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Puerto Rico, Puerto Ricans, and Latcrit Theory: Commonalities and Differences Between Latina/o Experiences

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PUERTO RICO, PUERTO RICANS, AND LATCRIT
THEORY: COMMONALITIES AND DIFFERENCES
BETWEEN LATINA/O EXPERIENCES

Kevin R. Johnson*

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In recent years, critical Latina/o (LatCrit) theory has emerged in legal academia with the hope of shedding light on the racial subordination of Latinas/os in the United States.¹ Common Latina/o life experiences with the law unquestionably warrant close attention. A rich body of

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1. See, e.g., Symposium, *Expanding Directions, Exploding Parameters: Culture and Nation in LatCrit Coalitional Imagination*, 5 MICH. J. RACE & L. 787, 33 U. MICH. J.L. REFORM 203 (2000); Symposium, *Rotating Centers, Expanding Frontiers: LatCrit Theory and Marginal Intersections*, 33 U.C. DAVIS L. REV. 751 (2000); Symposium, *Comparative Latinas/os: Identity, Law and Policy in LatCrit Theory*, 53 U. MIAMI L. REV. 575 (1999); Symposium, *Difference, Solidarity and Law: Building Latina/o Communities Through LatCrit Theory*, 19 CHICANO-LATINO L. REV. 1 (1998); Symposium, *LatCrit: Latinas/os and the Law*, 85 CAL. L. REV. 1087 (1997), 10 LA RAZA L.J. 1 (1998); Symposium, *LatCrit Theory: Naming and Launching a New Discourse of Critical Legal Scholarship*, 2 HARV. LATINO L. REV. 1 (1997); Colloquium, *International Law, Human Rights, and LatCrit Theory*, 28 U. MIAMI INTER-AM. L. REV. 177 (1997); Colloquium, *Representing Latina/o Communities: Critical Race Theory and Practice*, 9 LA RAZA L.J. 1 (1996). See generally Francisco Valdes, *Foreword: Under Construction—LatCrit Consciousness, Community, and Theory*, 85 CAL. L. REV. 1087 (1997), 10 LA RAZA L.J. 1 (1998) (articulating fundamental tenets of LatCrit theory); THE LATINO/A CONDITION: A CRITICAL READER (Richard Delgado & Jean Stefancic eds., 1998) (collecting critical readings on law and Latinas/os).

scholarship analyzes the status of Latinas/os in the United States and how it fits into broader patterns of subordination.²

The heterogeneity of the many Latina/o communities, however, militates in favor of taking great care in drawing generalizations and essentializing the Latina/o “experience.”³ Particular analysis of specific histories of sub-groups of Latinas/os is critical to a full appreciation of how the past has served as a prelude to the present.⁴ Consequently, Lat-Crit scholars have begun the exploration of the diverse experiences of the various national origin groups comprising the greater Latina/o community.⁵

The Mexican American experience has been analyzed in detail, particularly issues of Chicana/o identity,⁶ the legal legacies associated with the conquest of the Southwest,⁷ and the impact of the United States

2. See, e.g., Elizabeth Iglesias & Francisco Valdes, *Expanding Directions, Exploding Parameters: Culture and Nation in LatCrit Coalitional Imagination*, 5 MICH. J. RACE & L. 787 (2000), 33 U. MICH. J.L. REFORM 203 (2000); Elizabeth M. Iglesias, *Foreword: Identity, Democracy, Communicative Power, Inter/National Labor Rights and the Evolution of LatCrit Theory and Community*, 53 U. MIAMI L. REV. 575, 576–79 (1999); George A. Martinez, *African Americans, Latinos, and the Construction of Race: Toward an Epistemic Coalition*, 19 CHICANO-LATINO L. REV. 213, 221–22 (1998); Athena D. Mutua, *Shifting Bottoms and Rotating Centers: Reflections on LatCrit III and the Black/White Paradigm*, 53 U. MIAMI L. REV. 1177, 1202–15 (1999); Francisco Valdes, *Piercing Webs of Power: Identity, Resistance and Hope in LatCrit Theory and Praxis*, 33 U.C. DAVIS L. REV. 897, 897–900 (2000).

3. See Kevin R. Johnson, *Some Thoughts on the Future of Latino Legal Scholarship*, 2 HARV. LATINO L. REV. 101, 129–38 (1997); see also Leslie Espinoza & Angela P. Harris, *Afterword: Embracing the Tar-Baby—LatCrit Theory and the Sticky Mess of Race*, 85 CAL. L. REV. 1585, 1605 (1997), 10 LA RAZA L.J. 499, 519 (1998) (“[R]ather than attempting to construct the ‘authentic’ Latino/a, many LatCrit theorists have committed themselves to an antiessentialist politics.”) (citation omitted).

4. See Kevin R. Johnson & George A. Martínez, *Crossover Dreams: The Roots of LatCrit Theory in Chicana/o Studies Activism and Scholarship*, 53 U. MIAMI L. REV. 1143, 1155–57 (1999) (arguing for legal analysis of Mexican American legal history and issues in United States).

5. See Johnson, *supra* note 3, at 131–34.

6. See, e.g., Margaret E. Montoya, *Mascaras, Trenzas, y Greñas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse*, 17 HARV. WOMEN’S L.J. 185, 15 CHICANO-LATINO L. REV. 1 (1994) (analyzing issues of identity facing Chicanas in the United States); Christopher David Ruiz Cameron, *How the García Cousins Lost Their Accents: Understanding the Language of Title VII Decisions Approving English-Only Rules as the Product of Racial Dualism, Latino Invisibility, and Legal Indeterminacy*, 85 CAL. L. REV. 1347 (1997), 10 LA RAZA L.J. 261 (1998) (investigating importance of the Spanish language to Latina/o identity).

7. See, e.g., Guadalupe T. Luna, *Chicana/Chicano Land Tenure in the Agrarian Domain: On The Edge of a “Naked Knife”*, 4 MICH. J. RACE & L. 39 (1998); Symposium, *Understanding the Treaty of Guadalupe Hidalgo on Its 150th Anniversary*, 5 SW. J.L. & TRADE AM. 5 (1998) (compiling articles analyzing legal impact of Treaty of Guadalupe Hidalgo).

immigration laws on persons of Mexican ancestry in the United States,⁸ to name a few examples. Not as much attention, however, has been paid to the specific histories of the two next largest Latina/o national origin groups in the United States, persons of Cuban and Puerto Rican ancestry.⁹

Building on the foundational articles considering the legal history of Puerto Rico,¹⁰ Professor Malavet focuses on the colonial status of this United States territory and the limited citizenship rights of Puerto Ricans on the island.¹¹ Although legal citizens, persons in Puerto Rico lack important rights ordinarily associated with United States citizenship.¹² Consistent with his previous scholarship,¹³ Professor Malavet analyzes how popular island culture remains independent of the Anglo culture dominant in the continental United States.¹⁴ Contending that deficiencies

8. See, e.g., Elvia R. Arriola, *LatCrit Theory, International Human Rights, Popular Culture, and the Faces of Despair in INS Raids*, 28 U. MIAMI INTER-AM. L. REV. 245 (1997); Gerald P. López, *Undocumented Mexican Migration: In Search of a Just Immigration Law and Policy*, 28 UCLA L. REV. 615 (1981); Bernard Trujillo, *Immigrant Visa Distribution: The Case of Mexico*, 2000 WIS. L. REV. 713.

