Civil Rights and Immigration: Challenges for the Latino Community in the Twenty-First Century

Kevin R. Johnson
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I. INTRODUCTION

This Symposium, *Demography and Distrust: The Latino Challenge to Civil Rights and Immigration Policy in the 1990's and Beyond*, is devoted to two related issues of central importance to the Latino community in the United States, civil rights and immigration. Latino activists understandably are preoccupied with civil rights questions, which run the gamut from enforcement of anti-discrimination laws to guaranteeing voting rights to maintaining and promoting bilingual education in the public schools. Immigration from Latin America, which by almost all accounts has in-
creased substantially over the last century, has had a significant impact on the Latino community and has added a wealth of complexity to its full civil rights agenda.

It is always healthy for minority communities to reexamine the conventional wisdoms. This, however, is a particularly opportune time to think afresh about strategies for change, the impact of immigration on the Latino community, and the interface between the two. Latinos in the United States comprise an increasing proportion of the general population. This in no small part is due to immigration. Changing demographics in turn might well enhance the viability of political strategies for social change. At the same time, however, as suggested by the reference to “Demography and Distrust” in the title of this Symposium, the increasing Latino population, especially new immigrants, may receive a hostile reception from dominant society.

This article emphasizes that political, as opposed to strictly legal, strategies are the most likely to bear fruit for the Latino community in the near future. Litigation may often prove to be a necessary supplement to such strategies and may be especially useful in removing obstacles hindering political action. In pursuing political solutions to the problems of the Latino community, efforts must be made to reinvigorate and reconstruct a civil rights coalition — not necessarily different from previous coalitions — that crosses minority lines and brings together diverse interest groups. A prerequisite to the construction of such a coalition is building consensus within the diverse Latino community on an agenda for change.

The need for an emphasis on political mobilization results in large part from deficiencies of traditional legal strategies. In essence, the strategies employed by the African-American community in some important instances may not be the most effective for Latinos. To illustrate this point, this article compares the landmark Supreme Court decision for the African-American community.

2. See U.S. DEP’T OF JUSTICE, 1992 STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE 27-28 (1993) [hereinafter INS STATISTICS 1992] (compiling statistics showing that annual number of immigrants from Mexico (49,642 to over 1.6 million), the Caribbean (107,548 to 872,051), Central America (8,192 to 468,088) and South America (17,280 to 461,847) grew substantially from the 1901-1910 time period to the 1981-1990 time period).


4. My working assumption is that there is a general perception in the Latino community on the need for political and social change, even if a consensus on its precise nature has yet to emerge.

5. See U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES 1993 18-19 (113th ed. 1993) [hereinafter 1993 STATISTICAL ABSTRACT] (showing that U.S. population of “Hispanic origin” increased from 6.4% to 9.0% from 1980 to 1990 (3.9% to 5.4% for Mexican-Americans) with projections showing substantial increase through the year 2050); see also Barry Edmonston & Jeffrey Passel, The Future Immigrant Population of the United States, in IMMIGRATION AND ETHNICITY 317, 346-47 (Barry Edmonston & Jeffrey Passel eds., 1994) (projecting that Latino and Asian populations will grow as proportion of U.S. population and that, by 2020, Latinos will exceed African-Americans numerically and as proportion of U.S. population).
can community (and indeed a watershed for the nation as a whole), \textit{Brown v. Board of Education},\textsuperscript{6} and the decision in \textit{Plyler v. Doe},\textsuperscript{7} which many regard as the highwater mark for the Latino community in the Supreme Court. Both decisions involved access to education. Both were welcomed as victories by their respective communities. \textit{Brown} barred \textit{de jure} race segregation in the schools while \textit{Plyler} held that the states could not constitutionally bar undocumented children from the schools. However, \textit{Brown} recently enjoyed a much-heralded fortieth birthday while \textit{Plyler}’s future vitality is in serious doubt.

The contrast between \textit{Brown} and \textit{Plyler} demonstrates the need for political action to accompany a litigation strategy in order to successfully bring about social change. While \textit{Brown} was part of a much larger social movement,\textsuperscript{8} \textit{Plyler} was not. While \textit{Brown} commenced a period of transformation, \textit{Plyler} did not. While \textit{Brown}’s equality principle has become deeply-embedded in American jurisprudence, \textit{Plyler}’s has not.

The contrast between these cases — particularly the fact that \textit{Brown} had such great transformative powers on society while \textit{Plyler} had virtually none — further suggests that legal strategies previously successful for African-Americans in certain circumstances may be ill-suited for the Latino community. Rather, the great heterogeneity among Latinos in terms of race, color, immigration status, country of origin, socioeconomic background, and other variables limits the utility of a strictly race-based strategy as pursued in \textit{Brown}. Attention must be directed at the refinement of strategies tailored to fit the particular characteristics of the Latino community.

This article’s perspective on \textit{Plyler v. Doe} undoubtedly will trouble some who firmly believe, as I do, that the decision is praiseworthy. Nor do I minimize the concrete benefits of the litigation, namely that thousands of undocumented children were given access to a public school education. Rather, my purpose here may best be characterized as an attempt to play devil’s advocate and point out some generally ignored negative aspects of \textit{Plyler} and the litigation-oriented strategy that it exemplifies.

Strategies for change also must take into account the continuing immigration from Latin America, particularly Mexico, to the United States. Latinos in the United States often hold ambivalent views about immigration, some which might even be characterized as anti-immigrant. Immigration, however, has a long tradition in this country. Though the numbers of immigrants may vary, immigration from Latin America almost certainly will

\textsuperscript{6} 347 U.S. 483 (1954).

\textsuperscript{7} 457 U.S. 202 (1982). The comparison of these two Supreme Court decisions seems apt in light of the fact that \textit{Plyler} apparently reflected a conscious attempt to emulate the \textit{Brown} strategy. See Peter Skerry, \textit{Mexican Americans: The Ambivalent Minority} 325 (1993).

continue for the indefinite future. Rather than being perceived as a problem, immigration should be viewed as a positive process offering the promise of reinvigorating and increasing the political strength of the Latino community. Capitalizing on the potential created by immigration, particularly the possible increase in eligible voters, may be a key to the future political fortunes of Latinos in the United States.

Obviously the issues touched upon here are breathtaking in scope. This article attempts to engage in a preliminary exploration of some of the far-reaching questions facing the Latino community. Because the thoughts expressed here are necessarily tentative in nature, my modest aim is to identify some of the more salient issues for consideration. By so doing, I hope to offer some structure and coherency to the analysis of those issues for Latino leaders seeking to address these questions.

Part II sketches some thoughts on the future of civil rights activism for Latinos, including the comparative benefits offered by political action and litigation-oriented strategies. Part III focuses on immigration, particularly its special relevance to the Latino community and its importance in the formulation of strategies for change.

II. CIVIL RIGHTS AND THE LATINO COMMUNITY

Much has been written in recent years on the limits of the courts in bringing about social change. Recognition of such limits necessarily requires consideration of viable alternatives, the most obvious one being political action. Politics appears to be a promising alternative for the Latino community as the percentage of Latinos incrementally increases as a proportion of the U.S. population. The likelihood of success of Latino political action may well improve along with such increases. In recent years, however, formidable obstacles to the formulation of successful political strategies have developed. Divisions among the constituent members of the traditional civil rights coalition on a number of significant policy issues, including immigrants and immigration, have hindered progressive change. Moreover, the great heterogeneity of the Latino community makes internal agenda-setting a difficult endeavor. The time therefore is ripe for the formulation of new strategies tailored specifically to the needs of the Latino community.

A. The Limits of Litigation

*Brown v. Board of Education*\(^9\) demonstrates the potential for litigation to serve as a catalyst for social change. Over the years, litigation by Latino

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9. 347 U.S. 483 (1954). The conventional wisdom about the importance of *Brown* in triggering the so-called civil rights movement, however, has been questioned in recent years. *See, e.g., Gerald N.*
advocacy groups, such as the Mexican-American Legal Defense and Education Fund (MALDEF),\textsuperscript{10} has successfully secured some protections and improvements for the Latino community.\textsuperscript{11} \textit{Plyler v. Doe},\textsuperscript{12} the cornerstone of other contributions to the Symposium,\textsuperscript{13} is an example.

