholarship, and the Black-White Binary*, 75 TEX. L. REV. 1181 (1997) (book review) (same).

the habit of placing two groups, blacks and whites, at the center of his analysis and pronouncing them paradigmatic (if not constitutive) of America's racial dilemma. His analysis of Los Angeles, for example, correctly notes that although they share a number of common features, the housing problems of blacks in inner-city neighborhoods are different from those of the Latinos, Koreans, and working-class whites who also live there.<sup>6</sup>

The purpose of this essay is to honor Professor John Calmore by suggesting an agenda for a Latino housing expert still to come.<sup>7</sup> What issues would Professor Calmore's imaginary Latino/a counterpart, or sibling, address, and what theoretical framework might he or she employ in addressing them?

This essay proceeds in two parts. Part I addresses four problems confronting Latinos regarding housing or land that have yet to receive appropriate attention from the legal community. Part II considers a framework for approaching these problems. As will be seen, Latinos stand in different relation to the majority group than do blacks. The Latinos' founding experience was conquest,<sup>8</sup> not slavery and Jim Crow laws, so the objective and quality of anti-Latino sentiment is, even today, different from those sentiments that target blacks.<sup>9</sup> As a result, civil rights laws developed with African Americans in mind are at best an inexact instrument for redressing the sorts of racism Latinos encounter, in housing or elsewhere.

## I. HOUSING AND LAND USE ISSUES AFFECTING LATINOS

Among the housing and land use issues affecting Latinos are what we might call "ordinary discrimination," in which local authorities impose or tolerate substandard housing conditions or services where Latinos are concerned. As will be seen, the *colonias* or shantytowns that line the Texas border, are an extreme example, but other areas with large Latino concentrations exhibit much the same neglect.<sup>10</sup> A second issue is the host of recent laws, at the state and local level, which aim to make recent Latino

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6. See Calmore, *Lost and Found*, *supra* note 3, at 1108–17. A common feature is segregation and move-in resistance. *Id.* at 1116–17.

7. For possible developing experts, see generally Raul Yzaguirre et al., *The Fair Housing Act: A Latino Perspective*, 4 CITYSCAPE: J. POL'Y DEV. & RES. 161 (1999).

8. By "conquest" we mean Anglo occupation of lands formerly in the hands of Indians or Mexicans. See, e.g., JUAN F. PEREA ET AL., RACE AND RACES: CASES AND RESOURCES FOR A DIVERSE AMERICA 19–24, 180–85, 285–94 (2d ed. 2007) [hereinafter RACE AND RACES] (discussing conquest and its consequences for U.S. Latinos).

9. See *infra* Part II.

10. See *infra* Part I.A.1 (discussing the *colonias* as examples of areas demonstrating administrative neglect).

immigrants uncomfortable.<sup>11</sup> A third issue is reparation for lands stolen in the years after the Treaty of Guadalupe Hidalgo ended the war with Mexico in 1848.<sup>12</sup> A fourth, related issue is the status of the U.S. colony of Puerto Rico.<sup>13</sup> As will be seen, none of these problems is capable of easy solution under the prevailing paradigm of antidiscrimination law that has developed to deal with the aftereffects of black slavery and oppression.

### A. *Substandard Housing*

Latinos suffer seriously deficient housing in a number of locations where violations of ordinary health and safety standards are rife.<sup>14</sup> Yet, legal authorities and inspectors look the other way, while the principal legal scholar who has addressed one of the issues of substandard housing in the Texas *colonias* has concluded that it is not capable of resolution under the current legislative and administrative framework.<sup>15</sup>

#### 1. *Texas Colonias*

Latinos are among the poorest groups in the United States—on some measures even worse off than African Americans.<sup>16</sup> Yet “[l]ow incomes alone cannot explain completely the housing conditions in which many Latino families live.”<sup>17</sup> A U.S. Department of Housing and Urban Development study showed that Latinos living in cities experienced roughly the same degree of housing discrimination as blacks, and that a dark-skinned Mexican American had a ninety-six percent chance of at least one encounter with discrimination during a search for housing.<sup>18</sup> Federal studies conducted in areas as diverse as Boston, Denver, Fresno County, San Antonio, and the greater Washington D.C. area<sup>19</sup> came to similar conclusions as did studies of denials of mortgages, home insurance, and federal housing assistance.<sup>20</sup> Until recently, federal enforcement activity to

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11. See *infra* Part I.B (discussing recent anti-immigrant ordinances).

12. See *infra* Part I.C.2 (discussing possible federal action to redress nineteenth-century land theft).

13. See *infra* Part I.C.4 (discussing the broad question of self-rule for Puerto Rico). The United States acquired Puerto Rico in a manner very similar to that by which it acquired the portions of Mexico that are now the U.S. Southwest—namely by outright conflict. See *infra* Part I.C. Accordingly, the legal consequences of these two land grabs exhibit many similarities. *Id.*

14. See, e.g., *infra* Part I.A.1 (Texas *colonias*), Part I.A.2 (migrant housing).

15. See *infra* notes 30–32 and accompanying text (discussing the work of scholar Jane Larson).

16. See Yzaguirre et al., *supra* note 7, at 161.

17. *Id.*

18. *Id.* at 162 (citing a HUD study).

19. *Id.* at 163–64.

20. *Id.* at 164–65.

counter these types of discrimination against Latinos was markedly lacking.<sup>21</sup>

But the most dramatic examples of housing neglect occur in the U.S. Southwest. In a series of shantytowns (*colonias*) lining the Texas border, Mexican and Mexican American families live under conditions that would be unacceptable anywhere else.<sup>22</sup> With homemade houses built of tin and scraps of wood located on dusty, unpaved streets, the *colonias* offer few, if any, services.<sup>23</sup> Some lack indoor plumbing or even electricity; sewage and garbage services are nonexistent or unreliable.<sup>24</sup> Grocery stores sell water, and a few businesses allow their customers to use their tap, if they have one.<sup>25</sup> Other *colonistas* dig shallow wells by hand, and they often become contaminated by industrial or human waste.<sup>26</sup>

Tens of thousands of Mexican Americans live under conditions like these, many of them commuting to menial jobs in cities such as El Paso, Laredo, or Brownsville that are dozens of miles away.<sup>27</sup> Since most of the *colonias* are unincorporated, the only source of services is the surrounding county, which may lack the funds or tax base to offer services of the kind the communities need.<sup>28</sup> In many cases, the Texas legislature has refused to give the counties the zoning and regulatory authority needed to impose minimum standards.<sup>29</sup>

Jane Larson, who has studied the *colonias*, expresses consternation over the conditions but despairs of an easy solution.<sup>30</sup> If the county cracked down on the homeowners and landlords because of the many housing code violations, the cost of fixing the houses would simply raise the price of occupying them to the point where many of the residents would have no place to live.<sup>31</sup> Housing code enforcement would paradoxically propel many of the local residents into an even worse situation, such as living on the streets or erecting a shantytown somewhere in the desert.<sup>32</sup> Without aid

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21. *Id.* at 165–66.