9. See U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: THE NATIONAL DATA BOOK 32, 816 (119th ed. 1999) (Tables No. 32, 1338) (summarizing 1990 Census data showing that, in the continental United States, persons of Mexican ancestry constituted nearly 13.5 million persons in the United States compared to approximately 2.7 million Puerto Ricans (along with more than 3.5 million in Puerto Rico) and over one million Cubans); see also Berta Esperanza Hernández Truyol, *Building Bridges—Latinas and Latinos at the Crossroads: Realities, Rhetoric and Replacement*, 25 COLUM. HUM. RTS. L. REV. 369, 383–96 (1994) (summarizing histories of Mexican, Puerto Rican, and Cuban populations in United States).

10. See, e.g., JOSÉ A. CABRANES, *CITIZENSHIP AND THE AMERICAN EMPIRE: NOTES ON THE LEGISLATIVE HISTORY OF THE UNITED STATES CITIZENSHIP OF PUERTO RICANS* (1979); JOSÉ TRÍAS MONGE, *PUERTO RICO: THE TRIALS OF THE OLDEST COLONY IN THE WORLD* (1997); JUAN R. TORRUELLA, *THE SUPREME COURT AND PUERTO RICO: THE DOCTRINE OF SEPARATE AND UNEQUAL* (1985); Lisa Napoli, *The Legal Recognition of the National Identity of a Colonized People: The Case of Puerto Rico*, 18 B.C. THIRD WORLD L.J. 159 (1998); Ediberto Román, *The Alien-Citizen Paradox and Other Consequences of U.S. Colonialism*, 26 FLA. ST. U. L. REV. 1 (1998) [hereinafter Román, *Alien-Citizen Paradox*]; Ediberto Román, *Empire Forgotten: The United States's Colonization of Puerto Rico*, 42 VILL. L. REV. 1119 (1997); Sylvia R. Lazos Vargas & Petra DeWitt, "One Hundred Years of Solitude for the Tropical Peoples of the Insular Territories: Transformations of National Identity, Race and Citizenship, 1896–1900" (unpublished manuscript on file with the *Michigan Journal of Race & Law*).

11. See Pedro A. Malavet, *Puerto Rico: Cultural Nation, American Colony*, 6 MICH. J. RACE & L. 1 (2000).

12. See *infra* text accompanying notes 53–57.

13. See Pedro A. Malavet, *Literature and the Arts as Antisubordination Praxis: LatCrit Theory and Cultural Production: The Confessions of an Accidental Crit*, 33 U.C. DAVIS L. REV. 1293 (2000).

14. See Malavet, *supra* note 11, at 6–7.

of liberal theory require a communitarian shift,¹⁵ he advocates the accommodation of the cultural rights of Puerto Ricans based on their unique history and status in a legal regime premised on individual freedoms.¹⁶

This Essay situates Professor Malavet's analysis in LatCrit theory. The diminished citizenship status of Puerto Ricans on the island shares important commonalities with and differences from the experiences of persons of Mexican ancestry in the United States.¹⁷ Both Mexican Americans and Puerto Ricans enjoy citizenship and membership rights unequal to those accorded Anglos, although one group (Mexican Americans) is composed of citizens by law with full legal rights while the other (Puerto Ricans) includes United States citizens with limited legal rights in Puerto Rico.¹⁸ The guarantees of the law historically have held limited meaning for Mexican Americans; the limitation on the legal rights of United States citizens on Puerto Rico hold great significance. Law thus proves malleable depending on the social context and, not coincidentally, accords Latinas/os in both contexts diminished membership rights.

The focus of Professor Malavet's article indirectly suggests the need for study of the status of the Puerto Rican people on the mainland, which to this point has gone largely unexplored in LatCrit analysis. Puerto Ricans on the island and those on the mainland by necessity have different rights, social statuses, and life experiences. For example, although voting in national elections is guaranteed to citizens on the mainland and denied to those on the island, Puerto Ricans in the continental United States long have been subordinated, particularly in the urban Northeast. Indeed, the status of Puerto Ricans on the mainland in many respects resembles that of Chicanas/os in the Southwest. Important class and racial differences undoubtedly contribute to that diminished citizenship status. This, in turn, raises fundamental questions about class and racial variations among Latina/o national origin sub-groups.

Part I of this Essay compares the status of Puerto Ricans on the island with that of persons of Mexican ancestry in the continental United States. Part II articulates the need for LatCrit exploration of Puerto Rican subordination on the mainland and offers a brief comparison of the treatment under United States law of various Latin American migrants. Future comparisons of this type will reveal similarities and differences

15. See *id.* at 5.

16. See *id.* at 5. See generally WILL KYMLICKA, *MULTICULTURAL CITIZENSHIP: A LIBERAL THEORY OF MINORITY RIGHTS* (1995) (arguing for protection of minority group rights in multicultural society).

17. See *infra* Part I.

18. This discussion of Chicanas/os and Mexican Americans, terms used interchangeably in this Essay, generally focuses on citizens, not Mexican immigrants who are not citizens under the law but classified as "aliens."

between Latinas/os of different national origin groups and will help us better understand the roles of race and class in their subordination.

I. THE LATINA/O CRISIS OF CITIZENSHIP: A COMPARISON OF PUERTO RICANS ON THE ISLAND AND MEXICAN AMERICANS ON THE MAINLAND

As has been described elsewhere, Latinas/os in the United States face a perpetual “crisis of citizenship.”¹⁹ Socially defined as outsiders to mainstream United States society, they live on the periphery of American social life.²⁰ Many Latinas/os are citizens; those who lawfully immigrate to this country, and some who do not enter in compliance with the immigration laws but later regularize their immigration status, generally can become citizens.²¹ They often are denied full membership, however, because they are presumed to be foreign and inferior to the nation’s Anglo core.

The denial of “belonging to America” is by no means limited to Latinas/os, but applies generally to persons of color, and many other groups, including women, lesbians, and gay men.²² For example, the Fourteenth Amendment²³ guarantees formal legal citizenship to African Americans born in the United States. Even as citizens, however, no one would seriously contend that African Americans have the same social status as Whites in the United States.²⁴ Similarly, in immigration law,

19. Yxta Maya Murray, *The Latino-American Crisis of Citizenship*, 31 U.C. DAVIS L. REV. 503 (1998).

20. See Juan F. Perea, *Los Olvidados: On the Making of Invisible People*, 70 N.Y.U. L. REV. 965 (1995) (analyzing “invisibility” of Latinos in mainstream United States society).

21. See Immigration & Nationality Act § 316, 8 U.S.C. § 1427 (1994 & Supp. III 1997) (outlining various naturalization requirements).

22. KENNETH KARST, *BELONGING TO AMERICA: EQUAL CITIZENSHIP AND THE CONSTITUTION* (1989) (studying various subordinated groups and their efforts to become full members of United States society); Ediberto Román, *U.S. Citizens, the Other U.S. Citizens, and the Alien Citizens: A Vision of the Models of United States Citizenship and a Few Queries About European Union Citizenship*, 9 U. MIAMI INT’L & COMP. L. REV. (forthcoming 2001) (discussing limited citizenship afforded minority groups); Enid Trucios-Haynes, *The Legacy of Racially Restrictive Immigration Laws and Policies and the Construction of the American National Identity*, 76 OR. L. REV. 369, 408–11 (1997) (discussing difficulties of assimilation experienced by various immigrants of color); see also Guadalupe T. Luna, *On the Complexities of Race: The Treaty of Guadalupe Hidalgo and Dred Scott v. Sandford*, 53 U. MIAMI L. REV. 691 (1999) (analyzing common manipulations of citizenship rights of African Americans in *Dred Scott* and of persons of Mexican ancestry by courts applying Treaty of Guadalupe Hidalgo).