An ever-increasing number of voices have trumpeted the limits of litigation in achieving meaningful social change.\textsuperscript{14} Some of the limits are all too apparent. For example, despite its many accomplishments, the full promise of \textit{Brown v. Board of Education} is yet to be fulfilled; many schools in the United States unfortunately remain segregated.\textsuperscript{15} Though slowly changing in political composition, a conservative federal judiciary left by

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11. See, e.g., White v. Regester, 412 U.S. 755, 767-70 (1973) (affirming district court order redrawing multimember districts in Texas county that had been employed to discriminate against Mexican-Americans); Garza v. County of Los Angeles, 918 F.2d 763 (9th Cir. 1990) (imposing redistricting scheme and finding that, by fragmenting Hispanic voting population, electoral districting scheme of Los Angeles County Board of Supervisors violated equal protection and Voting Rights Act of 1965), cert. denied, 498 U.S. 1028 (1991).
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14. See generally Rosenberg, supra note 9 (questioning ability of courts and litigation to facilitate social change); Joel F. Handler, Social Movements and the Legal System (1978) (to the same effect); Marc Galanter, Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change, 9 Law & Soc'y Rev. 95 (1974) (analyzing how deck is stacked against reformers seeking change through litigation). A pessimistic appraisal of the prospects for eradicating racism in the United States through any means may be found in Derrick Bell, Faces at the Bottom of the Well: The Permanence of Racism (1992) (arguing that racism is permanent feature of U.S. society).
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15. See Handler, supra note 14, at 105-18 (discussing limited impact of \textit{Brown} and subsequent litigation in desegregating schools); Klarman, supra note 9, at 9-10 (citing sources suggesting that \textit{Brown} failed to desegregate schools). "[T]here is overwhelming statistical and sociological evidence that in the years since \textit{Brown} virtually no progress has been made in truly integrating our society. Indeed, contemporary American society may be more segregated, more separate in its racial make-up in every important index than it ever has been." Alex M. Johnson, Jr., Bid Whist, Tonk, and United States v. Fordice: Why Integrationism Fails African-Americans Again, 81 Cal. L. Rev. 1401, 1409-10 (1993) (footnotes omitted).
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Chicanos, though perhaps less so than as has been the case for African-Americans and other minority groups, historically have attended segregated schools. See Gary Orfield, The Growth of Segregation in American Schools: Changing Patterns of Separation and Poverty Since 1968 (1993) (documenting increasing school segregation of African-American and Latino students); see also Gary Orfield, Must We Bus? Segregated Schools and National Policy 198-229 (1978) [hereinafter Orfield, Must We Bus?] (analyzing school segregation of Mexican-Americans); Jorge C. Rangel & Carlos M. Alcala, Project Report: De Jure Segregation of Chicanos in Texas Schools, 7 Harv. C.R.-C.L. L. Rev. 307 (1972) (same).
two Republican presidents makes litigation inherently risky. But even with a more liberal judiciary, legal institutions, which are by nature conservative, cannot reasonably be expected to bring about wholesale changes in the social structure.

The available empirical evidence indicates that litigation historically has not been as successful as one might think in promoting change for the Latino community. Consider a few examples. A review of litigation implicating issues of concern to the Mexican-American community from 1930-1980 concluded that courts often resolved legal indeterminacy against Mexican-Americans. Even when litigation results in victories, change is slow in coming. Consider the example of immigration, which frequently implicates interests of the Latino community. A comprehensive empirical study of immigration litigation in the 1980s found a significant percentage of successful challenges to the Executive Branch's implementation of the immigration laws. Despite the success, deep structural flaws in the immigration bureaucracy, often a direct cause of errant agency decisions, have for the most part remained intact. This is a clear demonstration of the limited power of litigation alone to bring about change.

Although a much-heralded victory for the Latino community, Plyler v. Doe itself shows the need for solid political support cementing significant changes decreed by the courts. A slender five-four majority of the Supreme Court rendered the decision, which in the view of even sympathetic constitutional law scholars, was grounded on relatively weak constitutional underpinnings. A political reaction slowly brewed over the next decade. Spurred on by an economic downturn resulting in severe fiscal pressures on government budgets, that reaction ultimately erupted in a dramatic fashion in California. Repeated attempts were made in the California legislature to

16. See Stephen R. Reinhardt, Riots, Racism, and the Courts, 23 Golden Gate U.L. Rev. 1, 7 (1993) ("By their appointments, Presidents Reagan and Bush have ensured that the federal courts will not be representative. Instead, they are a bastion of white America. They stand as a symbol of white power.").

17. See generally Rosenberg, supra note 9; Spann, supra note 9.


19. See infra text accompanying notes 166-234 (discussing importance of immigration to Latino community).


21. See id. at 176-78.


23. See, e.g., Laurence H. Tribe, American Constitutional Law § 16-23, at 1553 (2d ed. 1988) (analyzing Plyler and observing that some commentators "will quite properly wish that the Court's head had proven equal to its heart and that a sturdier analytic foundation had been provided for the result reached").
pass a bill that would deny public education to undocumented children. In 1994, immigration restrictionists placed an initiative on the California ballot that, besides denying health and social service benefits to undocumented persons, would bar the public education of undocumented children. The hope was to convince the Supreme Court to revisit Plyler v. Doe. When one considers the persistent efforts to undermine and overrule the decision, Plyler demonstrates the need to build strong political support behind any incremental changes secured through legal action.

A comparison of two cases involving the educational rights of Latinos also is instructive. In 1931 in the small community of Lemon Grove, California, the board of education announced plans to build a separate school for Mexican-Americans and to begin school segregation. The working class community, including many Mexican citizens, organized politically and formed the Comité de Vecinos de Lemon Grove (Lemon Grove Neighbors Committee), which organized a boycott of the school. The Committee made public appeals in statewide Spanish and English newspapers. Contacted by the Committee, the Mexican consul in San Diego provided two lawyers to assist the community, who successfully challenged the school segregation in a lawsuit. Political action, supported by litigation, allowed for the successful resistance to school segregation in Lemon Grove. Polit-


25. This was Proposition 187 on the November 1994 ballot. See CALIFORNIA BALLOT PAMPHLET 91 (1994) (full text of Proposition 187); see also Alan C. Nelson, Barring Illegal Aliens From State's Classrooms, SACRAMENTO BEE, Apr. 29, 1994, at B11 (describing initiative). The group that sponsored the initiative was named Save Our State. See id.

26. See Steve Albert, Can States Stop Aid to Immigrants?, THE RECORDER, June 2, 1994, at 1 (quoting Alan Nelson former Commissioner of Immigration and Naturalization Service who assisted organization in placing initiative on ballot: "The purpose of the initiative is to have the high court revisit and reconsider the Plyler decision.").

27. Cf. ORFIELD, MUST WE BUS?, supra note 15, at 319-60 (analyzing negative political reaction in response to litigation requiring busing to desegregate schools). For example, the women's movement organized around the issue of reproductive rights, thereby to some extent cementing into law the gains of the Supreme Court's abortion decision in Roe v. Wade, 410 U.S. 113 (1973). See ROSENBERG, supra note 9, at 173-265 (emphasizing importance of political action by women's groups, rather than judicial decree, in ensuring access to abortion and furthering women's rights generally).

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ical action also defeated a bill proposed in the California legislature that would have allowed segregation of Mexicans in the schools. 29

In contrast, consider the outcome of a more recent litigation effort. Five undocumented persons in 1985 successfully challenged a California policy of precluding undocumented persons from eligibility for in-state tuition in California universities and colleges. 30 No visible political movement or organization accompanied the litigation. The original benefits of the litigation, however, were short-lived. A California court of appeals later refused to follow the lower court finding and reached a contrary conclusion. 31 A growing political movement acted to solidify the result of this decision. 32 Litigation, without any connection to a larger political movement, ultimately failed to achieve its goals. 33

B. Alternative Strategies

As skillfully argued by Professor Gerald López, 34 it is necessary for lawyers desiring progressive social change to reevaluate, re-tool, and adapt to the realities of over-reliance on litigation and traditional lawyering strategies. Latino and other law professors may assist in reconceptualizing strategies for political action by the Latino community. 35 Some of the more interesting proposals in this regard have involved so-called “client empow-


32. See supra text accompanying notes 24-27 (discussing California initiative that would bar public education to undocumented persons).

33. In the wake of the two conflicting decisions, the University of California and the California Community College system, but not the California State University system, decided to charge nonresident fees to undocumented students. See California Senate Office of Research, Analysis of State Propositions on the November 1994 Ballot 91 (1994).


35. This potential obviously is limited by the relatively small number of Latinos in legal education and the formidable difficulties encountered by those seeking to add to their numbers. See Michael A. Olivas, The Education of Latino Lawyers: An Essay on Crop Cultivation, 14 Chicano-Latino L. Rev. 117, 128-38 (1994).
The underlying idea is that lawyers promoting social change should engage in active collaboration with subordinated clients. Possibilities have been explored in detail by others.36

In essence, strategies that allow Latinos to control their lives when the lawyers are gone are the ones most likely to result in lasting change. Political organization and mobilization are the only durable solutions to the political powerlessness of the Latino community.37 At least in the long run, political solutions to the problems of Latinos, citizens and non-citizens alike, in the United States appear more likely to bear fruit than litigation-based strategies.38 Such possibilities necessitate further inquiry if only because Latinos soon may constitute a majority of the population in some major metropolitan areas.39

36. See, e.g., López, supra note 34; Alfieri, supra note 34; Olivas, supra note 34; White, supra note 34; see also Gerald P. López, Economic Development in the "Murder Capital of the Nation", 60 TenN. L. Rev. 685 (1993) (describing travails of public interest attorney involved in attempting to pursue strategy of fostering economic development in East Palo Alto, California).

37. See Chavez, supra note 3, at 165-67 (extolling "Hispanics" to become politically involved); Mark Day, Forty Acres: Cesar Chavez and the Farm Workers 9-10 (1971) (Introduction by Cesar Chavez) ("I have always believed that, in order for any movement to be lasting, it must be built on the people. They must be the ones involved in forming it, and they must be the ones that ultimately control it. It is harder that way, but the benefits are more meaningful and lasting when won in this fashion."); see also Stephen Wexler, Practicing Law for Poor People, 79 Yale L.J. 1049, 1053 (1970) ("Poverty will not be stopped by people who are not poor. If poverty is stopped, it will be stopped by poor people. . . . The lawyer who wants to serve poor people must put his skills to the task of helping poor people organize themselves."); Luke W. Cole, Empowerment as Key to Environmental Protection: The Need for Environmental Poverty Law, 19 Ecology L.Q. 619, 654-73 (1992) (applying empowerment strategies to environmental poverty law).