22. See generally Jane E. Larson, *Free Markets Deep in the Heart of Texas*, 84 GEO. L.J. 179 (1995). On the struggles of agricultural workers to achieve a decent standard of living, see generally Guadalupe T. Luna, "Agricultural Underdogs" and *International Agreements: The Legal Context of Agricultural Workers Within the Rural Economy*, 26 N.M. L. REV. 9 (1996).

23. Larson, *supra* note 22, at 185–203.

24. *Id.* at 185–86.

25. *Id.*

26. *Id.* at 187–91.

27. See *id.* at 184.

28. *Id.* at 197–205.

29. *Id.*

30. *Id.* at 180–82, 230, 244–57 (pointing out political and structural obstacles in the way of reforms).

31. *Id.*

32. *Id.*

from the federal government or the State of Texas, these *colonias* continue to exist, year after year, in a regulatory limbo made tolerable only by the ingenuity, forbearance, and solidarity of their residents. The children who grow up there enjoy little social capital such as health care, schooling, or opportunities for sports and recreation—so that family poverty is apt to persist, generation after generation.

Although the term *colonias* came into use in connection with Texas shantytowns, the recent influx of Latino immigrants in other parts of the country has given rise to conditions that are deplorable, if not quite so extreme. For example, Siler City, North Carolina has witnessed a rapid growth in the Latino population, which now accounts for fifty-two percent of the population and nearly seventy percent of the workforce.<sup>33</sup> Despite the explosive growth, however, “life there has not necessarily been kind to Latino residents.”<sup>34</sup> According to a local official, “the majority of Latinos live in . . . miniature developments . . . at the edge of the developed area, reminiscent of the [c]olonias along the U.S.-Mexico border.”<sup>35</sup> One commentator posits that Siler City’s experience raises a familiar American phenomenon—segregation—and that the issue is no longer a black-white one.<sup>36</sup> The same commentator observes that segregation of Latinos can mean inadequate access to health and educational services, as well as lost opportunities to build the kind of wealth that other families do.<sup>37</sup>

On the North Carolina situation, the same commentator notes that Latino segregation stems from forces different from those that drive the black variety—white flight, housing riots, and redlining.<sup>38</sup> Latinos, on the other hand, settle wherever they can find jobs and housing they can afford.<sup>39</sup> Frequently, they end up isolated within neighborhoods by language and culture.<sup>40</sup>

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33. Janis Bowdler, *Beyond Black and White: Latino Segregation in North Carolina*, NEXT AM. CITY, Nov. 2005, available at [http://www.americancity.org/article.php?id\\_article=137](http://www.americancity.org/article.php?id_article=137); Emily Matchar, *Latino Group Marks 10 Years; Hispanic Liaison Serves Chatham’s Growing Immigrant Population*, NEWS & OBSERVER (Raleigh, N.C.), Aug. 6, 2005, at B1.

34. Bowdler, *supra* note 33.

35. *Id.* (quoting Vince Sanabria, Executive Director of El Vínculo Hispano, a nonprofit organization serving Siler City’s Latino community).

36. Bowdler, *supra* note 33.

37. *Id.*

38. *Id.* “Redlining” means refusal to lend money or issue insurance for housing in black areas.

39. *Id.*

40. *Id.*



## 2. Migrant Housing

Much of the nation's produce arrives at the markets courtesy of crews of migratory farmworkers, most of them from Mexico or Guatemala, who plant, weed, and harvest the nation's vegetables and fruit in states ranging from California, Colorado, and Washington to Michigan, Illinois, and North Carolina. The work is seasonal. During the winter, most migrant workers either go back to their villages or secure other employment elsewhere in the United States. It is backbreaking, with a premium on speed and repetitious motions, and often performed in a bent-over position. Exposure to pesticides, insecticides, herbicides, and, with fruit-picking, the ever-present risk of falls from high ladders make this one of the most dangerous ways to make a living.<sup>41</sup>

Because current workplace and occupational health and safety laws largely exempt farm labor from regulation,<sup>42</sup> the conditions in the camps that farm owners provide range from reasonably safe and clean, with running water, electricity, bunks, basic kitchens, and indoor toilets, to the barely adequate, many of them former chicken coops.<sup>43</sup> Since many migrant workers travel with their families, and the women and children work beside them in the fields, a farm barracks without a safe space for a young child to play, or with exposed electrical circuitry, for example, can pose a life-threatening danger.

A recent study of North Carolina farmworkers found many of them living in shacks and mobile homes located near agricultural fields.<sup>44</sup> Crowding was common, and even quarters designed for multiple occupants lacked basic facilities.<sup>45</sup> Farmworkers were keenly aware of their susceptibility to skin diseases and environmental toxins and compensated by frequently cleaning their dwellings.<sup>46</sup>

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41. Luna, *supra* note 22, at 26–29, 33–34; *see also* Richard Delgado & Jean Stefancic, *Home-Grown Racism: Colorado's Historic Embrace—and Denial—of Equal Opportunity in Higher Education*, 70 U. COLO. L. REV. 703, 785 (1999) (referring to the work as “backbreaking labor”).

42. Luna, *supra* note 22, at 24–29.

43. *Id.* at 30–32; Naseem Stecker, *Justice Initiative: Resource Development: All About Access: The Challenge of Resource Development*, 85 MICH. B.J. 30, 32 (2006); *see also* SARAH DEUTSCH, *NO SEPARATE REFUGE: CULTURE, CLASS AND GENDER ON AN ANGLO-HISPANIC FRONTIER IN THE AMERICAN SOUTHWEST, 1880–1940*, at 209 (1987) (describing how beet labor houses in northern Colorado in the 1930s had substandard facilities).

44. *See generally* Julie Early et al., *Housing Characteristics of Farmworker Families in North Carolina*, 8 J. IMMIGRANT & MINORITY HEALTH 173 (2006). *See also* Dan Barry, *For Family of Migrant Farmworkers, a New Season Is Dawning*, N.Y. TIMES, Aug. 5, 2007, at A16 (describing housing that was “little more than shacks”).

45. *See* Early et al., *supra* note 44, at 181.