23. See U.S. CONST., AMEND. XIV, § 1 (“All persons born or naturalized in the United States . . . are citizens of the United States . . .”).

24. See, e.g., Peggy Davis, *Law as Microaggression*, 98 YALE L.J. 1559 (1989) (analyzing impacts of microaggressions on African Americans); Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987) (studying modern unconscious racism directed at African Americans). See generally

many immigrants of color and their families face impediments to full membership long after they are naturalized and become citizens; naturalization proves to be simply a step toward full membership and equal citizenship.²⁵

In terms of diminished citizenship and limited membership, certain commonalities exist within the many Latina/o experiences, including classification as the “other” based on perceived foreign-ness, religion (Catholicism), the Spanish language, and other characteristics that limit social acceptance.²⁶ Latinas/os as a group possess membership of unequal status with that accorded to Anglos.

The view of Latinas/os as outsiders has affected the United States government’s policies toward Puerto Ricans and Mexican Americans. For example, even in Puerto Rico, the United States government in the past hoped to improve “inferior” cultures by “Americanizing” the people,²⁷ just as it attempted to do with persons of Mexican ancestry in the United States in the early twentieth century.²⁸ Classification of Puerto Ricans and Mexican Americans as inferior inevitably harms their collective self-esteem and contributes to the internalization of negative stereotypes about them held by Anglos.²⁹ Perceived inferiority of Puerto Ricans³⁰ and Mexicans³¹ also rationalized harsh use of the criminal justice

ANDREW HACKER, *TWO NATIONS: BLACK AND WHITE, SEPARATE, HOSTILE, UNEQUAL* (1992) (analyzing in detail subordinated status of African Americans in the United States).

25. See Kevin R. Johnson, *Race Matters: Immigration Law and Policy Scholarship, Law in the Ivory Tower, and the Legal Indifference of the Race Critique*, 2000 U. ILL. L. REV. 525, 541–43.

26. See Ian F. Haney López, *Race, Ethnicity, Erasure: The Salience of Race to LatCrit Theory*, 85 CAL. L. REV. 1143 (1997), 10 LA RAZA L.J. 57 (1998) (discussing racialization of Latinas/os in United States, with particular focus on Mexican Americans in Texas).

27. See Malavet, *supra* note 11, at 55.

28. See Bill Ong Hing, *Beyond the Rhetoric of Assimilation and Cultural Pluralism: Addressing the Tension of Separatism and Conflict in an Immigration-Driven Multiracial Society*, 81 CAL. L. REV. 863, 920–21 (1993); George A. Martínez, *Latinos, Assimilation and the Law: A Philosophical Perspective*, 20 CHICANO-LATINO L. REV. 1, 12–13 (1999).

29. See *infra* text accompanying note 99 (discussing internalization of negative stereotypes by Latinas/os). Despite the dubious historical precedent, the blue-ribbon United States Commission on Immigration Reform recommended that the United States government adopt a variety of policies, including facilitating naturalization, denominated as “Americanization” designed to integrate immigrants into United States society. See U.S. COMMISSION ON IMMIGRATION REFORM, *BECOMING AN AMERICAN: IMMIGRATION AND IMMIGRANT POLICY* vi (1997).

30. See Malavet, *supra* note 11, at 11–12.

31. See Cruz Reynoso, *Hispanics and the Criminal Justice System*, in *HISPANICS IN THE UNITED STATES: AN AGENDA FOR THE TWENTY-FIRST CENTURY* 277 (Pastora San Juan Cafferty & David W. Engstrom eds., 2000).

system as a social control device against them, a problem that continues to plague minority communities.³²

Other similarities exist between the experiences of Puerto Ricans on the island and those of Mexican Americans in the continental United States. United States military intervention deeply affected the historical development of these communities. Puerto Ricans and Mexicans “entered the United States reality through the brutal process of United States imperial expansion. They were militarily attacked, invaded, colonized, and annexed.”³³ This history contributes to Anglos’ perception of Mexican Americans and Puerto Ricans as “enemies” and “inferior” peoples.

Despite the commonalities, different Latina/o national origin groups have different histories and experiences, and thus different types of “partial membership” in United States society.³⁴ The role of law in the subordination of Puerto Ricans on the island and Mexican Americans, for example, varies dramatically. The law formally imposes limited membership rights on persons in Puerto Rico, whose United States citizenship rights are constrained in ways other citizens’ are not.³⁵ For Puerto Ricans, the law is simply being enforced, not subverted, as is the case for Mexican Americans, whose civil rights protections under the law often are ignored.³⁶ This distinction in the deployment of law warrants careful scrutiny. In the final analysis, law appears to have limited relevance in defining the place of Latinas/os in United States society; general social, political, and economic forces play more salient roles in shaping that status.³⁷

32. See TIM DAVIS ET AL., *RACE, CIVIL RIGHTS AND AMERICAN LAW: A MULTIRACIAL APPROACH* Ch. 5 (forthcoming 2001) (collecting readings on impacts of criminal justice system on communities of color in United States); see, e.g., Alan Feuer, *Three are Guilty of Cover-Up Plot in Louima Attack*, N.Y. TIMES, Mar. 7, 2000, at A1 (discussing verdicts in case of New York City police cover-up of brutal torture of Abner Louima, a Haitian man); Jane Fritsch, *4 Officers in Diallo Shooting are Acquitted of All Charges*, N.Y. TIMES, Feb. 26, 2000, at A1 (reporting on acquittal of police officers who killed unarmed Black man with forty-one shots in front of his apartment building).

33. Angel R. Oquendo, *Re-Imagining the Latino/a Race*, 12 HARV. BLACKLETTER L.J. 93, 93–94 (1995); see Rachel F. Moran, *Neither Black Nor White*, 2 HARV. LATINO L. REV. 61, 72–73 (1997).

34. Michael Scaperlanda, *Partial Membership: Aliens and the Constitutional Community*, 81 IOWA L. REV. 707 (1996) (exploring “partial membership” provided by law with respect to immigrants to United States); see Linda Bosniak, *Universal Citizenship and the Problem of Alienage*, 94 NW. U. L. REV. 963 (2000) (analyzing problems of alienage in study of citizenship rights). See generally JUAN F. PEREA ET AL., *RACE AND RACES: CASES AND RESOURCES FOR A DIVERSE AMERICA* (2000) (offering legal history of racism directed at various racial minorities in United States.).

35. See *infra* text accompanying notes 53–63.

36. See *infra* text accompanying notes 38–52.

37. See *infra* text accompanying notes 38–63

A. Chicana/o Citizenship

For Chicano/as, second-class citizenship can be traced to the conquest of the Southwest, once a part of the Republic of Mexico.³⁸ Unlike African Americans, who were denied citizenship under *Dred Scott v. Sandford*³⁹ (until it was overruled by the ratification of the Fourteenth Amendment), Mexican nationals could become United States citizens, in no small part because of the rights guaranteed by the Treaty of Guadalupe Hidalgo ending the U.S./Mexican War in 1848.⁴⁰ The treaty allowed Mexicans in the ceded territories the option of becoming citizens.⁴¹

Despite the guarantee of citizenship, formal and informal devices historically have been employed to limit the rights of Mexican American citizens.⁴² Mexican Americans, for example, faced segregation in public accommodations and schools⁴³ and exclusion from juries.⁴⁴ To defeat Mexican Americans' right to vote as citizens, Anglos employed various

38. See generally RICHARD GRISWOLD DEL CASTILLO, *THE TREATY OF GUADALUPE HIDALGO: A LEGACY OF CONFLICT* (1990) (analyzing Treaty of Guadalupe Hidalgo under which Mexican territory was ceded to United States); *THE LEGACY OF THE MEXICAN AND SPANISH-AMERICAN WARS: LEGAL, LITERARY, AND HISTORICAL PERSPECTIVES* (Gary D. Keller & Cordelia Candelaria eds., 2000) (collecting essays analyzing treaty and its legacy); Symposium, *supra* note 7.