38. See generally Spann, supra note 9 (arguing that subordinated minorities must seek greater influence in political community to foster change, rather than to pursue social change through the courts). Professor Spann states that: [c]ontemporary racial minorities possess a degree of political power that enables them to operate effectively in the pluralist political process. By pooling their political resources, individual minority groups can increase their inherent political strength. Minorities can further enhance their political strength by forming political coalitions with sympathetic majority interest groups on both short and long term bases. . . . [T]he simplicity of the overt political process is more advantageous to minorities than the complexities of Supreme Court politics.

Id. at 165; see also infra text accompanying notes 119-25 (analyzing necessity for building such coalitions).

39. See 1993 Statistical Abstract, supra note 5, at 40 (showing that population of "Hispanic origin" was 69.6% in El Paso metropolitan area, 47.4% in San Antonio area, 33.3% in Miami area, 32.9% in Los Angeles area, and 20.7% in Houston area).

Even if Latinos some day constituted a majority of the population, that would not necessarily mean that they would be undeserving of judicial protection. See John Hart Ely, Democracy and Distrust: A Theory of Judicial Review 165 (1980) ("A sufficiently pervasive prejudice can block its own correction not simply by keeping its victims 'in the closet' but also by convincing even them of its correctness."); Deborah L. Rhode, Justice and Gender 89 (1989) (rebutting similar argument made with respect to women and emphasizing that "numerical majorities can — and in American culture do — assume the functional characteristics of minorities"); see also infra text accompanying note & note 71 (discussing Caroleene Products footnote and need for courts to protect discrete and insular minorities from the excesses of the political process).
One factor contributing to the marginalization of the Latino community as a whole relates to the images held about its members by dominant society. Consequently, any political movement will find it imperative to attack some of the popular misconceptions about Latinos. For example, negative stereotypes of Latinos,\(^4\) and immigrants generally,\(^4\) must be countered. Stories challenging the dominant mindset must be told and retold, a strategy consistent with the history of storytelling in the Latino community.\(^4\) Efforts must be made to undermine the prevailing wisdom that makes the status quo seem natural, normal, and inevitable.\(^4\) The political process is the central battlefield where the struggle for hearts and minds must be fought.

1. Electoral Politics and Naturalization

Resort to political action will require a focus of energies on the electoral process. One obvious candidate for scrutiny is increasing Latino voter registration and turnout.\(^4\) Low voter turnout has been a chronic problem

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44. See ACUNA, supra note 1, at 417-25 (describing efforts at voter registration in Latino community).
for the Latino community. This topic, which has been explored extensively elsewhere, will not be reopened here.

Immigration has, and will have, a profound impact on the political fortunes of the Latino community. A large population of potential Latino voters are left outside of the political process. Lawful permanent residents, though entitled to live and work "permanently" in the United States, cannot vote. This has a significant impact on Latino political participation because the lawful permanent resident population from Mexico is substantial in size but has a relatively low naturalization rate. New immi-


47. For reasons articulated elsewhere, I avoid referring to lawful permanent residents or undocumented persons as "aliens," although it is the popular convention to do so. See Kevin R. Johnson, A "Hard Look" at the Executive Branch's Asylum Decisions, 1991 Utah L. Rev. 279, 281 n.5.


49. See INS Statistics 1992, supra note 2, at 130 (showing that 16.2% of immigrants from Mexico in 1977 naturalized through fiscal year 1991 compared to 38.7% of immigrants from all countries); U.S. Dep't of Justice, 1991 Statistical Yearbook of the Immigration and Naturalization Service 120 (1992) [hereinafter INS Statistics 1991] (showing that Mexican naturalization rate for sample cohort was 15.1% through fiscal year 1990, compared to overall average of over 37%); see also Rodolfo O. de la Garza et al., Latino Voices: Mexican, Puerto Rican & Cuban Perspectives on American Politics 45 (1992) [hereinafter Latino Voices] (reporting that only 15.3% of foreign-born Mexicans in U.S. surveyed were U.S. citizens); Harry P. Pachon, An Overview of Citizenship in the Hispanic Community, 21 Int'l Migration Rev. 299, 301 (1987) (compiling 1980 census data in table showing that only 35% of Mexicans residing in country for over five years were naturalized compared to 66% for all foreign born). Low naturalization rates among Mexican lawful permanent residents has long been of concern. See Leo Grebler et al., The Mexican-American People: The Nation's Second Largest Minority 557-60 (1970) (discussing low naturalization rates among Mexican-Americans in 1950s and 1960s).

grants from Latin America, at least those who immigrate in compliance with the immigration laws, are potential voters if they become citizens and thus are a potential source of strength to the Latino community.

The magnitude of the problem raised by disenfranchised Latinos is suggested by a survey showing that nearly 70% of the Latinos in Los Angeles polled were not eligible to vote in the 1988 Presidential election. Although some might be undocumented and thus ineligible to vote, a good number might well be eligible for naturalization, but for whatever reason have not taken the steps necessary to become citizens. Besides limiting the political power of the Latino community, eligible immigrants who do not naturalize may be viewed suspiciously by those who consider this "failure" as tantamount to a refusal to assimilate.

The fact that so many Mexican lawful permanent residents are in the United States suggests great potential benefits of a drive to convince lawful permanent residents eligible for naturalization to become citizens and participate in the political process. Some Latino activist groups long have pursued this tactic and recent years have seen reinvigorated naturalization efforts. In its early days, the Clinton administration endorsed this strategy in principle and promised to assist in encouraging naturalization.

49. See infra text accompanying notes 206-34 (analyzing implications for Latino community of uncertain legal and political status of undocumented persons from Mexico).

50. See Rodolfo O. de la Garza & Louis DeSipio, Overview: The Link Between Individuals and Electoral Institutions in Five Latino Neighborhoods, in BARRIO BALLOTS: LATINO POLITICS IN THE 1990 ELECTIONS 1, 16 (Rodolfo O. de la Garza et al. eds., 1994) [hereinafter BARRIO BALLOTS]; see also Harry Pachon et al., Grass-Roots Politics in an East Los Angeles Barrio: A Political Ethnography of the 1990 General Election, in BARRIO BALLOTS, supra, at 140 (stating that close to 50% of Latino adults in California were not citizens).

51. The immigration laws generally allow an immigrant to naturalize after five years of continuous residence in the United States. Certain requirements must be satisfied, however, such as that the immigrant have established "good moral character" and sufficient "attachment to constitutional principles." INA § 316(a), 8 U.S.C. § 1427(a) (1988); see DAVID WEISSBRODT, IMMIGRATION LAW AND PROCEDURE IN A NUTSHELL 222-38 (2d ed. 1989) (summarizing naturalization requirements).

52. See T. Alexander Aleinikoff, Citizens, Aliens, Membership and the Constitution, 7 CONST. COMMENTARY 9, 16-17 (1990); see also infra text accompanying notes 176-205 (discussing concern among certain segments of American society with alleged refusal of immigrants to assimilate).

53. See Harry Pachon, Naturalization and Immigrant Rights: Naturalization and Its Effects on Latino Empowerment, 14 CHICANO-LATINO L. REV. 86 (1994); see also de la Garza & DeSipio, supra note 45, at 1522 (advocating that federal government promote naturalization in order to increase Latino political participation).


55. See Carolyn Lochhead, 1,010 More Agents for Border Patrols, S.F. CHRON., Feb. 4, 1994, at A1; see also Reinventing INS, Rethinking Asylum, REFUGEE REPORTS, Feb. 28, 1994, at 2 (mentioning Immigration and Naturalization Service plan to "promote community outreach programs to disseminate
of the potential benefits, naturalization efforts, which capitalize on changing demographics in a positive way, are a strategy worthy of exploitation.\textsuperscript{56} Moreover, they are unlikely to meet much political resistance. Naturalization allows for the almost-universally applauded assimilation of immigrants into the mainstream and thus is relatively uncontroversial.\textsuperscript{57}

Besides increasing the number of eligible voters, steps should be taken to reform the electoral process. Energy might wisely be focused on creative steps to improve electoral systems.\textsuperscript{58} Voting rights litigation may assist meaningful Latino participation in the political process, especially in districts that in practice exclude Latinos from elected office.\textsuperscript{59} This strategy has offered some concrete gains for Latinos. In Los Angeles County, for example, a successful voting rights lawsuit culminated in the election of the first Latino (a Chicana) to the board of supervisors.\textsuperscript{60} The case is a prime example of the positive use of litigation to clear the way for meaningful Latino political participation.\textsuperscript{61} Combined with efforts to increase political participation, electoral reform has much to offer in the long run.

Although removing obstacles to political participation are important first steps, more far-reaching political options must be weighed. As alluded to previously,\textsuperscript{62} community organizing and participation allow people to exercise control over their lives. To ensure the durability of change,
subordinated people must participate in remediying their problems on a regular basis. Despite my focus on voting, mobilization cannot solely revolve around elections or times of crisis. Organizing instead should and must continue as an ordinary part of daily life. In that way, political participation in the broad sense will become the norm.