46. *See* Early et al., *supra* note 44, at 181; J. Krejci-Manwaring et al., *Skin Disease Among Latino Farmworkers in North Carolina*, 12 J. AGRIC. SAFETY & HEALTH 155, 161 (2006).

During the two World Wars, formal guestworker (*bracero*) programs provided a degree of governmental supervision of conditions in the fields and the camps.<sup>47</sup> And on a few occasions, unusually bad conditions prompted the Mexican government to threaten to discontinue sending workers to a region with the worst abuses.<sup>48</sup> But today, even that basic level of supervision is gone, with the result that farm owners may run the camps essentially any way they wish. A worker's recourse is to take his or her services elsewhere. Of course, if all the housing in a region—the California valley, for example—is similarly deficient, this approach will offer the typical worker little in the way of an alternative.

Part II focuses on why substandard housing of all these types—*colonias* and farm labor camps—persists. At this point, it might occur to the reader that part of the reason is sheer invisibility—both the *colonias* and farmworker camps spring up far from where most white citizens live. Since the average citizen has little opportunity to acquaint himself with the dismal conditions that prevail there, he feels little incentive to correct them. Additionally, the Latino immigrant or temporary worker has little bargaining or political power.

But even when Latino immigrants settle in an Anglo-dominated town—where they are not at all invisible—they may not fare any better. Local citizens may agitate against them and enact measures designed to make life difficult for the newcomers.<sup>49</sup> Thus, something more than simple lack of knowledge may be responsible for a considerable portion of this group's housing woes.

### B. *Hazleton and Its Counterparts*

In recent months, news stories have reported the efforts of cities like Hazleton, Pennsylvania, and Farmingville, New York, to make things difficult for Latino immigrants, many of them undocumented.<sup>50</sup> Beginning with the former town's highly publicized ordinance, dozens of cities have enacted measures aimed at penalizing landlords who rent to and employers

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47. Gilbert P. Carrasco, *Latinos in the United States: Invitation and Exile*, in IMMIGRANTS OUT!: THE NEW NATIVISM AND THE ANTI-IMMIGRANT IMPULSE IN THE UNITED STATES 190, 192–95 (Juan F. Perea ed., 1997).

48. See RICHARD DELGADO ET AL., *LATINOS & THE LAW* ch. 5 (forthcoming 2008); Ronald L. Mize, Jr., *Reparations for Mexican Braceros?: Lessons Learned from Japanese and African American Attempts at Redress*, 52 CLEV. ST. L. REV. 273, 285 (2005).

49. See *infra* Part I.B.

50. See Anna Quindlen, *U.S. Dependent on Newcomers*, CHI. SUN-TIMES, Aug. 16, 2007, at 33; Paul Vitello, *Rift over Illegal Immigration Leads To Talk of Secession*, N.Y. TIMES, Dec. 16, 2006, at B1 (describing events in Farmingville).

who hire undocumented aliens.<sup>51</sup> Other laws punish owners who rent to more than a certain number of tenants per unit, regardless of whether the tenants are documented or not, or restrict the number of cars parked outside.<sup>52</sup> These measures, of course, fall heavily on recent immigrants who often share space to keep down housing costs while getting established and finding work. Some of the cities that have been most insistent about the evils of immigration have relatively few immigrants.

Although measures like these began at the town or city level, recent state bills aim to accomplish much the same thing.<sup>53</sup> After a district court in Pennsylvania struck down Hazleton's ordinance, finding much of it preempted by federal immigration law,<sup>54</sup> the mayor vowed to continue the struggle.<sup>55</sup> Other towns and cities will undoubtedly try other statutory approaches, hoping to find one that will survive constitutional challenge.<sup>56</sup> And, of course, nothing prevents federal authorities from enacting measures of their own.<sup>57</sup>

### C. *Restoration of Traditional Lands in the Southwest*

The Treaty of Guadalupe Hidalgo (1848), which ended the war with Mexico, ostensibly protected the rights of Mexican landowners in the newly conquered territory.<sup>58</sup> Article VIII of that treaty provided that "property of every kind, now belonging to Mexicans . . . shall be inviolably respected."<sup>59</sup> Yet in a story that would strike a familiar note to readers of American Indian history, land-hungry Anglos soon found ways to circumvent these provisions and divest the former Mexicans of their lands

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51. See Erika Hayasaki, *Pennsylvania City Immigration Law Is in Judge's Hands: His Ruling on Hazleton May Have Repercussions Across the Country*, L.A. TIMES, Mar. 23, 2007, at A26.

52. Kim Cobb & Susan Carroll, *The Immigration Debate: Small Towns Clamping Down: Fear, Frustration Prompt 'Raging Fire' for Ordinances Against Illegal Immigrants*, HOUSTON CHRON., Nov. 19, 2006, at A1. An anti-car parking measure would fall heavily on migratory or day laborers who drive beat-up cars to get to work every day.

53. See, e.g., Darryl Fears, *Judge Blocks City's Ordinances Against Illegal Immigrants*, WASH. POST, July 27, 2007, at A2.

54. See Julia Preston, *Judge Voids Ordinance on Illegal Immigrants: Says Restrictions Violated Due Process*, N.Y. TIMES, July 27, 2007, at A14.

55. See *id.*

56. For example, they might decouple the measures from immigration—thus sidestepping federal preemption—by aiming the measures at landlords who rent to too many tenants or employers who hire workers on street corners.

57. Federal measures would obviously not be vulnerable to challenges based on federal preemption. They still might violate due process or equal protection rights, though.

58. See RACE AND RACES, *supra* note 8, at 296–308.

59. For complete text of the treaty and the history of its negotiation and ratification, see 5 TREATIES AND OTHER INTERNATIONAL ACTS OF THE UNITED STATES OF AMERICA 207–428 (Hunter Miller ed., 1937). For a classic work, see generally RICHARD GRISWOLD DEL CASTILLO, THE TREATY OF GUADALUPE HIDALGO: A LEGACY OF CONFLICT (1990).

and *haciendas*. Aggressive squatters would conspire with crooked land registration agents and Anglo lawyers to deprive the Mexicans of their ancestral lands.<sup>60</sup> Faced with a challenge to ownership of their own land, the Mexicans would have to hire a lawyer, gather documentation of long ownership, pay for, and defend, a proper survey; prove that the land grant lawfully derived from Mexico or Spain; and file in a timely manner.<sup>61</sup> Because many Mexicans held their lands in common—a form of ownership not recognized in Anglo law—much of the lands used for grazing and water became property of the U.S. government.<sup>62</sup>