39. 60 U.S. 393 (1856); see *supra* text accompanying note 23 (noting that Fourteenth Amendment guarantees African Americans citizenship).

40. See George A. Martínez, *The Legal Construction of Race: Mexican-Americans and Whiteness*, 2 HARV. LATINO L. REV. 321, 326–27 (1997) (analyzing *In re Rodriguez*, 81 F. 337 (W.D. Tex. 1897) (holding that Mexican immigrant was eligible to naturalize as a “White” person and the decision’s significance to racialization of Mexican Americans in United States)); see also IAN F. HANEY LOPEZ, *WHITE BY LAW* (1996) (analyzing court decisions interpreting the requirement that an immigrant be “White” in order to naturalize).

41. See Kevin R. Johnson, *An Essay on Immigration, Citizenship, and U.S./Mexico Relations: The Tale of Two Treaties*, 5 SW. J.L. & TRADE AM. 121, 127–30 (1998) (analyzing immigration and nationality provisions of Treaty of Guadalupe Hidalgo). Arguing that the non-White, non-English-speaking status of the population of the New Mexico territory precluded the territory’s admission as a State, opponents of admission delayed New Mexico’s entry into the Union until 1912. See Román, *Alien-Citizen Paradox*, *supra* note 10, at 35–36 (citing authorities).

42. See Martínez, *supra* note 40, at 334–47.

43. See, e.g., *Westminster School Dist. v. Mendez*, 161 F.2d 774 (9th Cir. 1947) (public school segregation); *Luecas v. Town of Lafayette*, 65 P.2d 1431 (Colo. 1937) (public swimming pool segregation).

44. See *Hernandez v. Texas*, 347 U.S. 475 (1954); see also Haney López, *supra* note 26 (analyzing significance of *Hernandez* decision in terms of racial formation); Ian F. Haney López, *Institutional Racism: Judicial Conduct and a New Theory of Racial Discrimination*, 109 YALE L.J. 1717 (2000) (discussing institutional racism in Los Angeles County grand jury selection).

devices, including but not limited to intimidation and violence, to effectively disenfranchise Mexican Americans in the Southwest.⁴⁵

Mexican Americans to this day possess limited membership rights in United States society. They continue to experience great difficulties integrating into the social and economic mainstream.⁴⁶ Courts historically have rebuffed efforts to vindicate Mexican American civil rights.⁴⁷ Racial discrimination against Mexican Americans continues, even if condemned by the courts.⁴⁸ Children of Mexican ancestry attend segregated schools.⁴⁹ Few Mexican Americans can be found in higher education, a problem exacerbated by the eradication of affirmative action in California and Texas.⁵⁰ In addition, the criminal justice system disparately impacts Mexican Americans, with young men of Mexican ancestry prosecuted and imprisoned significantly in excess of their proportion of the general population.⁵¹ Similarly, because persons from Mexico are subject to the enforcement of the immigration laws, all persons who "look Mexican"

45. See Rodolfo O. de la Garza & Louis DeSipio, *Save the Baby, Change the Bathwater, and Scrub the Tub: Latino Electoral Participation After Seventeen Years of Voting Rights Act Coverage*, 71 TEX. L. REV. 1479 (1993) (reviewing how Voting Rights Act and amendments addressed barriers to Latina/o voting).

46. See Kevin R. Johnson, "Melting Pot" or "Ring of Fire"?: *Assimilation and the Mexican-American Experience*, 85 CAL. L. REV. 1259, 1277-99 (1997), 10 LA RAZA L.J. 173, 191-213 (1998); Martínez, *supra* note 28, at 9-13; see also Sylvia R. Lazos Vargas, *Deconstructing Homo[genous] Americanus: The White Ethnic Immigrant Narrative and Its Exclusionary Effect*, 72 TUL. L. REV. 1493, 1554-67 (1998) (discussing the "myth of assimilation" of immigrants of color).

47. See, e.g., *People ex rel. Gallo v. Acuna*, 929 P.2d 596 (Cal. 1997) (upholding broad injunction barring alleged activities, including association, of Chicanas/os in "criminal street gang"). See generally George A. Martinez, *Legal Indeterminacy, Judicial Discretion and the Mexican-American Litigation Experience: 1930-1980*, 27 U.C. DAVIS L. REV. 555 (1994) (analyzing Mexican American civil rights decisions over fifty years).

48. See, e.g., *Aguilar v. Avis Rent a Car System, Inc.*, 980 P.2d 846 (Cal. 1999) (upholding remedial injunction prohibiting use of racial epithets directed at Latino employees in workplace); *Ruiz v. Hull*, 957 P.2d 984 (Ariz. 1998), *cert. denied sub nom.*, *Arizonans for Official English v. Arizona*, 525 U.S. 1093 (1999) (invalidating Arizona constitutional amendment requiring that state employees conduct business exclusively in English); see also CARMEN T. JOGE & SONIA M. PÉREZ, NATIONAL COUNCIL OF LA RAZA, *THE MAINSTREAMING OF HATE: A REPORT ON LATINOS AND HARASSMENT, HATE VIOLENCE, AND LAW ENFORCEMENT ABUSE IN THE '90s* (1999).

49. See GARY ORFIELD & JOHN T. YUN, *RESEGREGATION IN AMERICAN SCHOOLS* 3 (1999) ("[T]he data shows continuously increasing segregation for Latino students, who are rapidly becoming our largest minority group and have been more segregated than African Americans for several years.").

50. See *Coalition for Econ. Equity v. Wilson*, 122 F.3d 692 (9th Cir. 1997) (upholding California law barring the state from considering race and gender in state programs); *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996) (invalidating affirmative action program utilized by University of Texas law school), *cert. denied*, 518 U.S. 1033 (1996).

51. See Reynoso, *supra* note 31.

can be subject to interrogation of their citizenship and immigration status.⁵²

In sum, although the law purportedly protects Mexican American citizenship and membership rights, it often fails to do so fully. Law thus proves marginal in protecting this group of United States citizens.

B. Puerto Rican Citizenship

Puerto Rican quasi-citizenship differs in salient ways from that of Mexican Americans. All Puerto Ricans, both those on the island and those who live in the United States, by operation of law, are United States citizens.⁵³ However, the law *denies* all persons in Puerto Rico important rights *guaranteed* to other United States citizens.⁵⁴ In Puerto Rico, for example, United States citizens currently cannot vote for President, lack voting representation in Congress, and are effectively locked out of the political process of the nation of which they ostensibly are a part.⁵⁵ Limited citizenship rights are premised on the view that the United States government possesses “plenary power” over inferior peoples in its territories.⁵⁶ As a consequence of their disenfranchisement, Puerto Ricans regularly receive less favorable treatment from the federal government than citizens of the various states. For example, federal benefit programs offer significantly lower benefit levels to United States citizens in Puerto Rico than to those on the mainland.⁵⁷

52. See *United States v. Brignoni-Ponce*, 422 U.S. 873, 886–87 (1975) (stating that “Mexican appearance” constitutes a legitimate consideration under the Fourth Amendment for making an immigration stop); see also *United States v. Martinez-Fuerte*, 428 U.S. 543, 563 (1976) (stating that reliance on race at fixed immigration checkpoints is permissible). *But see* *United States v. Montero-Camargo*, 208 F.3d 1122 (9th Cir. 2000) (en banc) (holding that Border Patrol officers cannot consider “Hispanic appearance” of subject in effecting immigration stop); Victor C. Romero, *Racial Profiling: “Driving While Mexican” and Affirmative Action*, 6 MICH. J. RACE & L. __ (2000).