2. A Mix of Political and Legal Strategies

Having emphasized (perhaps overly so) the limits of litigation, I do not mean to suggest that litigation is worthless or that it should be disregarded entirely. Litigation obviously is a necessary weapon in any movement to facilitate social change. It may be used defensively to protect rights previously won or to resist retrograde change. However, to successfully promote social change, litigation must be linked to a broader-based political and social movement, as exemplified by the successful resistance by Latinos to the attempted segregation of the Lemon Grove schools.

Moreover, caution should be taken to avoid the over-reliance on litigation. At times, and as a former litigator, I have been guilty of this; lawyers almost reflexively think of litigation as the one and only solution to a problem. Rather than fall into this trap, those seeking social change should be more sensitive to alternative strategies and carefully evaluate the costs, benefits, risks, and long-term impact of litigation.

Skeptics might claim that this analysis underestimates the impediments facing people of color in the political process. Indeed, a cursory review of history teaches that politics have not always been so kind to Latinos or to minorities generally. So long as any group constitutes a numerical or functional minority in the political process, the problems identified by the

63. A detailed and perceptive analysis of barriers to Latino empowerment in Los Angeles and concrete recommendations for overcoming them can be found in Brackman & Erie, supra note 54. See also infra text accompanying notes 220-34 (discussing possibilities for organizing undocumented persons).
65. See supra text accompanying notes 28-29 (discussing Lemon Grove school desegregation case).
67. See supra text accompanying notes 28-29.
68. Litigation has been criticized on other grounds as well. Proponents of alternative dispute resolution, for example, have emphasized the need to move away from litigation because of the costs and other negative consequences. See Kim Dayton, The Myth of Alternative Dispute Resolution in the Federal Courts, 76 IOWA L. REV. 889, 890-94 (1991) (surveying alternative dispute resolution literature on this point).
69. See infra text accompanying notes 171-74 (discussing impact of anti-immigrant hostility on Latino community).
70. See supra note 39 (discussing potential in United States for numerical majorities to behave functionally as minorities).
Supreme Court in the famous *Carolene Products* footnote\(^7\) continue to exist. That is, the political process may not appropriately consider their interests. Nor does the simple increase in the number of Latino citizens through naturalization efforts necessarily mean that Latinos instantly will become first class citizens.\(^2\)

There obviously are serious impediments facing Latinos in the political process. Resorting to the courts at times undoubtedly will be necessary. Nonetheless, the courts should not be the only battlefield for Latinos seeking change. As the demographics suggest, the political realm offers Latinos the most promise in the near future. The time of a judiciary willing to foster change has come and gone. In short, though imperfect, the concentration of resources in the political process appears to be the optimal investment of scarce resources.

**C. Divisions in the Civil Rights Coalition**

It goes without saying that one necessary ingredient to any successful political strategy is coalition-building. In the 1960s, many achievements of the civil rights movement were gained through a coalition of African-American, labor, Latino, Jewish and other progressive organizations. Recent years have seen growing division among the various members of this coalition. It has been suggested that the civil rights coalition today is in disarray.\(^3\) This disorder has been attributed in part to so-called interethnic conflict.

Two issues relating to the popular concern with interethnic conflict are of special interest to the Latino community. First, immigration is often pointed to as a source of conflict, including a few much-publicized violent confrontations. Second, there is a widespread perception that civil rights issues are defined as almost exclusively involving African-Americans and Anglo society.

In strategizing for social change, Latino leaders must consider the current state of the civil rights coalition and the debilitating impact of interethnic conflict on the success of efforts to re-build any such coalition. The real and perceived impact of immigration must be weighed into the analy-

\(^{71}\) United States v. Carolene Prods. Co., 304 U.S. 144, 153 n.4 (1938) ("[P]rejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry . . . .") (citations omitted).

\(^{72}\) See José A. Cabranes, *Citizenship and the American Empire*, 127 U. Pa. L. REV. 391, 397-98 (1978) (analyzing the limits to the citizenship rights afforded Puerto Ricans by the United States and referring to it as "the creation of a second-class citizenship for a community of persons . . . given no expectation of equality").

\(^{73}\) See Peter H. Schuck, *The New Immigration and the Old Civil Rights*, 15 AM. PROSPECT 1 (Fall 1993) (analyzing tensions in traditional civil rights coalition).
sis. Dispelling the mindset that civil rights is a black-white issue also is of critical importance.

1. Immigration as a Dividing Line

Disagreements among members of the traditional civil rights coalition in part result from differences in the constituent groups. The fault lines become readily apparent when one broaches the topic of immigration, which each minority group views in a different light. As the focus on Korean-American and African-American conflict in South Central Los Angeles in the wake of the 1992 violence suggests, immigration has often emerged as a line of division between various communities of color. Consider for a moment some of the differing views on the question.

Immigration has been of particular interest to Latino activists and organizations. Immigration issues greatly affect Latino, as well as Asian-American, communities. Their communities are composed of a significant number of immigrants. As a whole, one might expect those communities to be more sympathetic toward immigration and immigrants than the African-American community, which is composed of a relatively small number of immigrants.

Some Latino and Asian activists have resisted efforts to restrict immigration and to crack down on illegal immigration. In part, this sympathy perhaps results from a perceived kinship — sometimes exaggerated — between Mexican-Americans and Mexican immigrants. These efforts also have a self-interested aspect. Restrictionist immigration policies, such as increased efforts at border enforcement, often have negative side-effects on Latino citizens. Nonetheless, at times, concern with economics has lead some Latinos to support restrictionist measures.

Another participant in the civil rights coalition of the 1960s, Jewish activist groups, have much in common with Latinos in their views about immigration. These groups have opposed restrictive policies, in no small part due to the immigration history of Jewish-Americans, including previous efforts to exclude Jews from immigrating to the United States.

74. See infra text accompanying notes 92-94 (analyzing various causes of this conflict).
75. See infra text accompanying notes 171-74.
76. See ACUNA, supra note 1, at 235-36. Limited data on the subject suggests that Latinos to some extent share the restrictionist sentiments of the majority of the populace. See LATINO VOICES, supra note 48, 100-101 (reporting polling results in response to statement whether “there are too many immigrants;” 75.2% of the Mexicans, 79.4% of the Puerto Ricans, and 65.5% of the Cubans compared to 73.8% of the Anglos agreed or strongly agreed with the statement). However, as a group, less than 2% of the Latinos agreed that immigration was the “principal national problem.” See id. at 87-89.
Other members of the traditional civil rights coalition, however, historically have found appeal in restrictionist goals. Due to a recurring concern that immigrant labor adversely affects the domestic labor market, organized labor has supported restrictionist legislation at various times in U.S. history. Similarly, African-Americans have expressed concern that immigration adversely affects their community in similar ways. Fear of the adverse economic impact of immigration in large part has fueled recurring restrictionist stances of these two groups.

In other respects, however, the African-American community, in stark contrast to Latinos, has been relatively unconcerned with immigration issues. The unconscionable treatment of Haitians fleeing political violence appears to have raised consciousness about the issues of race and class implicated by this nation's immigration policies.

Other traditional liberal bastions have differed with Latinos on immigration for other than purely economic reasons. Concerned with population control, some environmental groups have backed immigration restrictions and at various times have had tense relations with immigrants' rights


Whatever the cause, Haitians historically have been treated very differently from Cubans when fleeing their native countries; while Cubans generally have been accepted with open arms, Haitians have been returned to their homeland. See 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, 11-14 (1993). This differential treatment changed somewhat in 1994 when, in response to an increase in attempted Cuban migration, the Clinton administration began apprehending and detaining Cubans outside the United States. See Carroll J. Doherty, Influx of Cubans Forces Clinton to Halt Automatic Asylum, Cong. Q., Aug. 20, 1994, at 2464.
groups. These concerns are symptomatic of other tensions between liberal activist groups and communities of color.

The media and restrictionist groups seem to relish highlighting the conflict between minority citizens and recent immigrants. Well-publicized conflicts of this variety have a long historical pedigree, dating at least as far back as clashes between Irish immigrants and black migrants in the urban Northeast in the mid-1800s and Chinese immigrants and "American workers" in California in the late 1800s. Such conflict unquestionably has influenced the laws. For example, in upholding one of a series of laws designed to put the brakes on immigration from China to the United States, the Supreme Court expressly recognized that Congress was motivated by competition and conflict between domestic and Chinese labor. Today, some have argued that African-Americans want to restrict immigration be-

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81. See Robert Gottlieb, Forcing the Spring: The Transformation of the American Environmental Movement 253-60 (1993). At the same time, however, environmental activists have shown an increasing interest in attacking environmental racism, which may have a disproportionate impact on undocumented persons. See generally Symposium, Environmental Justice, 5 Md. J. Contem. L. Issues 1 (1993-94).

82. One example is the rift between free speech absolutists, such as the American Civil Liberties Union, and people of color, on the regulation of hate speech. Compare Nadine Strossen, Regulating Racist Speech on Campus: A Modest Proposal?, 1990 Duke L.J. 484 (presenting more absolutist position of American Civil Liberties Union on issue) with Charles R. Lawrence III, If He Hollers Let Him Go: Regulating Racist Speech on Campus, 1990 Duke L.J. 431 (advocating critical race theory view).