### 1. Reies López Tijerina and the Tierra Amarilla Land Revolt

In the late 1960s, an itinerant, poorly educated lay preacher, Reies López Tijerina, began studying the chain of title to ancestral lands in the vicinity of his village in northern New Mexico.<sup>63</sup> Convinced that Anglos had stolen much of the land in the “Tierra Amarilla” (yellow land—named after a species of wild flower that blossoms there) region, and, in particular, that the federal government had come into ownership of Kit Carson National Forest illegally, Tijerina sought to enforce his compatriots’ time-honored claims. He and his followers began by occupying the National Forest campgrounds, known as Echo Amphitheater, and asserting the revival of the *ejido* rights of the people.<sup>64</sup> When police and Forest Rangers arrived a few days later, Tijerina’s men took two of them into custody and tried them in a makeshift people’s court for trespassing and being a public nuisance. The makeshift court fined and sentenced them to eleven months and twenty-two days in jail, then “graciously” suspended their punishment.<sup>65</sup> A short time later, the State tried Tijerina himself for his role in the amphitheater affair.<sup>66</sup> While his sentence was under appeal, he returned to Tierra Amarilla with the intention of making a citizen’s arrest of the local district attorney.<sup>67</sup> A shootout ensued, and Tijerina was arrested a second time.<sup>68</sup> Undeterred, he appeared at several protest rallies while free on bail, earning the admiration of his followers and militants

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60. See, e.g., RACE AND RACES, *supra* note 8, at 303–13.

61. *Id.*

62. *Id.*

63. See, e.g., RODOLFO ACUÑA, OCCUPIED AMERICA: A HISTORY OF CHICANOS 340–41 (3d ed. 1988). We recount this story as an example of a modern attempt to rectify old land claims and to illustrate “the intensity of local feelings of dispossession that swirl” around them.

64. *Id.* at 340. *Ejido* land means “land held in common.”

65. *Id.*

66. *Id.*

67. *Id.* at 340.

68. *Id.*

around the nation.<sup>69</sup> When he eventually stood trial, it turned out that a key witness for the prosecution had been murdered.<sup>70</sup> Tijerina defended himself, and much of the trial centered on the right to make a citizen's arrest.<sup>71</sup> A jury believed Tijerina's story and entered a verdict of not guilty.<sup>72</sup> Shortly afterward, he again attempted to occupy Kit Carson National Forest, where he and his wife burned a few signs. Authorities charged him with destroying government property, and this time he served seven months in prison.<sup>73</sup> A short time later, Tijerina himself stood trial and was convicted in a real court for the amphitheater affair. Tijerina's activism is but one illustration of the intensity of local feelings of dispossession that swirl around land grant controversies in the Southwest.

## 2. The General Accountability Office Report on Western Land Claims

In response to recurrent claims like Tijerina's that much ancestral land passed into Anglo hands under dubious circumstances, Congress, at the request of two western Senators, asked the U.S. Government Accountability Office ("GAO") to investigate the legitimacy of these claims and explore options if they turned out to be justified.<sup>74</sup>

Shortly before we wrote this, the GAO issued a lengthy report concluding that, while it might be desirable as a policy matter to recognize some of the historical claims, they are now legally unenforceable because the lands had passed into government hands in a lawful manner.<sup>75</sup> While the Mexican Americans who brought these challenges pointed to a situation with the similar and nearby properties owned by the Pueblo Indians, the GAO nevertheless concluded that the situations were not the same. With respect to the Pueblo Indians, the federal government stood in fiduciary relationship to their sovereignty, so they could not take the land. On the other hand, no such fiduciary relationship linked the federal government and the Mexican/Mexican American occupants of communally owned land.<sup>76</sup>

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69. *Id.*

70. *Id.* at 341.

71. *Id.*

72. *Id.*

73. *Id.* For further accounts of the incident, see generally RICHARD GARDNER, GRITO! REIES TIJERINA AND THE NEW MEXICO LAND GRANT WAR OF 1967 (1970); PETER NABAKOV, TIJERINA AND THE COURTHOUSE RAID (2d ed. 1970).

74. See U.S. GOV'T ACCOUNTABILITY OFFICE, REPORT NO. 04-59, TREATY OF GUADALUPE HIDALGO: FINDINGS AND POSSIBLE OPTIONS REGARDING LONGSTANDING COMMUNITY LAND GRANT CLAIMS IN NEW MEXICO I (2004), available at <http://www.gao.gov/docdb/lite/details.php?rptno=GAO-04-59> (categorizing the specific responses to the Senators' requests).

75. *Id.* at 6–12.

76. *Id.* at 11–12.

As for remedial options, the GAO report listed a simple acknowledgment that the land grant confirmation process “could have been more efficient and less burdensome and imposed fewer hardships on claimants.”<sup>77</sup> It also suggested the creation of a commission to reexamine specific community land grant claims that the government originally rejected a hundred or more years ago.<sup>78</sup> It also listed “making financial payments to claimants’ heirs”<sup>79</sup> for the loss of lands that occurred when government agents denied rightful claims—a remedy at odds with the report’s earlier conclusion that accession had been perfectly legal.<sup>80</sup>

### 3. *Lobato v. Taylor* and Southern Colorado Land Rights

In 1960, a prosperous Anglo developer, Jack Taylor, purchased a large tract of land in southern Colorado that, prior to the Mexican War, had been owned by a group of Mexican families, called *hacendados*, who had farmed and raised cattle there.<sup>81</sup> Over time, the large ranches were broken up and soon thereafter fell into the control of Anglo developers and farmers such as Taylor. Even so, many descendants of the *hacendados* lived in the region, running small farms and eking out a living by raising crops and a few cattle. Taylor’s deed, in fact, indicated that he took the land subject to “claims of the local people by prescription or otherwise to rights to pasturage, wood, and lumber and so-called settlement rights in, to, and upon said land.”<sup>82</sup>

The descendants of the *hacendados* (now called Chicanos), by the tacit consent of the Anglo owners, continued to use the land, including the part now called the Taylor Ranch, as a grazing ground for their cattle and source of water for their crops. When Taylor closed it off and denied the farmers access to the water they had been using for their crops for generations, their dispute ended up in the Colorado Supreme Court.<sup>83</sup> In a lengthy opinion, the court ruled that the Taylor family had superior title to the ranch. But consideration of colonial and Mexican law required recognition of the grazing, water, and timber rights of the Chicano families,

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77. *Id.* at 13 (Option 2).

78. *Id.* at 13 (Option 3).

79. *Id.* at 13 (Option 5).