53. See Malavet, *supra* note 11, at 5, 7, 10.

54. See, e.g., *Balzac v. People of Puerto Rico*, 258 U.S. 298 (1922) (holding that Puerto Rico is not incorporated into the United States, and therefore its inhabitants do not have a Sixth Amendment right to a jury trial); *Downes v. Bidwell*, 182 U.S. 244 (1901) (holding that Article I, section 8 of the Constitution does not apply to Puerto Rico). See generally GERALD L. NEUMAN, *STRANGERS TO THE CONSTITUTION: IMMIGRANTS, BORDERS, AND FUNDAMENTAL LAW* 72–117 (1996) (analyzing Supreme Court decisions concluding that Constitution does not apply with full force in United States territories).

55. See Román, *Alien-Citizen Paradox*, *supra* note 10, at 10–11, nn.60–72 (citing authorities).

56. See Malavet, *supra* note 11, at 30; Román, *Alien-Citizen Paradox*, *supra* note 10, at 45.

57. See *Harris v. Rosario*, 446 U.S. 651 (1980) (per curiam) (rejecting constitutional challenge to Congress’s decision to offer lower level of assistance in federal public benefit program to recipients in Puerto Rico than those provided to United States citizens).

Unlike the territories ceded by Mexico to the United States under the Treaty of Guadalupe Hidalgo,⁵⁸ Puerto Rico has never been afforded statehood but instead enjoys the limited status of a United States territory. This limited place in the greater United States contributes to calls for statehood,⁵⁹ as well as for the Puerto Rican independence movement.⁶⁰ Commentators, including Professor Malavet, have offered alternative visions about the need for political change in Puerto Rico.⁶¹

In sum, Puerto Ricans on the island face limits on citizenship imposed by the law. Law circumscribes their citizenship and membership rights.

C. *The Need for Future Inquiry*

The preceding pages offer but a few of the relevant comparisons between Puerto Ricans on the island and Mexican Americans in the continental United States. Both have long embarked on the difficult quest for full membership and equal citizenship in the United States. The history of both groups demonstrates that formal citizenship rights are not sufficient to make them full members in United States society.

The second-class citizenship afforded Puerto Ricans on the island and Mexican Americans in the United States deserves greater attention. A critical question concerns the relevance of law. With respect to Mexican Americans, formal and informal ways have been found, such as the failure to enforce civil rights protections, to circumvent law when necessary to defeat its dictates.⁶² For Puerto Ricans, law helps to define their

residing in one of the 50 states); *Califano v. Torres*, 435 U.S. 1 (1978) (per curiam) (upholding requirement that federal disability benefits are payable only to residents of the 50 states and the District of Columbia).

58. See *supra* text accompanying notes 40–41.

59. See José A. Cabranés, *Puerto Rico: Colonialism as Constitutional Doctrine*, 100 HARV. L. REV. 450, 451 (1986) (referring to “the island’s statehood movement, a movement that took root at the beginning of the century among Puerto Rico’s blacks and poor whites, that for the most of this century was led by members of the island’s elite, and that today is broadly representative of all sectors of Puerto Rican society”); see also Juan R. Torruella, *¿Hacia Donde Vas Puerto Rico?*, 107 YALE L.J. 1503, 1519–22 (1998) (stating need to resolve “status problem” of Puerto Rico and finally determine the status of the island in the United States).

60. See, e.g., *United States v. Jordan*, 223 F.3d 676 (7th Cir. 2000) (affirming criminal conviction of Puerto Rican academic for conspiracy and other offenses in connection with effort to secure independence for Puerto Rico through violent means if necessary); *United States v. Rodriguez*, 803 F.2d 318 (7th Cir. 1986) (affirming criminal conviction of member of organization seeking Puerto Rican independence).

61. See, e.g., sources cited in *supra* note 10, advocating that United States re-evaluate its relationship with Puerto Rico and offering alternatives for de-colonization of the island; Malavet, *supra* note 11.

62. See *supra* text accompanying notes 42–52.

limited citizenship. With and without legal protections, Latino/as are subordinated with limited membership rights. This offers support to the claim articulated by Professor George Martínez about “the marginality of law” in defining the place of Latinas/os in the United States.⁶³

II. THE NEED FOR LATCRIT STUDY OF PUERTO RICAN SUBORDINATION IN THE CONTINENTAL UNITED STATES

A need exists for study and comparison of the racialization of various Latina/o national origin groups.⁶⁴ By focusing on the diminished citizenship rights of Puerto Ricans on the island, Professor Malavet indirectly suggests a ripe area for future LatCrit inquiry. Although Puerto Rican experiences at times have factored into general LatCrit analysis,⁶⁵ little specific attention has been paid by legal scholars to the particular status of Puerto Ricans in the continental United States.

A. Differing Puerto Rican Experiences

Puerto Ricans have migrated in significant numbers to the mainland of the United States for over a century. The flow of migrants increased after the end of the Spanish-American War in 1898 and “exploded after the Second World War. Puerto Ricans arrived as one of the most socially and economically impoverished groups and have retained that status. . . . The United States has dominated Puerto Ricans who reside on the island, as well as those who live on the continent.”⁶⁶ LatCrit study of the Puerto Rican experience on the mainland may build on the body of non-legal scholarship in the field.⁶⁷

63. Martínez, *supra* note 40, at 334–39 (analyzing “the marginality of law” in connection with Mexican American civil rights in United States); see also RICHARD DELGADO & JEAN STEFANCIC, *FAILED REVOLUTIONS: SOCIAL REFORM AND THE LIMITS OF LEGAL IMAGINATION* (1994) (examining various reasons for social reform failures).

64. See Iglesias, *supra* note 2, at 586–608.

65. See, e.g., Max J. Castro, *Making Pan Latino: Latino Pan-Ethnicity and the Controversial Case of the Cubans*, 2 HARV. LATINO L. REV. 179, 185 (1997) (reviewing well-publicized incident in which Puerto Rican member of Congress Luis Gutierrez was told by police officer to “go back from where he came” as he attempted to go to his congressional office); Natsu Taylor Saito, *Alien and Non-Alien Alike: Citizenship, “Foreignness,” and Racial Hierarchy in American Law*, 76 OR. L. REV. 261, 308 n.246 (1997) (same).

66. Oquendo, *supra* note 33, at 121–22 (footnotes omitted); see Gloria Sandrino-Glasser, *Los Confundidos: De-Conflating Latinos/as’ Race and Ethnicity*, 19 CHICANO-LATINO L. REV. 69, 127 n.227 (1998) (summarizing history of migration from Puerto Rico to mainland United States).