83. See, e.g., Miles, supra note 79 (emphasizing tensions between African-American and Latino communities); Larry Rohter, As Hispanic Presence Grows, So Does Black Anger, N.Y. Times, June 20, 1993, at A1 (same); John Sullivan, Immigration's Effects on Poor Blacks, Chi. Tribune, June 18, 1993, at 23 (same); Deborah Sontag, Across the U.S., Immigrants Find the Land of Resentment, N.Y. Times, Dec. 11, 1992, at A1 (highlighting conflict between immigrants and minority citizens); Jonathan Tilove, Immigration is Undoing Blacks' Job Gains, Plain Dealer, Dec. 19, 1993, at 25A ("In the tinderbox that is Los Angeles, this interplay of immigration and affirmiative action is like a lit match. But it is also stoking smoldering inter-minority conflicts in other big-immigration cities. . . .").

84. See, e.g., Federation for American Immigration Reform, Immigration 2000: The Century of the New American Sweatshop (1992) (collecting articles pertaining to such questions as "does immigration perpetuate the underclass and impede economic improvement for black and Hispanic citizens?").

85. See Kenneth L. Karst, Belonging to America: Equal Citizenship and the Constitution 89 (1989) ("When Irish mobs committed violence against blacks in the New York draft riots of 1863, the root causes were fear of the competition of black workers and resentment over the use of blacks as strikebreakers.").

86. See infra text accompanying note 87.

87. See The Chinese Exclusion Case, 130 U.S. 581, 594-95 (1889). In the words of Chief Justice Field:

[economic] competition steadily increased as the laborers came in crowds on each steamer that arrived from China. . . . They were generally industrious and frugal. Not being accompanied by families, except in rare instances, their expenses were small; and they were content with the simplest fare, such as would not suffice for our laborers and artisans. The competition between them and our people was for this reason altogether in their favor, and the consequent irritation, proportionately deep and bitter, was followed, in many cases, by open conflicts, to the great disturbance of the public peace.

Id. (emphasis added).
cause of the alleged preferences of nonminority citizens to hire undocumented Latinos rather than black citizens.  

As history teaches, tension of this sort often comes to the fore at times of intense competition for scarce resources. In times of economic distress, competition at the margin, the place in the market where citizens of color and recent immigrants are disproportionately represented, is intense. People of color compete for resources that became increasingly scarce in the recessionary 1990s. New immigrants often are perceived as directly competing with the poorest, including many minority, citizens in the United States. Competition might be expected to produce friction. A major cause of the resulting “interethnic conflict,” the “invisible hand” of a slow market economy, is not easily seen, much less blamed, by those living in the urban enclaves of the United States. Public attention, and that of the competitors, instead is focused on those at the center of the fray.

The essential point is that the tensions popularly referred to as interethnic conflict are symptomatic of the economic and racial stratification in the existing United States society to which immigrants come rather than the by-product of some sort of irrational clash between cultures resulting from immigration. Professor Bill Ong Hing has recognized this phenomenon and its complexity in analyzing the dynamics of the tensions between Korean-Americans, many whom recently immigrated here, and African-Americans, in South Central Los Angeles:

The tension between the Korean American and African American communities in South Central Los Angeles was not all racial. Much had to do with economic class divisions, as demonstrated by the similar destruction of La-

88. See Miles, supra note 79; cf. Douglas S. Massey & Nancy A. Denton, American Apartheid: Segregation and the Making of the Underclass 87 (1993) (observing data reflecting that African-Americans are segregated in major metropolitan areas to a much greater extent than Latinos or Asian-Americans). But cf. William Schneider, American Turn Against Immigration, 25 Nat’l J.L. 1900 (1993) (reporting results of public opinion poll finding that less than 50% of blacks surveyed strongly felt the need to limit immigration, the smallest percentage of any group).

Although the assertion that Anglos prefer to hire undocumented Mexicans as opposed to African-Americans may (or may not) have some truth to it, this Article does not attempt to test its accuracy. Nor am I convinced that inquiries into comparative racism serve a constructive purpose.

89. See Gordon W. Allport, The Nature of Prejudice 370-71 (1954) (analyzing anti-Semitism and discussing link between economic insecurity and prejudice). The economic roots of nativism is evidenced by the fact that, while immigration was a hot political issue in California and its ailing economy in 1994, it was not in Texas, which was in the midst of an economic recovery. See Sam Howe Verhovek, Texas and California: 2 Views of Illegal Aliens, N.Y. Times, June 26, 1994, at A12.


90. See Kenneth L. Karst, Paths to Belonging: The Constitution and Cultural Identity, 64 N.C. L. Rev. 303, 310-11 (1986) (offering historical examples of this phenomenon).

91. See generally Robert Blauner, Racial Oppression in America (1972) (articulating internal colonialism theory exemplified by exploitation of African-Americans in inner city).
tino and African American owned businesses [in the spring 1992 violence]. . . . Thus, what appears to be a racial conflict may be actually a class dispute, or a mixture of racial and class elements.\textsuperscript{92}

It is not mere coincidence that the conflict in South Central Los Angeles became publicly prominent during a national recession that, combined with severe defense budget reductions, hit southern California particularly hard.\textsuperscript{93} Competition in the marketplace, no doubt exacerbated by class and racial stratification existing long before increased immigration from Korea, appears to be the primary driving force behind the conflict. Animosity exists between Korean-American merchants without the resources to open businesses in affluent neighborhoods and poor African-American consumers. To the extent that Korean immigrants came from middle class families in their native country, they may have enjoyed certain economic advantages not available to African-Americans, which might foster resentment.\textsuperscript{94} After considering this backdrop, it is not surprising that the so-called conflict flared up between these two outsider groups in relatively poor economic times.

The violence in South Central Los Angeles is one of a number of examples of tension attributed to interethnic conflict between minority citizens and immigrants.\textsuperscript{95} An analysis of other examples reveals similar insights about the genesis of the conflict. The arrest of a Salvadoran immigrant by an African-American police officer in 1991 triggered violence in

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\item \textsuperscript{92} 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 \textit{Cal. L. Rev.} 863, 889 (1993) (emphasis added). Similarly, the conflict between Chinese and “American” workers in the United States in the 1800s appears to have been partly economic and partly racial. \textit{See supra} notes 86-87 and accompanying text.
\item \textsuperscript{93} \textit{See} Robert A. Rosenblatt & Stuart Silverstein, Jobless Rate Shoots Up to 9.8% in California, \textit{L.A. Times}, Nov. 7, 1992, at A1; Martha Groves, California Still Reeling From Recession Blow, \textit{L.A. Times}, June 28, 1992, at D1. A number of other factors — repeated abuse of force by police and perceived racism in the criminal justice system, lack of economic opportunity, disinvestment in the community, and two decades of conservative social policy, to name a few — may have played a more significant role than interethnic conflict in sparking the violence. \textit{See} James H. Johnson, Jr. & Walter C. Farrell, Jr., The Fire This Time: The Genesis of the Los Angeles Rebellion of 1992, 71 \textit{N.C. L. Rev.} 1403, 1409 (1993).
\item \textsuperscript{95} \textit{See}, e.g., Philip Perlmutter, Divided We Fall: A History of Ethnic, Religious, and Racial Prejudice in America 250-52 (1992) (offering examples of interethnic conflict in 1980s); Emily Adams & Frank B. Williams, Protest Over Police Beating Continues, \textit{L.A. Times}, Aug. 6, 1994, at B1 (describing tension touched off by beating of Latino by African-American police officer in Compton, California, that had roots in the fact that African-Americans held virtually all municipal jobs although their population in the city roughly equaled that of Latinos); Erin J. Aubry, Proposed Limits on Laborers Protested, \textit{L.A. Times}, Jan. 30, 1994, at 8 (describing conflict between day laborers, many whom are immigrants from Mexico, “loitering” while they waited for work near predominantly African-American residential area).
\end{itemize}
Economic disparities, combined with perceived indifference of local government to the concerns of a burgeoning Latino immigrant community, contributed to a tense climate that culminated in the violence. Sporadic eruptions of violence in Miami during the last two decades have been attributed to tensions between African-Americans and Cuban-Americans. African-Americans, for example, reportedly resented special treatment and benefits received by Cuban immigrants in Miami and felt burdened by a perceived inequitable distribution of resources.

Economic conflict of this variety is not limited to citizens of color and immigrants. Tensions undeniably exist between new immigrants and working people generally. As organized labor's historically restrictionist bent suggests, economic competition between non-minority working class citizens and new immigrants has been a longstanding concern. Workers fear competition in the labor market, fewer jobs, lower wages, and limited benefits often attributed to an influx of low wage immigrant labor. This is not an illegitimate concern. The self-interests of capital and labor clearly motivate their respective positions on immigration. Business frequently lobbies to change the immigration laws to ensure a ready supply of cheap and pliant labor. In times of relative economic hardship, working people may be inclined to blame immigrants for taking jobs. As the events of the


97. See U.S. Comm'n on Civil Rights, supra note 96, at 140-52.

98. See Alejandro Portes & Alex Stepick, City on the Edge: The Transformation of Miami 176-202 (1993); Marvin Dunn & Alex Stepick III, Blacks in Miami, in Miami Now! Immigration, Ethnicity, and Social Change 41 (Guillermo J. Grenier & Alex Stepick III eds., 1992); see also John F. Stack, Jr. & Christopher L. Warren, The Reform Tradition and Ethnic Politics: Metropolitan Miami Confronts the 1990s, in Miami Now!, supra, at 160, 173 ("That the 1980 riots coincided with the Mariel boatlift from Cuba, and that the most recent violence took place at a time when thousands of Nicaraguans were coming to Miami, reinforced the perception that there has been a connection between rioting and Hispanic immigration.").