80. *Id.*; see also *id.* (Option 4) (positing that the government might “consider transferring federal land to communities that did not receive all of the acreage originally claimed for their community land grants”—a form of rough justice).

81. See *Lobato v. Taylor*, 71 P.3d 938, 943 (Colo. 2002) (en banc); see also RACE AND RACES, *supra* note 8, at 314 (including commentary on *Lobato* and a partial reprint of the opinion).

82. *Lobato*, 71 P.3d at 948.

83. *Id.* at 944.

many of whom had lived there continuously for centuries.<sup>84</sup> The Taylor Ranch litigation may be the forerunner of similar efforts to regain the use of traditional lands in the Southwest. Professor Calmore's counterpart would surely include issues of this sort in his agenda.

#### 4. Puerto Rico

Due in large part to its convoluted history, the territory of Puerto Rico poses a different set of land and housing issues. Ownership of the island passed to the United States about fifty years after the Treaty of Guadalupe Hidalgo ended the war with Mexico in 1848.<sup>85</sup> When the United States and Spain ended their own war in 1898, the United States acquired Puerto Rico and a number of other islands that formerly had been under the Spanish flag.<sup>86</sup> Since then, the status of Puerto Rico has been that of a territory or, later, more euphemistically, a commonwealth.<sup>87</sup> But with equal justification it might be described as a U.S. colony.<sup>88</sup> A number of recent books consider it so, and a United Nations committee whose responsibility it is to encourage decolonization among first world nations has been tactfully pressing the United States in the direction of greater self-determination for the island's people.<sup>89</sup>

In the meantime, Puerto Rico continues as a nonautonomous entity with limited rights of self-government. Its citizens enjoy U.S. citizenship, but few of its benefits, and live with poverty rates higher than those of any state.<sup>90</sup> They do not vote in presidential elections but serve and die in U.S. wars.<sup>91</sup> One of the dubious incidents of Puerto Rican citizenship is the right to move freely to the contiguous United States, where many live in even worse conditions than those back home, perhaps because of racism and

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84. *Id.* at 945, 947–49.

85. PEDRO MALAVET, *AMERICA'S COLONY: THE POLITICAL AND CULTURAL CONFLICT BETWEEN THE UNITED STATES AND PUERTO RICO I* (2004) (establishing that “after prevailing in the Spanish-American [W]ar, the United States took Puerto Rico from Spain”); RACE AND RACES, *supra* note 8, at 358–59.

86. See MALAVET, *supra* note 85, at 1; Michael A. Cabotaje, *Equity Denied: Historical and Legal Analyses in Support of the Extension of U.S. Veterans' Benefits to Filipino World War II Veterans*, 6 *ASIAN L.J.* 67, 88 (1999) (describing how Guam, Philippines, and Puerto Rico came under U.S. control with the Treaty of Paris, which concluded the war with Spain).

87. See RACE AND RACES, *supra* note 8, at 376–77.

88. See MALAVET, *supra* note 85, at 2. See generally Ediberto Roman, *Empire Forgotten: The United States' Colonization of Puerto Rico*, 42 *VILL. L. REV.* 1119 (1997) (referring to Puerto Rico as a colony of the United States rather than a territory).

89. See Press Release, U.N. Gen. Assembly, Special Committee on Decolonization Approves Text Calling on United States to Expedite Puerto Rican Self-Determination Process, U.N. Doc. GA/C043138/Rev. (June 13, 2006), available at <http://www.un.org/News/Press/docs/2006/gac03138.doc>.

90. See, e.g., MALAVET, *supra* note 85, at 2.

91. *Id.* at 1.

limited English-speaking ability.<sup>92</sup> Meanwhile, the beautiful and resource-rich island has a markedly negative balance of trade with the United States, so that the mainland receives many more benefits from the current relationship than do those who live on the island itself.<sup>93</sup> A national *independentista* movement presses for self-rule but has yet to make much of a dent in Congress or even with the general populace of Puerto Rico.<sup>94</sup>

This section reviewed a number of housing and land or land-use issues affecting Latinos. What is the appropriate framework for analyzing these and similar issues? The next section addresses this question.

## II. BEYOND THE BLACK-WHITE BINARY OF RACE: A FRAMEWORK FOR ADDRESSING LATINOS' HOUSING AND LAND ISSUES

### A. *The Relevance of Latino History: A Brief Review*

A Juan or Juanita Calmore would likely anchor his or her analysis of Latinos' housing issues in the group's singular history. He or she would begin by recalling that most Latinos became part of the United States by conquest or arrived here by immigration. Those who immigrated here often did so for financial reasons or physical survival after the United States plundered their homelands of natural resources and installed dictatorial regimes. Recently, one-sided treaties, such as the North American Free Trade Agreement, have accelerated the flow of immigration by increasing the disparity between the rich and the poor in Mexico.<sup>95</sup>

Professor Calmore's counterpart would also recall the long history of Latino resistance to their colonized condition, including armed rebellion,<sup>96</sup> and—later—folk tales, *corridos*, and street theater satirizing self-important, loud Anglos, murderous border vigilantes, and Texas Rangers who would

92. *Id.* Why might such a person remain in the United States? Family considerations may trap many such as children or elderly dependents. Others may remain out of false hope that their situation will improve over time.

93. See, e.g., JOSÉ LUIS MORÍN, *LATINO/A RIGHTS AND JUSTICE IN THE UNITED STATES: PERSPECTIVES AND APPROACHES* 26–27 (2003).

94. *Id.* at 26 (noting that “all political parties in Puerto Rico . . . denounce Puerto Rico’s ongoing colonial situation”); see also MALAVET, *supra* note 85, at 87 (noting that commonwealth status and statehood are more popular).

95. For discussion of the impact of NAFTA on Mexico’s poverty level, especially among small farmers who could not compete with subsidized American agribusiness, see MORÍN, *supra* note 93, at 37; and David Ziemer, *Immigration Law Rife with Unintended Consequences*, WIS. L.J., Oct. 18, 2006.

96. See generally MALCOM EBRIGHT, *LAND GRANTS AND LAWSUITS IN NORTHERN NEW MEXICO* (1994); ROBERT J. ROSENBAUM, *MEXICANO RESISTANCE IN THE SOUTHWEST* 42–49 (1981) (describing Latino resistance to Anglo abuses).



shoot first and ask questions later.<sup>97</sup> He would trace this resistance into the present, including the mass marches for liberalized immigration that took place in the spring of 2006.<sup>98</sup> He would conclude that this singular history requires consideration in terms different from those of the black-white binary paradigm of race.