67. See, e.g., JOSÉ E. CRUZ, *IDENTITY AND POWER: PUERTO RICAN POLITICS AND THE CHALLENGE OF ETHNICITY* (1998) (studying Puerto Rican political activism in Connecticut); JOSÉ LUIS GONZÁLEZ, *PUERTO RICO: THE FOUR-STOREYED COUNTRY AND OTHER*

Sadly enough, there is ample evidence of discrimination and subordination of Puerto Ricans on the mainland.⁶⁸ Linda Chavez refers to the "Puerto Rican exception" to Hispanic assimilation in the United States.⁶⁹ As summarized by an influential observer,

Puerto Ricans, largely residing in New York, are the poorest, most segregated of the Latino groups. . . . Many Americans actually consider a significant number of them to be black and consequently they face similar treatment in the real estate market. Also, the Puerto Rican urban poor resemble the black poor in their proportion of female-headed families, welfare recipients, and central-city residents.⁷⁰

Similarly, Puerto Ricans' treatment by the criminal justice system on the United States mainland often mirrors that of African Americans.⁷¹

Many questions remain to be analyzed with respect to the experiences of Puerto Ricans on the mainland. The experiences of White versus Black and poor versus more affluent Puerto Ricans in the continental United States, as well as on the island, unquestionably diverge. Observers have analyzed tensions between the established Mexican American and the Mexican immigrant communities in the United

ESSAYS (1990) (analyzing issue of race for Puerto Ricans); THE PUERTO RICAN STRUGGLE: ESSAYS ON SURVIVAL IN THE U.S. (Clara Rodríguez et al. eds., 1980) (collecting essays on Puerto Rican experience in continental United States); see also SUZANNE OBOLER, ETHNIC LABELS, LATINO LIVES 44–29 (1995) (analyzing Chicano and Puerto Rican movements of 1960s).

68. See *Alfred L. Snapp & Son, Inc. v. Puerto Rico*, 458 U.S. 592 (1982) (allowing Commonwealth of Puerto Rico to bring discrimination claim on behalf of Puerto Rican migrant farmworkers in continental United States); *Katzenbach v. Morgan*, 384 U.S. 641 (1966) (holding that New York English literacy requirement discriminated against Puerto Ricans and violated Voting Rights Act); see also PEREA ET AL., *supra* note 34, at 328–55 (tracing legal history of Puerto Ricans in United States).

69. See LINDA CHAVEZ, *OUT OF THE BARRIO: TOWARD A NEW POLITICS OF HISPANIC ASSIMILATION* 139–59 (1991); see NATHAN GLAZER & DANIEL PATRICK MOYNIHAN, *BEYOND THE MELTING POT* 86–136 (2d. ed. 1970) (describing the experience of Puerto Ricans in New York City). Some claim that Mexican Americans also have not been fully assimilated into the mainstream. See Johnson, *supra* note 46, at 1277–99, 191–213; Martínez, *supra* note 28, at 9–13.

70. John O. Calmore, *Race/ism Lost and Found: The Fair Housing Act at Thirty*, 52 U. MIAMI L. REV. 1067, 1113 (1998) (footnote omitted).

71. See, e.g., *National Congress for Puerto Rican Rights v. City of New York*, 191 F.R.D. 52 (S.D.N.Y. 1999) (holding that Latino and Black plaintiffs stated a constitutional claim challenging race-based stops by New York law enforcement authorities).

States.⁷² Schisms along lines of physical appearance and class would appear likely among Puerto Ricans as well.

It remains, however, uncertain just how different the experiences are between Puerto Ricans on the mainland and on the island. As Professor Gerald López observes,

Puerto Ricans still tend to distinguish strongly between those born on the island and those born in the continental United States. . . . Yet the boundaries between the island and the mainland seem increasingly smudged. Particularly for the thousands of Puerto Ricans who have migrated back and forth between places like New York City and San Juan, life seems to draw in equal measure on two related though separable worlds. What it means to be Puerto Rican—on the island and on the mainland—seems very much in dispute, constitutionally and culturally.⁷³

A comparison of Puerto Rican experiences on and off the island promises to yield important insights. For example, Puerto Ricans on the island cannot vote on national matters while those on the mainland enjoy the franchise. Unlike persons on the island, Puerto Ricans on the mainland are eligible for the same public benefits as other citizens on the mainland. However, despite limited political and other rights, many Puerto Ricans on the island do not face the social marginalization in their daily lives that Puerto Ricans seem to experience in the Anglocentric continental United States. Puerto Ricans on the island thus may be better off in certain ways than those on the mainland.

The issue, however, is quite complex and deserves further investigation. Unemployment and poverty are strikingly higher in Puerto Rico than on the mainland.⁷⁴ Consequently, Puerto Ricans continue to leave the island in significant numbers.⁷⁵ Obviously seeing economic and other advantages to living in the continental United States, the migrants appar-

72. See generally DAVID G. GUTIÉRREZ, *WALLS AND MIRRORS: MEXICAN AMERICANS, MEXICAN IMMIGRANTS, AND THE POLITICS OF ETHNICITY* (1995) (analyzing division among various groups of persons of Mexican ancestry on issue of Mexican immigration).

73. See Gerald P. López, *Learning About Latinos*, 19 *CHICANO-LATINO L. REV.* 363, 402 (1998).

74. See TRÍAS MONGE, *supra* note 10, at 2–3 (“Per capita income in Puerto Rico is still only about one-third that of the United States and half that of Mississippi. In the Caribbean, eleven other areas enjoy a higher per capita income The per capita income of the poorest of these areas is 20 percent higher than that of Puerto Rico.”) (citation omitted).

75. See *id.* at 2 (“The number of Puerto Ricans or persons of Puerto Rican descent now living in the United States totals about 75 percent of the current population of Puerto Rico. A worsening of local conditions normally triggers massive emigration to the United States.”) (citation omitted).

ently are willing to trade off social marginalization for increased economic opportunity.

Moreover, the *de jure* status of Puerto Ricans on the island outside the polity translates into literal outsider status. Without voting representation in the national government, the needs and concerns of Puerto Ricans on the island long have been neglected, if not ignored,⁷⁶ a situation that shows little likelihood of change absent political reform. In contrast, Mexican Americans and Puerto Ricans in the United States enjoy the right to vote. As a group, Latinas/os on the mainland, including Mexican Americans and Puerto Ricans, have gained the attention of political leaders seeking their votes.⁷⁷

This brief discussion obviously raises more questions than it offers answers. At a minimum, it suggests the need for more careful scrutiny of the Puerto Rican experience in the United States.

B. Race and Class in Chicana/o and Puerto Rican Subordination

Chicana/o Studies scholars long have considered race and class as operating in tandem to subordinate Chicanas/os in the Southwest.⁷⁸ LatCrit scholarship has increasingly engaged the relationship between race and class.⁷⁹ In addition, Latinas/os have different life experiences depending on their physical appearances, a topic of LatCrit inquiry.⁸⁰ In

76. See *infra* text accompanying notes 78–90.

77. See, e.g., William Booth, *Impact of Latino Vote Shifts to Cities and Southwest*, WASH. POST, Oct. 6, 2000, at A18; Jill Leovy, *State Will Test Parties' Appeal to Latinos*, L.A. TIMES, Aug. 16, 2000, at A3 (studying efforts of Republican and Democratic candidates to attract Latina/o voters in elections).

78. See, e.g., RODOLFO F. ACUÑA, *OCCUPIED AMERICA* (3d ed. 1988); MARIO BARRERA, *RACE AND CLASS IN THE SOUTHWEST: A THEORY OF RACIAL INEQUALITY* (1979).