99. See supra note 98 (citing authorities); see also Rohter, supra note 83 (discussing tensions in Miami due to perceived loss of employment opportunities resulting from immigration). As with the Korean immigrants in Los Angeles, see supra text accompanying note 94, Cubans, many of whom came from middle class backgrounds, when immigrating to the United States, may have had advantages not available to many African-Americans in Miami. See Portes & Stepick, supra note 98, at 123-35 (discussing access to capital of Cuban immigrants in Miami through social, business and other connections).

100. See supra text accompanying note 78.


early 1990s suggest, anti-immigrant sentiment can be expected to thrive during these times.\textsuperscript{103}

It is against this backdrop that reconstruction of a civil rights coalition must be considered. Tensions between communities of color have hindered efforts at developing coalitions. Building for the future requires that these communities work together to transcend the differences.\textsuperscript{104} In light of the hard economic appeal the sensitive subject of immigration holds, coalition builders must address it. One problem is that, even if attempts are made to develop a consensus, immigration may prove to be a formidable barrier to reformation of a civil rights coalition. A critical fact to remember for all interested parties is that, absent a drastic turnaround in immigration enforcement, immigrants, legal or not, will continue to come to the United States.\textsuperscript{105} The goal must be to minimize any societal stress resulting from the migration, especially during relatively difficult economic times.

In surmounting the differences with respect to immigration between minority groups, it is critical to emphasize that "interethnic conflict" is a symptom of much larger societal problems. Consequently, undue focus on any such conflict may well be misguided. The scapegoating of immigrants for society's woes, including causing such things as "interethnic conflict," serves the interests of certain elites. This scapegoating phenomenon is reminiscent of the blaming of minority citizens for the social ills of the day, such as claims that the drug and crime "problem" is a people of color "problem."\textsuperscript{106} The most logical solution for the grievances of the lower echelons of society — citizens and noncitizens alike — is not to fight amongst themselves. Strategies for change rather should center on the real source, and the beneficiaries of, the status quo.

\textsuperscript{103} See Johnson, supra note 41, at 1162-74 (summarizing rise in anti-immigrant sentiment in 1990s).


\textsuperscript{105} See infra text accompanying notes 225-28 (discussing long history of undocumented migration from Mexico to United States).

\textsuperscript{106} See Regina Austin, "The Black Community," Its Lawbreakers, and a Politics of Identification, 65 S. CAL. L. REV. 1769, 1773 (1992) (“[B]ased on the behavior of a few, street crime is wrongly thought to be the near exclusive . . . domain of black males; as a result, black men of all sorts encounter an almost hysterical suspicion as they negotiate public places in urban environments . . . .”); see also Richard Delgado, Rodrigo's Eighth Chronicle: Black Crime, White Fears — On the Social Construction of Threat, 80 VA. L. REV. 503, 536 (1994) (observing that black family is scapegoated for social ills, especially crime).
2. The Complexity of Civil Rights Issues in a Multicultural Society

Another issue causing tension among minority communities is the tendency of the media and politicians to frame civil rights as an almost exclusively black/white issue. To some extent, this focus is understandable in light of the horrible legacy of slavery in the United States. Nonetheless, the Latino community has expressed concern that government officials and the news media often treat civil rights issues as African-American issues with relatively little attention paid to particularly Latino concerns.107

To illustrate this phenomenon, let us briefly return to the disturbances in South Central Los Angeles in the spring of 1992. In the reconstruction process, Latino leaders complained that government ignored the impact of the violence on the Latino community.108 There is some truth to this assertion. Attention has been, and continues to be, focused primarily on the tensions between African-Americans and Korean-Americans in South Central Los Angeles.109 Often forgotten is that, by 1990, Latinos, including a significant immigrant population from Central America, comprised nearly a majority of the area’s population.110 Moreover, Latinos constituted a significant number of persons arrested or killed and a large number of the businesses damaged in the riots were Latino-owned.111 Though perhaps overshadowed by other tensions, such as those resulting from the tragic killing of a young African-American woman by a Korean-American

107. See Linda Chavez, Rainbow Collision: Relations Between African Americans and Hispanic Americans, NEW REPUBLIC, Nov. 19, 1990, at 14; Ruben Navarrette, Jr., The Moral Challenge of Another Police Beating, L.A. TIMES, Aug. 14, 1994, at M1. This is not a new concern. See RODOLFO F. ACUÑA, A COMMUNITY UNDER SIEGE: A CHRONICLE OF CHICANOS EAST OF THE LOS ANGELES RIVER, 1945-1975 47 (1984) (“[T]he struggle for equality in the United States has been perceived as a Black-White phenomenon. Blacks were a national minority, whereas Mexican Americans were considered a regional problem. More importantly, Blacks had a higher population ratio and had been a continuous part of U.S. history since 1619.”); GREBBLER ET AL., supra note 48, at 5-8 (discussing Mexican-Americans as “a forgotten minority”).


111. See PASTOR, supra note 108, at 8-13; Hayes-Bautista et al., supra note 110, at 429; see also Robert Garcia, LATINOS AND CRIMINAL JUSTICE, 14 CHICANO-LATINO L. REV. 6, 6-7 (1994) (citing statistics showing that 51% of persons arrested in riots in Los Angeles were Latinos compared to 38% for African-Americans, 9% Anglos, and 2% Asian-American or other).
conflict between Central Americans and Koreans exists in the area and may have contributed to the violence.\footnote{113}

Ironically, some of the less publicized aspects of government’s response to the violence in Los Angeles almost exclusively affected the Latino community. During and immediately after the riots, law enforcement authorities, with the ready assistance of the Border Patrol of the Immigration and Naturalization Service, arrested and deported many undocumented Latinos.\footnote{114} Little attention has been given to these events, which implicate larger concerns of the Latino community with immigration enforcement.\footnote{115}

As this example illustrates, Latino concerns may be buried in large multi-faceted and deeply complex civil rights controversies. This obviously is not the fault of the African-American community. Rather, the media and public perceptions, molded by the United States’ unique history with respect to black/white relations, to some extent continue to define civil rights questions in this country. Latino leaders bear the burden of expanding public awareness of the complexity of the civil rights agenda.

Besides the overshadowing of Latino concerns by the African-American civil rights agenda, Latino and African-American communities at times have embraced divergent political positions, a topic beyond the scope of this article. Each community as a whole has slightly different views on affirmative action, immigration, reapportionment, welfare, and undoubtedly other issues.\footnote{116} The debate over Congressional ratification of the North American Free Trade Agreement (NAFTA) is an example.\footnote{117} The Mexican-American Legal Defense and Education Fund (concerned with relations with Mexico in light of the Mexican ancestry of a large portion of its constituency and opposed to some of the anti-Mexican rhetoric used by some NAFTA opponents) endorsed the trade accord while most African-American advocacy groups (concerned primarily with a loss of jobs to Mexico)
opposed it.118 Although these differences exist, it is necessary to move beyond them, build consensus when possible, develop strategies that further common goals, and address shared needs.

3. Future Coalitions

This is a troubled time for the traditional civil rights coalition. A broad-based “rainbow coalition”119 holds the most promise for success in the political process. Previous civil rights and immigration gains have been the result of expansive coalitions that must be revived, reinvigorated, and reformed.120 Minority communities must talk, build communicative bridges,121 and plan for the future, both within and outside their respective community. Effective coalition-building at a minimum requires that some basic issues be resolved among minority communities.122 Continued infighting only makes reform for any individual group more unlikely.

Importantly, in building broad-based coalitions, minority communities must reach out to others in the dominant society. Political efforts almost always are destined to fail if labelled and marginalized as involving exclusively “minority,” “Hispanic,” or “black” issues. Coalitions between minority communities and parts of dominant society are possible and necessary. For example, business interests, along with the Latino community, often have opposed restrictionist immigration measures.123 Lesbian
and gay organizations, with the support of Latino and immigration groups, have been instrumental in improving immigration laws affecting their communities. Women's organizations have as well. Exploration of potential alliances such as these are necessary for successful efforts at change.

D. Diversity in the Latino Community

One perhaps implicit assumption in this Article is that the amalgamation referred to as the "Latino community" is monolithic. This could not be further from the truth. Indeed, Latinos in the United States are extremely heterogeneous, composed of those of Mexican, Cuban, Puerto Rican, Central American and other Latin American ancestry. National origin diversity is simply the beginning. Professor Portes has captured the essence of the sweeping breadth of Latino diversity in the United States:

The absence of a firm collective self-identity among [the Hispanic] population is an outcome of its great diversity, despite the apparent "commonness" of language and culture that figures so prominently in official writings. Under the same label, we find individuals whose ancestors lived in the country since at least the time of independence and others who arrived last year; substantial numbers of professionals and entrepreneurs along with humble farm laborers and unskilled factory workers; whites, blacks, mulattoes, and mestizos; full-fledged citizens and unauthorized aliens; and finally, among the immigrants, those who came in search of employment and a better economic future and those who arrived escaping death squads and political persecution at home. . . . The complexity of Hispanic ethnicity is a consequence . . . of . . . diverse national origins, which often lead to more differences than similarities among the various groups. Lumping them together is not too dissimilar from attempting to combine turn-of-the-century northern Italian, Hungarian, Serbian, and Bohemian immigrants in a unit based on their "common" origin in various patches of the Austro-Hungarian Empire. A second difficulty is that most Spanish-origin groups are not yet

124. The lesbian and gay community, for example, was instrumental in pressuring Congress to override the Supreme Court's decision in Boutilier v. INS, 387 U.S. 118 (1967), which held that homosexuals could be excluded from entry into the United States. See William N. Eskridge, Jr., Overriding Supreme Court Statutory Interpretation Decisions, 101 YALE L.J. 331, 357-59, 411-12 (1991). The growing political clout of this community may well have affected the Attorney General's decision to allow homosexuals in certain circumstances to be eligible for asylum. See Membership in a "Social Group" as Grounds for Asylum Expanding — Somali Clans: Gays and Lesbians, REFUGEE REPORTS, June 30, 1994, at 11, 13.