Calmore's counterpart would also likely ponder Latinos' deep attachment to their language and culture,<sup>99</sup> even in the face of nativist pressure, including Official English groups, and Latinos' desire for a school curriculum that respects their uniqueness.<sup>100</sup> He would note the group's attachment to land and community, visible in the wide popular support for César Chávez's farmworkers movement,<sup>101</sup> and the flourishing of working-class communities like East Los Angeles and Spanish Harlem.

### B. *Latino Legal History*

Our imaginary housing law expert would also proceed aware of the way American law, including the civil rights version, has framed and constructed the Latino group and its identity. Because housing law issues almost always concern group rights, bearing in mind how U.S. judges have responded to Latino claims is key to devising any remedial framework.

As recently as the 1970s, American courts' treatment of Latinos left them with little legal recourse. In some cases, the courts considered Latinos white and concluded that they therefore lacked standing to

97. See, e.g., YOLANDA BROYLES-GONZALEZ, *EL TEATRO CAMPESINO: THEATER IN THE CHICANO MOVEMENT* (1994); Richard Delgado, *Rodrigo's Corrido: Race, Postcolonial Theory, and U.S. Civil Rights*, 61 VAND. L. REV. 1691 (2008) (discussing such folk literature and its meaning). For collections of the literature, see, for example, JOSE LIMÓN, *MEXICAN BALLADS, CHICANO POEMS* (1992); AMÉRICO PAREDES, *A TEXAS-MEXICAN CANCIONERO* (1976); AMÉRICO PAREDES, *WITH HIS PISTOL IN HIS HAND: A BORDER BALLAD AND ITS HERO* (1958); Jorge Huerta, *When Sleeping Giants Awaken: Chicano Theatre in the 1960s*, 43 THEATRE SURV. 23 (2002).

98. See, e.g., Randal C. Archibold, *Latinos Protest in California in Latest Immigration March*, N.Y. TIMES, Apr. 2, 2006, at 24.

99. See, e.g., Juan F. Perea, *Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English*, 77 MINN. L. REV. 269, 340-47 (1992); Juan F. Perea, *Los Olvidados: On the Making of Invisible People*, 70 N.Y.U. L. REV. 965, 978-81 (1995). Perea explains that the Official English and English Only are movements that seek to make English the official and only language of government.

100. RICHARD VALENCIA, *Bilingual Education*, in *MEXICAN-AMERICAN SCHOOL LITIGATION* (forthcoming 2008) (on file with the North Carolina Law Review).

101. See, e.g., ACUÑA, *supra* note 63, at 324-27; see also ANN AURELIA LÓPEZ, *THE FARMWORKERS' JOURNEY* 102-03 (2007) (explaining that César Chávez was a farm labor organizer who fought to improve conditions for this group). See generally SUSAN FERRISS & RICARDO SANDOVAL, *THE FIGHT IN THE FIELDS: CÉSAR CHÁVEZ AND THE FARMWORKERS MOVEMENT* (Diana Hembree ed., 1997) (providing a compilation of articles on Chávez and his role in the movement).

complain about discrimination.<sup>102</sup> In cases in which the courts did consider Latinos to be a minority, they considered them to be too diverse to warrant group treatment, so they were still left without a remedy. In *Tijerina v. Henry*,<sup>103</sup> for example, a federal district court in New Mexico denied Latino litigants the opportunity to file as a class for various forms of civil rights relief, mainly school discrimination.<sup>104</sup> Since the group contained members with Spanish surnames and others without them, members who trace their ancestry to Latin America and those who do not, and those who speak Spanish and others who do not, the group lacked the cohesiveness necessary to file for class relief.<sup>105</sup> Moreover, the court found that the group could not sue under civil rights theories coined with blacks in mind for many of the same reasons.<sup>106</sup>

An early Supreme Court decision, *Hernandez v. Texas*,<sup>107</sup> held that Latinos could sue for jury discrimination in parts of the country where they could prove local discrimination.<sup>108</sup> Later courts, however, found the decision inapplicable to their regions, and Latino litigators found proof of local discrimination—a requirement blacks do not face—so burdensome that they often ignored *Hernandez* and its Fourteenth Amendment rationale in favor of other legal theories.<sup>109</sup>

Today, Latino civil rights remain on a shaky foundation. A more recent Supreme Court decision, *Hernandez v. New York*,<sup>110</sup> declined to find Spanish speaking a proxy for Latinicity in a second jury selection case, thus opening the door for discrimination against Latinos as long as the discriminator adopts a means that does not bespeak intent.<sup>111</sup>

Latinos wield comparatively little political influence for a group of their size. For example, the Supreme Court has contained two African American Justices<sup>112</sup> and two women,<sup>113</sup> but no Latino or Latina, and both

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102. See, e.g., George A. Martinez, *The Legal Construction of Race: Mexican-Americans and Whiteness*, 2 HARV. LATINO L. REV. 321, 325–29 (1997).

103. 48 F.R.D. 274 (D.N.M. 1969).

104. *Id.* at 275–76.

105. *Id.* at 275–77.

106. *Id.* at 278–79.

107. 347 U.S. 475 (1954).

108. *Id.*

109. See Richard Delgado, *Rodrigo's Roundelay: Hernandez v. Texas and the Interest-Convergence Dilemma*, 41 HARV. C.R.-C.L. L. REV. 23, 36 (2006). Proof of local discrimination is costly because it requires proof by an expert witness of some sort, such as a university sociologist's testimony. See *id.*

110. 500 U.S. 352 (1991).

111. That is, bases unfavorable treatment on a feature, such as being Spanish speaking, that is differentiable from race or natural origin.

112. Thurgood Marshall and Clarence Thomas.

113. Sandra Day O'Connor and Ruth Bader Ginsburg.

the House of Representatives and the Senate contain very small Latino caucuses. As we began writing this essay, one presidential candidate was part Latino,<sup>114</sup> but he was not a front runner and soon dropped out of the race.