79. See Elizabeth M. Iglesias, *Institutionalizing Economic Justice: A LatCrit Perspective on the Imperatives of Linking the Reconstruction of "Community" to the Transformation of Legal Structures That Institutionalize the Depoliticization and Fragmentation of Labor/Community Solidarity*, 2 U. PA. J. LAB. & EMP. L. 773, 803–04 (2000); see also Christopher David Ruiz Cameron, *The Rakes of Wrath: Urban Agricultural Workers and the Struggle Against Los Angeles's Ban on Gas-Powered Leaf Blowers*, 33 U.C. DAVIS L. REV. 1087 (2000); Roberto L. Corrada, *Familiar Connections: A Personal Re/View of Latino/a Identity, Gender, and Class Issues in the Context of the Labor Dispute Between Sprint and La Conexión Familiar*, 53 U. MIAMI L. REV. 1065 (1999); Elizabeth M. Iglesias & Francisco Valdes, *Afterword—Religion, Gender, Sexuality, Race and Class in Coalitional Theory: A Critical and Self-Critical Analysis of LatCrit Social Justice Agendas*, 19 CHICANO-LATINO L. REV. 503, 574–82 (1998); Mary Romero, *Immigration, the Servant Problem, and the Legacy of the Domestic Labor Debate: "Where Can You Find Good Help These Days!"*, 53 U. MIAMI L. REV. 1045 (1999).

80. See Johnson, *supra* note 46, at 1291–93, 205–07 (citing authorities discussing impacts of indigenous appearances on life experiences of persons of Mexican ancestry in United States).

modern Cuba, for example, Afro-Cubans suffer great disparities in treatment compared to White Cubans.⁸¹ Similarly, White Cubans and Afro Cubans have divergent experiences in the United States, as they find themselves in a society deeply divided along Black/White lines.⁸²

Importantly, Puerto Rican experiences may vary based on class and skin color. Professor Malavet recognizes that race and color have divided the population of Puerto Rico.⁸³ One indeed would be surprised if class disparities correlated with race failed to exist in Puerto Rico because they are prevalent in places with a colonial legacy.⁸⁴ Indeed, economic inequality on the island contributes to the migration of Puerto Ricans to the mainland.⁸⁵ Once in the continental United States, Black Puerto Ricans almost undoubtedly have different experiences than those of other Puerto Ricans,⁸⁶ and they are more likely than other Latinas/os to identify as Black in this country.⁸⁷ Similarities between the African American and Black Puerto Rican experiences may allow for political coalitions, one of the centerpieces of LatCrit theory.⁸⁸

Besides the impact that intra-Puerto Rican difference has on group identities and experiences, variations between various national origin groups may affect strategies for securing social change. As Professors Elizabeth Iglesias and Frank Valdes have observed,

LatCrit scholars will need to develop very different strategies for combating Puerto Rican poverty in New York, New Jersey and on the island of Puerto Rico as compared, for example, to the strategies needed to combat Chicana/o

81. See generally Tanya K. Hernandez, *An Exploration of the Efficacy of Class-Based Approaches to Racial Justice: The Cuban Context*, 33 U.C. DAVIS L. REV. 1135 (2000).

82. See Mirra Ojito, *Best of Friends, Worlds Apart*, N.Y. TIMES, June 5, 2000, at A1 (discussing dramatically different experiences of two Cuban immigrants to Miami, one Black, one not, who had been best friends in Cuba).

83. See Malavet, *supra* note 11, at 13 n.39 (discussing early history of Puerto Rico and orders of King of Spain that Whites marry Whites in Puerto Rico).

84. See Tayyab Mahmud, *Race, Reason, and Representation*, 33 U.C. DAVIS L. REV. 1581 (2000).

85. See *supra* text accompanying notes 74–75.

86. See, e.g., PIRI THOMAS, *DOWN THESE MEAN STREETS* (1967) (offering autobiographical experience of Puerto Rican in Spanish Harlem); see also Ian F. Haney López, *The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice*, 29 HARV. C.R.-C.L. L. REV. 1, 39–50 (1994) (analyzing Thomas's experiences from standpoint of racial formation).

87. See Moran, *supra* note 33, at 74–75; see, e.g., Trucios-Haynes, *supra* note 22, at 415–16 (discussing experiences of a Puerto Rican often “presumed to be African American” because of her physical appearance).

88. See, e.g., Martínez, *supra* note 2 (arguing for coalitions between African Americans and Latinas/os); Valdes, *supra* note 1, at 1094, 8 (stating that the building of community and coalitions is a central LatCrit tenet).

poverty in the border towns of Southern Texas, or the poverty of Central Americans and more recently-arrived Cubans in Miami.⁸⁹

Efforts to offer a positive prescription for change, a hallmark of LatCrit theory,⁹⁰ thus requires sensitivity to group and regional differences. To this point, limited LatCrit attention has been paid to the specifics of Puerto Rican subordination in the northeastern United States.

C. An Example: Race, Class, and Migration

As the previous discussion suggests, race and class differences among Latina/o national origin groups affect their life experiences in the United States. Such differences among Latina/o populations help us understand the shifting policies of the United States government toward Latin American migrants. Attention to the relevance of race and class may reveal lessons about other governmental policies as well.

Immigration raises important, although different, issues for Cubans and Mexicans who migrate to the United States. In contrast, Puerto Ricans who leave the island to the continental United States as United States citizens are not immigrants, even if they often are treated as perpetual “foreigners.”⁹¹ Commonalities nonetheless exist between Latina/o migration experiences. Many Latinas/os hold deep affinities for their native land. Many Cuban Americans and Puerto Ricans on the mainland hope to return home and consider their time in the United States as temporary. Similarly, many Mexican migrants have developed transnational identities as United States residents and Mexican citizens.⁹²

Differing from general patterns of Mexican and Puerto Rican migration to the United States mainland, the early waves of Cuban migrants after Castro’s Revolution were on the whole middle- and upper-income, educated, and Whiter than later waves of Cuban immigrants.⁹³ From

89. See Iglesias & Valdes, *supra* note 79, at 577.

90. See, e.g., Sumi K. Cho, *Essential Politics*, 2 HARV. LATINO L. REV. 433, 434–36 (1997); Laura M. Padilla, *LatCrit Praxis to Heal Fractured Communities*, 2 HARV. LATINO L. REV. 375, 386–92 (1997); see also Dean Rex Perschbacher, *Welcoming Remarks for LatCrit IV*, 33 U.C. DAVIS L. REV. 751, 751 (2000) (praising “the remarkable ability of LatCrit IV scholars to blend academic theory . . . with one of the law’s most positive attributes—its link with people’s day-to-day lives and their communities”).

91. See *supra* note 65 (citing authorities).

92. See Rachel F. Moran, *Foreword—Demography and Distrust: The Latino Challenge to Civil Rights and Immigration Policy in the 1990s and Beyond*, 8 LA RAZA L.J. 1, 13–24 (1995).

93. See generally ALEJANDRO PORTES & ROBERT L. BACH, *LATIN JOURNEY: CUBAN AND MEXICAN IMMIGRANTS IN THE UNITED STATES* (1985) (comparing experiences of Mexican and Cuban immigrants).

1959–80, the United States government generously admitted Cuban refugees.⁹⁴ A politically-powerful Cuban American community exists in South Florida and vigilantly watches to protect the rights of Cuban migrants, as demonstrated by the much-publicized Elián González matter.⁹⁵ The fact that Cuban Americans are considered part of the Republican constituency indicates how many have become integrated into the mainstream.⁹⁶ This political and economic assimilation, in no doubt stemming in large part from class and racial characteristics of the early cohort of Cuban immigrants, arguably differs from that of Mexican Americans and Puerto Ricans.⁹⁷

In addition, unlike the Southwest and Puerto Rico,⁹⁸ Cuba did not become part of the United States through United States military intervention, although United States imperialism in the Caribbean undoubtedly shaped the nation's political and economic development. As a result of this and many other factors, Cubans may not have internalized the negative stereotypes about them held by Anglos, prevalent among the Mexican, and perhaps Puerto Rican, populations in the United States.⁹⁹

As a historical matter, Cubans seeking to immigrate to the country generally have not faced the gauntlet of barriers constructed by the United States government to curb Mexican migration.¹⁰⁰ The United States, fearful of a mass migration of poor, Brown people from Mexico, bolstered border enforcement along the southern border in the 1990s with record expenditures.¹⁰¹ Similarly, the United States government,

94. See FELIX ROBERTO MASUD-PILOTO, *FROM WELCOMED EXILES TO ILLEGAL IMMIGRANTS* 32–70 (1996). See generally MARÍA CRISTINA GARCÍA, *HAVANA USA* (1996) (documenting Cuban migration and its impact from 1959 to 1994).