125. See Pamela Goldberg & Nancy Kelly, Recent Developments: International Human Rights and Violence Against Women, 6 HARV. HUM. RTS. J. 195 (1993) (describing efforts by international organizations, immigrant and refugee rights advocates, and women's groups to provide relief to women facing violence and persecution if returned to their native countries).

“settled”; they continue to expand and change in response to uninterrupted immigration and close contact with events in the home countries.\footnote{127}

Put simply, each constituent group of the so-called Latino community differs significantly in terms of class, culture, color, socioeconomic status, and immigration status. Immigration status is simply one of many salient differences.\footnote{128}

The diversity has political consequences. For example, the income distribution of persons of Mexican, Puerto Rican, and Cuban ancestry in the United States varies substantially.\footnote{129} In that light, one should not be surprised to learn that there appears to be differences in political views among the groups.\footnote{130} One also might expect the differences to affect their views on civil rights questions, such as affirmative action, welfare, and immigration.

Besides income, one little studied variable that leads to different concerns among Latinos is physical appearance. Experiences with discrimination on the basis of phenotype varies dramatically in the Latino community. While a relatively minor problem for some portions of the community, it looms much larger in the lives of others.\footnote{131} Put bluntly, some Latinos can

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\footnote{127} Id. at 160-61; see Samora & Simon, supra note 42, at 8 (observing “great diversity of physical, social, and cultural traits” among Mexican-American community); Grebler et al., supra note 48, at 8-9 (observing great diversity in Mexican-American population); Alex M. Saragoza et al., History and Public Policy: Title VII and the Use of the Hispanic Classification, 5 La Raza L.J. 1, 4 (1992) (“[T]here are no indelible physical characteristics, language, or cultural forms that are shared by all of the people south of the U.S.-Mexico border that would invariably unify them under one ethnic or racial term.”); Henry B. Gonzalez, Hope and Promise: Americans of Spanish Surname, Am. Federationist, June 1967, at 13, 14 (“The Spanish-surnamed American is unique from other minorities .... His is not a single origin. He has come from different places, at different times and for different reasons. He is different from other immigrant groups because his homeland, his mother country, is not across the sea. There is no ocean between his cultural home of Mexico and America; Mexico is but a short drive away.”); see, e.g., Hernandez Truyol, supra note 121, at 411 (relaying story of Cuban-American being treated as outsider by other Latinos); see also Cleve Daniel, Chicano Workers and the Politics of Fairness 3 (1991) (noting vacillation of U.S. Bureau of the Census on whether Chicanos should be classified as a separate racial group). This diversity may cause practical difficulties in certain circumstances. See, e.g., Metro Broadcasting, Inc. v. FCC, 497 U.S. 555, 633 n.1 (1990) (Kennedy, J., dissenting) (noting that racial preferences have caused agency “to trace an applicant’s family history to 1492 to conclude that the applicant was ‘Hispanic’ for purposes of a minority tax certificate policy”) (citation omitted).
\footnote{128} See infra text accompanying notes 218-34 (discussing distinctive concerns of the undocumented persons as compared to citizens and lawful permanent residents).
\footnote{129} See Latino Voices, supra note 48, at 84 (showing that, at time of survey, 25.5% of Mexicans, 45% of Puerto Ricans, and 19.7% of Cubans surveyed earned less than $13,000 and that 11% of Mexicans, 4.6% of Puerto Ricans, and 25.6% of Cubans earned in excess of $50,000).
\footnote{130} See Latino Voices, supra note 48, at 84 (survey showing that 34.2% of Cubans as compared to 15.4% of Mexicans and 22.7% of Puerto Ricans labelled themselves as “conservatives”).
\footnote{131} See Edward E. Telles & Edward Murguia, Phenotypic Discrimination and Income Differences Among Mexican Americans, 71 Soc. Sci. Q. 682 (1990) (finding that, although Mexican-American incomes in all phenotypic groups lag far behind those of non-Hispanic whites, earnings of Mexican-American males with dark and native American phenotype receive significantly lower income than lighter Mexican-American males with more European phenotype); Carlos H. Arce et al., Phenotype and Life Chances Among Chicanos, 9 Hispanic J. Behav. Sci. 19 (1987) (concluding that Mexican-American-}
"pass" as Anglos while others cannot. Limiting the inquiry to one Latino sub-group offers little help in narrowing the differences in this regard. Mexican-Americans, for example, are

a mixture of diverse peoples. In many, the Indian racial types predominate. Most are dark of complexion with black hair, traits inherited in large part from their Indian ancestors. But many are blond, blue-eyed and "white," while others have red hair and hazel eyes. This population is so-varied physically that the stereotype of the Mexican who is short and stout, with dark brown complexion and black hair does not really hold true.\textsuperscript{132}

Mexican-Americans who match the stereotype are more likely than persons of other backgrounds to be stopped, questioned, or worse, by immigration authorities, particularly in border communities.\textsuperscript{133} They also are more likely to be treated as "minorities" in everyday life than Mexican-Americans who do not fit the stereotype.

As is phenotype, Spanish surname, though frequently used as a surrogate for Latino ethnicity, is an imperfect indicia of whether a person is of Latino heritage. For example, "many Mexican Americans have surnames which are obviously not Spanish, such as Weaver, Gold, Taylor, McCormick, Glass, Von Robineau, Baptiste, Davis."\textsuperscript{134} Congress member Bill Richardson of New Mexico is a prominent example.\textsuperscript{135} Though Spanish is

cans with European physical appearance have enhanced "life chances" than Mexican-Americans with indigenous features); \textit{see also} Martha Menchaca, \textit{Chicano Indianism: A Historical Account of Racial Repression in the United States}, \textit{20 Am. Ethnologist} 583, 599 (1993) (scrutinizing history of laws applied to Mexicans and concluding "that the skin color of Mexican-origin people strongly influenced whether they were to be treated by the legal system as white or as non-white"); \textit{infra} text accompanying notes 171-74 (noting discrimination by Immigration and Naturalization Service against Latino citizens because of their skin color and attire).

\textsuperscript{132} \textit{Samora \& Simon, supra} note 42, at 8; \textit{see also} Carol Zabin et al., \textit{A New Cycle of Poverty: Mixtec Migrants in California Agriculture} (1993) (describing recent migration of Mixtecs, indigenous peoples from the state of Oaxaca in Mexico, many of whom do not speak Spanish as a first language, to United States and discrimination against them by other Mexican nationals).

\textsuperscript{133} \textit{See infra} text accompanying notes 171-74.

\textsuperscript{134} \textit{Samora \& Simon, supra} note 42, at 8. As one judge commented in the context of evaluating a challenge to allegedly discriminatory peremptory challenges:

While racial identity can often be determined simply by looking at the prospective juror, ethnicity is much harder to ascertain without knowing more about the juror’s family background. Even if one could identify with precision which surnames connote Hispanic ethnicity, the question remains whether the name was obtained through marriage or adoption rather than birth. Moreover, some Hispanic-sounding names — such as Cardoza and Perez — are common among Sephardic Jews.

United States v. Changco, 1 F.3d 837, 841 n.1 (9th Cir. 1993) (Kozinski, J.) (citation omitted); \textit{see also} \textit{infra} text accompanying notes 154-65 (analyzing impact of Supreme Court’s peremptory challenge decisions on Latino community). To further complicate matters, for professional and other reasons, some Latinos change their names. \textit{See infra} note 200 (describing name change of actor Martin Sheen).

\textsuperscript{135} \textit{See Congressional Quarterly’s Politics in America: 1990 The 101st Congress} 987 (Phil Duncan ed., 1989) ("Although he bears an Anglo name, Richardson is the son of a Mexican mother and has been a leader on Hispanic issues.").
spoken by many Latinos, the ability to speak it is not determinative of ethnicity. Some Latinos speak Spanish while others do not.  