C. *Ramon, Suzie, and a Moonlit Night: Using Postcolonial Theory To Interpret the Latino/a Condition, Including Housing*

Recent writing about Latinos analogizes them to an internal colony of the United States.<sup>115</sup> This small but growing body of writing draws inspiration from postcolonial theory, writing by scholars in formerly colonized areas, such as India, Africa, and Latin America, who aim to understand the operation and consequences of colonialism.<sup>116</sup>

Drawing on the writing of figures such as Frantz Fanon, Antonio Gramsci, Ngugi wa Thiongo, and Chinua Achebe, these scholars also build on the work of pioneer Latino studies scholar Rodolfo Acuña, who first likened U.S. Latinos to an internal colony.<sup>117</sup> They also seek parallels in the work of more recent African and South Asian writers such as novelist, essayist, and environmental activist Arundhati Roy, in order to understand Latinos' deep attachment to their land and language, and the various forms of resistance they have mounted, including lawsuits and popular storytelling.<sup>118</sup> They look for new frameworks, outside the Fourteenth Amendment, to understand the psychological and material basis of anti-Latino sentiment and oppression.<sup>119</sup>

For example, many Anglos—even those who would not be happy about a black neighbor—declare that they would not mind the idea of Latino neighbors.<sup>120</sup> Many of the same Anglos may well have in mind

114. Bill Richardson, who is part Latino, was seeking the Democratic nomination when we began writing this essay.

115. See, e.g., RODOLFO ACUÑA, OCCUPIED AMERICA: THE CHICANO'S STRUGGLE TOWARD LIBERATION 3–5 (1972); see also Delgado, *supra* note 97 (stating that an internal colony is a group that has been swallowed up by a larger, more powerful group—a nation that heads it, in effect, as a colony.).

116. For general introductions to this body of scholarship, see generally THE POSTCOLONIAL STUDIES READER (Bill Ashcroft et al. eds., 2d ed. 2006); David Ludden, *A Brief History of Subalternity*, in READING SUBALTERN STUDIES: CRITICAL HISTORY, CONTESTED MEANING AND THE GLOBALIZATION OF SOUTH ASIA I (David Ludden ed., 2002).

117. ACUÑA, *supra* note 63; Delgado, *supra* note 97, at 1697–1717; Chantal Thomas, *Critical Race Theory and Postcolonial Development Theory: Observations on Methodology*, 45 VILL. L. REV. 1195 (2000).

118. See, e.g., Delgado, *supra* note 97, at 1703–17; ARUNDHATI ROY, POWER POLITICS (2001).

119. See generally Delgado, *supra* note 97 (evaluating alternative modes of oppression and repression in the American racial system).

120. See Calmore, *Lost and Found*, *supra* note 3, at 1108–18 (noting that white resistance to Latino neighbors is often less virulent than that to blacks).

middle-class, white-collar Latinos with college degrees and a perfect command of English, not five or six unrelated but hardworking Latino immigrants sharing a nearby apartment and returning at the end of the workday in sweat-drenched clothing.<sup>121</sup>

Similarly, many Anglos say they do not mind Latino immigrants, so long as they learn English quickly and assimilate to the surrounding culture.<sup>122</sup> In short, Latinos are acceptable if they are as unlike blacks as possible and on their way to becoming honorary whites. Hard-working, exuberant young gardeners and construction workers living several to an apartment, playing Mexican music, and driving beat-up old cars are not.<sup>123</sup> One way of understanding the peculiar form of racism that visits Latinos begins by considering early contact between them and Anglos and noticing what was at stake during that period. The following story illustrates some of these issues.

Consider a scene that must not have been uncommon in the late nineteenth century—or, indeed, in slightly altered form, today. Much Mexican land in the farm-rich States of California, Arizona, Colorado, and Texas has fallen under Anglo control. Dispossessed of their lands, the Mexicans find work as field hands, tending the fields and picking crops for the Anglo farmers and ranchers who succeeded them in ownership of their former lands.<sup>124</sup> As in plantation society, the Anglo farm family lives in the big house, the Mexican workers in shacks on the far side of the spread.

A young Mexican field hand, Ramon, is a member of a crew of farmworkers who live in a nearby camp.<sup>125</sup> Unlike with slavery, these would be free people, most of them male and some of them young. Some would be transient, moving with the crops. Others would have settled down nearby in a local *barrio*, or Mexican part of town.

The night is moonlit. Suzie, the seventeen-year-old daughter of the farm family, feels restless and has gone for an after-dinner walk in the orchard. She comes across Ramon, whom she has met briefly before. Bronzed from the sun and strong from outdoor work, Ramon is a bright and

121. See *supra* Part I.B (noting how some communities have mounted strenuous resistance to new immigrants).

122. See PETER BRIMELOW, *ALIEN NATION: COMMON SENSE ABOUT AMERICA'S IMMIGRATION DISASTER* 216–19 (1995) (warning about Latinos' slowness to assimilate); SAMUEL HUNTINGTON, *WHO ARE WE? THE CHALLENGES TO AMERICA'S NATIONAL IDENTITY* 256 (2004) (same).

123. See *supra* note 52 and accompanying text. Is this partly a matter of class? Perhaps, but note that the basis of the objection often is to the *Mexican* music, language spoken, etc., not the music *simpliciter*. French or Italian music, to our knowledge, rarely, if ever, elicits objections.

124. See Delgado, *supra* note 97, at 1722.

125. *Id.* The following story (Ramon, Suzie, and a Moonlit Night) first appeared, in slightly different form, in Delgado, *supra* note 97, at 1722–24.

ambitious lad. He speaks English well and can play the guitar. He knows how to fix things and make plants grow. He has plans.

What happens next is the mother and father's worst fear—Suzie falls in love and runs away with a Mexican field hand. They are both attractive and the same age. Both are repressed; Suzie hates the farm and Ramon hungers for something better. They strike up a friendship, form a bond.<sup>126</sup>

### 1. Race: The Triple Taboo

In postcolonial theory, the occupying group (the colonials) needs to persuade themselves that they are doing the natives a service—bringing them orderly administration, western science, the English or French language, and the blessings of liberty.<sup>127</sup> Yet they are exploiting them, and they know it. To preserve the illusion that they are bringing a superior civilization to the benighted natives, they must, therefore, maintain a degree of distance from them. Too-close relations would reveal the lie at the heart of imperialism—that the natives were people, just like them, with hopes, dreams, fears, culture, and real intelligence.<sup>128</sup>

In post-conquest U.S. society, scenes like the one between Suzie and Ramon would play out often, endangering the social order that placed Anglos on top and the Latinos below them. Romantic relations between the two groups would pose an extreme example, to be avoided if at all possible. But other, more ordinary friendships could do so as well.<sup>129</sup> Consider the kind of camaraderie that could easily form between the Anglo supervisors and the Mexican farm hands. They are about the same age, they have the same objective—a healthy crop—they both understand nature and plants, and they both work hard. Might not they be tempted to form a friendship, to shake hands after picking a field clean, be tempted to go out for a beer together after work? Yet farm labor requires intense exploitation—stoop labor, the short hoe. Broiling sun. Low pay. Life in the camps.