95. See *Return of Elián González to Cuba*, 94 AM. J. INT'L L. 516 (2000).

96. See RODOLFO O. DE LA GARZA ET AL., *LATINO VOICES: MEXICAN, PUERTO RICAN & CUBAN PERSPECTIVES ON AMERICAN POLITICS* 84 (1992) (presenting survey results showing that more than 34% of Cubans, fewer than 23% of Puerto Ricans, and about 15.4% of Mexicans identified themselves as “conservatives”).

97. See *supra* text accompanying notes 19–63.

98. See *id.*

99. Compare Alice G. Abreu, *Lessons from LatCrit: Insiders and Outsiders, All at the Same Time*, 53 U. MIAMI L. REV. 787, 798 (1999) (“As the only Cuban or Latina/o lawyer at the law firm with which I practiced, I was hardly in the mainstream. But although I knew I was different, I did not feel inferior.”), with Laura M. Padilla, *Social and Legal Repercussions of Latinos’ Colonized Mentality*, 53 U. MIAMI L. REV. 769 (1999) (analyzing internalized oppression, including feelings of inferiority and lack of self esteem, among Latinas/os and particularly Mexican Americans).

100. See Karl Eschbach et al., *Death at the Border*, 33 INT'L MIGRATION REV. 430 (1999) (documenting deaths along U.S./Mexico border stemming from increased border enforcement measures).

101. See Kevin R. Johnson, *Race, the Immigration Laws, and Domestic Race Relations: A “Magic Mirror” into the Heart of Darkness*, 73 IND. L.J. 1111, 1136–40 (1998).

with the approval of the Supreme Court, enthusiastically returned poor, Black Haitians fleeing political violence to Haiti.¹⁰²

However, the claim made by some commentators that the United States government has embraced Cubans with open arms is simplistic.¹⁰³ The salience of race and class becomes readily apparent in analyzing the shifts in United States policy toward Cuban migrants. True, early Cuban refugees, many of whom were educated, middle- and upper-class, and White, received preferential treatment in no small part because their admission assisted the United States war on communism.¹⁰⁴ However, the percentage of Afro-Cubans, including many poor and working-class persons, who came in the Mariel Boatlift in 1980, was significantly higher than in previous waves of Cubans.¹⁰⁵ The Cuban American community in south Florida at times distinguished itself from the new Cuban migrants and did not vigorously oppose the United States government's harsh policies toward them.¹⁰⁶ Detention, interdiction, and other efforts at deterring migration have been among the arsenal of United States policies designed to limit Cuban migration in the 1980s and 1990s, when many of the migrants were poor and Black.¹⁰⁷ Race and class differences

102. See *Sale v. Haitian Ctrs. Council, Inc.*, 509 U.S. 155 (1993); Kevin R. Johnson, *Judicial Acquiescence to the Executive Branch's Pursuit of Foreign Policy and Domestic Agendas in Immigration Matters: The Case of the Haitian Asylum-Seekers*, 7 GEO. IMMIGR. L.J. 1 (1993) (analyzing reasons behind the United States government's harsh Haitian interdiction and repatriation policies).

103. See, e.g., Cheryl Little, *InterGroup Coalitions and Immigration Politics: The Haitian Experience in Florida*, 53 U. MIAMI L. REV. 717, 732 (1999) ("While immigration policy toward Cubans tends to be generous and humanitarian, even with recent repatriation, immigration policy toward Haitians tends to be stringent and inhumane.").

104. See PORTES & BACH, *supra* note 93, at 84-86; see, e.g., Cuban Adjustment Act, Pub. L. No. 89-732, 80 Stat. 1161 (1966) (offering Cubans opportunity to regularize immigration status in ways not available to other migrants). See generally GIL LOESCHER & JOHN A. SCANLAN, *CALCULATED KINDNESS: REFUGEES AND AMERICA'S HALF-OPEN DOOR, 1945 TO THE PRESENT* (1986) (analyzing significance of foreign policy to United States refugee admissions in post-World War II period and discussing Cuban refugee admissions along with other examples).

105. See PORTES & BACH, *supra* note 93, at 88; Richard A. Boswell, *Throwing Away the Key: Limits on the Plenary Power?*, 18 MICH. J. INT'L L. 689, 705 & n.52, 707 (1997); Joyce A. Hughes, *Flight from Cuba*, 36 CAL. W. L. REV. 39, 56-57 (1999); see also GARCÍA, *supra* note 94, at 68 (stating that Cubans of Mariel differed from migrants of 1960s and that "[t]here were more blacks and mulattoes among them (from 15 to 40 percent, compared to 3 percent of the 1959-73 migration)").

106. See GARCÍA, *supra* note 94, at 72-73.

107. See, e.g., *Cuban American Bar Ass'n v. Christopher*, 43 F.3d 1412 (11th Cir. 1995) (rejecting various statutory and constitutional claims of Cuban migrants in safe haven); *Barrera-Echavarria v. Rison*, 44 F.3d 1441 (9th Cir. 1995) (en banc) (upholding indefinite detention of Cuban immigrant); see also Arthur C. Helton, *Securing Refugee Protection in the Americas: The Inter-American System on Human Rights and the Rights of Asylum Seekers*, 6 SW. J.L. & TRADE AM. 129, 133-34 (1999) (summarizing shifting U.S. policy toward Cuban rafters after 1980).

therefore appear central to an understanding of the comparative treatment of the two distinct groups of Cuban migrants.

D. *Summary*

In the future, LatCrit theory should analyze the legal and social status of Puerto Ricans on the mainland as well as on the island. A comparison of Puerto Rican and Mexican American subordination in the continental United States is fertile ground for lessons about these groups as well as Latinas/os generally. Both have experienced political powerlessness, economic marginalization, and social stigmatization. Despite its promise, law has not protected Mexican Americans and Puerto Ricans from such treatment.

Race and class are deeply interrelated in the subordination of Latinas/os of different national origin ancestries in the United States and can provide insights into governmental policies toward them. A comparison of the United States government's shifting migration policies toward Cubans, Mexicans, and Puerto Ricans reveals the salience of race and class. LatCrit scholars must engage the interaction of race and class to better understand the range of Latina/o subordination.

CONCLUSION

Professor Malavet's article offers insights on a subject in much need of serious scholarship. The limits on full membership and equal citizenship of Puerto Ricans, Chicanas/os, and other Latinas/os justifies future investigation. Amazingly, although United States citizens, Puerto Ricans on the island effectively are denied the right to vote for and participate in the national government, ordinarily a bedrock right of United States citizenship.

Professor Malavet also implicitly suggests the need to consider the similarities in the Mexican and Puerto Rican experiences in the continental United States, where both enjoy full rights of citizenship, except for Mexican immigrants who have not been naturalized. LatCrit theory should not miss the opportunity to analyze the specific history and experiences of Puerto Ricans on the mainland and how race and class contribute to their subordination.