Under such circumstances, might not Anglo society coin a type of taboo—consisting, perhaps, of filth, hypersexuality, and jabber<sup>130</sup> (attachment to a strange and unknowable foreign language) to make sure

126. *Id.*

127. See EDWARD SAID, *CULTURE AND IMPERIALISM* 100 (1993); EDWARD SAID, *ORIENTALISM* 1–6 (1979) (discussing imperialism).

128. See Delgado, *supra* note 97, at 1724–25. For discussion of the closely related “social contact” hypothesis for reducing racism and fear of others, see GORDON ALLPORT, *THE NATURE OF PREJUDICE* 261–82 (25th ed. 1979).

129. The following thought experiment appears, as well, in Delgado, *supra* note 97, at 1724–25.

130. See *id.* See generally STEVE BENDER, *GREASERS AND GRINGOS: LATINOS, LAW, AND THE AMERICAN IMAGINATION* (2003) (describing the various Latino stereotypes).

that the two groups do not get too close? Blacks and Asian Americans would be invested with different taboos.<sup>131</sup> The one for Latinos would be designed to keep Suzie away from Ramon. At most, she might have a few moments of repressed conversation before hurrying back to the safety of the farmhouse. The Anglo field supervisor might congratulate Ramon's coworkers for a job well done. But the taboo of filth, sexuality, and contagious disease would prevent them from getting any closer.<sup>132</sup>

The taboo, each element of which has been documented by scholars of Latino stereotypes,<sup>133</sup> once in place, would perform its function quite effectively, if unconsciously. Because Anglos would not get too close to Latinos, they would not form friendships, much less have romances with them. They would not consider promoting them to supervisory positions because a supervisor would need a good command of English in order to communicate, from time to time, with the county agricultural agent or clerk in a fertilizer store. Ramon, of course, speaks perfect English, but who knows? It might fail him at a critical moment.

## 2. Revisiting Latino Housing and Land Use Issues in Light of the Group's History and Social Construction

Armed with an understanding of Latino cultural and legal history, the Latino or Latina John Calmore would realize at once that current civil rights laws offer little in the way of effective remedies. The Fair Housing Act, for example, has done little to alleviate Latinos' problems.<sup>134</sup> Latinos' formative experience—conquest, not slavery—and social construction differ radically from those of blacks and other groups.<sup>135</sup> The group would place a premium on redressing longstanding claims, but unlike with blacks, these would include land, citizenship, and treaty claims.<sup>136</sup>

So, too, with scholarly analysis of Puerto Rico's neocolonial status and the methods of challenging it.<sup>137</sup> John Calmore's counterpart would look for means to divest the broader group of its taboo, which contributes to Anglos' unwillingness to form close relations with them in schools,

131. See, e.g., Richard Delgado & Jean Stefancic, *Images of the Outsider in American Law and Culture: Can Free Expression Remedy Systemic Social Ills?*, 77 CORNELL L. REV. 1258, 1262–67 (1991). The main images/tabooes for blacks are stupidity, immorality, and a carefree attitude. *Id.* For Asians, deviousness, asexuality, and skill at math and science. *Id.* at 1270–73. All these images change over time to accommodate shifting social needs. *Id.*

132. Delgado, *supra* note 97, at 1728–41.

133. See generally BENDER, *supra* note 130.

134. See, e.g., Yzaguirre et al., *supra* note 7, at 161.

135. See *supra* notes 8–9 and accompanying text (discussing the differences in experience between racial groups).

136. See *supra* note 8–9 and accompanying text.

137. See *supra* Part I.C.4 (describing Puerto Rico and its history).

workplaces, and, neighborhoods.<sup>138</sup> Writers would see the need to deploy counterstories challenging the taboo and reminding their readers of its unjust and gratuitous nature.<sup>139</sup> Since Latinos' grievances, in housing, as in many other areas, stem from conquest and a subsequently established neocolonial relationship, sympathetic scholars should mine postcolonial literature and the writings of African, Indian, and Latin American writers who have explored all these issues.<sup>140</sup>

Lawyers must realize that black-themed civil rights law may provide some slight purchase when, on rare occasions, Latino grievances are similar to those of blacks. For example, both groups need access to low-cost credit.<sup>141</sup> Both groups need to combat discrimination of the rawest kind—lenders, sellers, or landlords who simply do not want to deal with them or their kind.<sup>142</sup> With Latinos, however, housing discrimination may not seem to the perpetrator (and perhaps the government agency as well) like discrimination at all, but simply a rational refusal to deal with someone who is (in the popular imagination) likely to be dirty, uninhibited, and the speaker of an unknowable tongue.<sup>143</sup>

Just as Ramon and Suzie will face powerful social headwinds if they try to consummate their romantic attraction, legal scholars must understand what it is that drives Latino subordination, how it is different from other kinds, and what structures they must unravel and historic forces unwind in order to challenge it.

#### CONCLUSION

We offer this essay in honor of John Calmore, integration warrior extraordinaire, with the aim of hastening the arrival of the "big tent" he always wanted to see.<sup>144</sup> Although Professor Calmore focused much of his

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138. See *supra* notes 130, 132 and accompanying text (citing the taboos/stereotypes associated with Latinos).

139. For a discussion on the role of counterstories in dispelling pernicious social texts, see generally Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411 (1989).

140. See *supra* notes 127–29 and accompanying text (citing an explanation of cultural imperialism).

141. See Press Release, Duke Univ. Office of News & Commc'ns, Duke Invests \$5 Million in Latino Credit Union, (Aug. 19, 2007), available at <http://www.news.duke.edu/2006/06/lccu.html> (noting the Latino population's need for access to credit).

142. See generally Yzaguirre et al., *supra* note 7 (describing incidents of this nature).

143. See *id.* at 161 (noting that "[l]ow incomes alone cannot explain" Latinos' problems in the housing market).

144. Address by John Calmore, Panel on Directions for Critical Race Theory, Second National People of Color Legal Scholarship Conference, George Washington University Law School, Wash. D.C., Oct. 9, 2004. The term appears, as an aspiration, in the co-edited anthology, *CROSSROADS, DIRECTIONS AND NEW CRITICAL RACE THEORY* 9, 20 (Franciso Valdes et al. eds.,

scholarship, understandably, on African Americans and their housing plight, remedying Latino problems, as we have seen, will require attention to their singular history and legal construction. In the hope that this large and needy group will one day develop a housing advocate as effective as Professor Calmore, we have identified four main areas of need. We have outlined the group's history and sought to explain its social construction in terms of a triple taboo that makes remedying its problems, or even recognizing them, difficult. A Latino/a counterpart of John Calmore will have much to do. We hope we have made that task ever so slightly easier.