The great difference illustrated by this brief discussion shows the infirmity of blanket generalizations about the "Latino community." My family history in some ways exemplifies some of the complexities. My mother is a first generation Mexican-American born a few miles north of the U.S./Mexico border in Brawley, California, a small farming community in the Imperial Valley. My father is an Anglo from Los Angeles. As my mother does, I have brown hair and brown eyes. At the same time I have the last name Johnson and am tall like in my father's side of the family. My brother, whose family became even more complicated than mine when he married a Filipino immigrant, was born with blond hair and blue eyes resembling my father's side of the family, although he is short in stature like my mother's family. Although my mother speaks some Spanish, my mother never taught the language to her sons. My wife, Virginia Salazar, is a Chicana from Los Angeles with dark brown hair and brown eyes and a fairly light complexion. Those in her mother's family generally have fair complexions and light brown hair; those in her father's family generally have dark skin and dark brown hair. Her father's father frequently proclaims with pride that he is an Indian. Although both her parents speak Spanish, she was not taught it in the home. To our surprise, our two children, Teresa and Tomás, have blond hair and blue eyes and fair complexions. Although this truncated description may seem complicated (and would be infinitely more so if I described my family tree and life experiences in greater detail), it is not all that extraordinary among Latinos.  

Differences among sub-groups comprising the Latino community complicate efforts at social change. Latino heterogeneity makes it difficult to build a consensus on a political agenda that serves the needs of many very different communities. Differences in the Latino community also may dilute the community's support for any particular strategy of change. The lack of agreement on an agenda may have fueled charges that some Latino leaders are out of touch with their constituency. Indeed, at times, there is conflict among different segments of the Latino community on critical issues. For example, while the Latino community as a whole has been sup-

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136. See infra note 190 (discussing distribution of Spanish-speakers among Mexican-Americans).

137. I use "Mexican-American" as opposed to "Chicana" out of deference to my mother who probably would resist the political connotations that some attach to the referent "Chicana."


139. See Skerry, supra note 7, at 217-49; see, e.g., Ruben Navarette, Jr., Immigration Ghosts Haunt the Hispanic Caucus, L.A. Times, Mar. 20, 1994, at M2 (claiming that Latino legislators are out of touch with constituency on issue of immigration).
portive of immigration, some Latino citizens have blamed economic problems on undocumented workers.140

_Plyler v. Doe_ indirectly illustrates the practical impact of the diversity in the Latino community and the complexities it creates. Although regarded by many activists as one of the most significant legal victories ever for Latinos, the decision was limited to one discrete part of the diverse Latino community, undocumented Mexican children. It offered no concrete benefits to most Mexican-Americans or other Latinos. Discrimination on the basis of immigration status is an issue for much of the Latino community, but the education of undocumented children is only one of many concerns.141

Moreover, in contrast to the popular reading and understanding of _Brown v. Board of Education_ as barring all forms of racial discrimination against African-Americans,142 _Plyler_ has not been read expansively at all for the proposition that discrimination against the undocumented is unlawful. Its constitutional repercussions have been minimal and strictly circumscribed. It has not been extended to protect the rights of the undocumented or Latinos generally. As a constitutional law professor might say, the decision has been limited to its facts.

Internal fissures in the Latino community constrain its ability to concentrate support behind any meaningful agenda for change. There may well be great heterogeneity in other minority communities as well that complicate those groups' ability to build a consensus.143 The common ground for a group as diverse as Latinos at some junctures may be small, perhaps so small as to amount to nothing more than meaningless platitudes (e.g., "End discrimination against Latinos!"). Activist organizations understandably have attempted to minimize the differences among the divergent segments

140. See supra text accompanying note 76 (noting evidence of anti-immigrant sentiment among some Latinos).

141. The Supreme Court soundly rejected a broader effort that would have improved the access to quality education for Mexican-American children, as well as other children, from poorer school districts. See San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1 (1973) (rejecting equal protection challenge to school financing scheme brought by parents of Mexican-American children attending elementary and secondary schools). This case would have affected children from low income areas, regardless of race and ethnicity. In combination with _Plyler_, _Rodriguez_ may be viewed as part of an overall strategy to improve the educational opportunity for many Latinos.


142. See supra text accompanying notes 9, 15.

143. For example, although not explored in this article, the Asian-American community appears similarly heterogeneous. See generally Bill Ong Hing, _Making and Remaking Asian America Through Immigration Policy_, 1850-1990 (1993) (analyzing how immigration policies have affected development of various Asian-American communities in United States). Diversity within other minority communities undoubtedly exists as well.
of the Latino community. However, recognition of the differences and attempts to mold a consensus for change tailored to fit the diversity of the community is critical. Absent such a consensus, the political support behind any call by Latino activists will be less than it might have been. A numerical minority, even though increasing in numbers, needs as much concentrated support as it can muster. In attempting to build a consensus among Latinos, it is essential for leaders to carefully craft strategies in order to serve the diverse segments of the community.

E. The Need for Reconstruction and a Uniquely "Latino" Strategy for Change

In selecting a strategy for social change, the Latino community in the past has been heavily influenced by the often-successful civil rights struggle of African-Americans. The hallmark of the struggle has been primary reliance upon race as the defining variable in various legal challenges to the status quo. This race-based strategy sometimes has had positive ripple effects for other minority communities. For example, the prototype, Brown v. Board of Education, which formally barred race segregation in the schools, was extended to bar educational segregation of Latinos. Similarly, in Hernandez v. Texas, the Court extended to Mexican-Americans the holding in Strauder v. West Virginia prohibiting exclusion of African-Americans from grand and petit juries.

However, Latino and African-American strategies must diverge to some extent because their respective constituencies differ in salient ways.

144. See Saragoza, et al., supra note 127, at 3.
146. See, e.g., United States v. Texas Educ. Agency, 532 F.2d 380 (5th Cir. 1976); Soria v. Oxnard School Dist. Board of Trustees, 386 F. Supp. 539 (C.D. Cal. 1974) (Pregerson, J.). As was the case for African-Americans, see supra text accompanying note 15, however, efforts by Mexican-Americans to desegregate the schools have not always been successful. See Martinez, supra note 18, at 580-606 (reviewing litigation efforts to desegregate schools by Mexican-Americans in the wake of Brown, many of which failed).
147. 347 U.S. 475 (1954); see, e.g., Castaneda v. Partida, 430 U.S. 482 (1977) (holding that the Texas "key man" system for selecting grand juries resulting in gross underrepresentation of Mexican-Americans violated equal protection). The Court did so even though suggesting that Mexican-Americans did not constitute a race. See Hernandez, 347 U.S. at 478 ("Throughout our history differences in race and color have defined easily identifiable groups which have at times required the aid of the courts in securing equal treatment under the laws. But community prejudices are not static, and from time to time other differences from the community norm may define other groups which need the same protection.") (emphasis added).
148. 100 U.S. 303 (1880).
149. See Gary Orfield, Must We Bus?, supra note 15, at 206 ("The striking difference between the black and Hispanic minorities is that whereas black separation is defined by race, for Hispanics the greatest barrier often seems to be language. Although many Hispanics have Indian ancestry and there has been much black-white intermarriage in Puerto Rico, the racial barriers are usually ambiguous."); Blauner, supra note 91, at 163 ("The historical and sociocultural context of Mexican-American life has been unique — it cannot be filled into the pattern of black-white relations, nor to the model of..."
Although Latino activist organizations often have employed race-based strategies, the Latino focus has differed from that of the African-American community, relying to a greater extent on language, culture, class, and immigration status. *Plyler v. Doe*, for example, primarily turned on the immigration status of undocumented children rather than race. Language reflects another divergence in the interests of the African-American and Latino communities. Because language links much of the community, Latinos as a whole are more interested in bilingual education than African-American groups. Tensions exist between the Latino demands for bilingual education and the African-American pursuit of desegregation remedies.

The pressing need to deviate from a race-based strategy modeled after the African-American approach is demonstrated by the developing jurisprudence on the proper use of peremptory challenges in the selection of juries. In cases involving the use of peremptory challenges to strike prospective African-American jurors, the Supreme Court held that peremptory challenges could not be exercised on the basis of a prospective juror's race.

Even though applied to Latinos as a group, this clear legal principle — no discrimination on the basis of the race of the potential juror — does not fit so neatly to the possible types of discrimination against Latinos. This
"fit" problem is exemplified in the only Supreme Court decision involving peremptory challenges that directly implicated the rights of Latinos.

In *Hernandez v. New York*, the Supreme Court held that, when a prosecutor expressed the belief that Latino Spanish-speakers might not accept the Spanish translation of testimony by an interpreter in the trial of a Latino defendant, it was proper to employ peremptory challenges to strike the jurors, even if the end result was that all Latino jurors were stricken. The Court did so even though it appears that the prosecutor limited his questions concerning Spanish-speaking abilities to the four jurors with Spanish surnames. That fact suggests invidious discrimination achieved through the use of language as a proxy for ethnicity. Two courts of appeals have extended *Hernandez* to permit the striking of jurors simply because they were Spanish-speakers.

The rule established by *Hernandez* allows prosecutors to rely on one of the defining characteristics of the Latino community — Spanish-speaking ability, which allegedly is a neutral non-racial one, to strike potential jurors. Because Latinos are more likely to speak Spanish than any other ethnic group, the Court's ruling clearly will have a disparate impact on

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158. See Pemberthy v. Beyer, 19 F.3d 857, 872 (3d Cir. 1994) (emphasizing that, although "language-speaking ability is . . . closely correlated with ethnicity," court was "not willing to hold as a matter of law that language-based classifications are always a proxy for race or ethnicity"); United States v. Munoz, 15 F.3d 395, 399 (5th Cir. 1994) (holding to same effect).

It is noteworthy that the use of peremptories to strike Spanish speakers seems to be at odds with the ancient English practice of trials *de medietate linguae*, literally "trials 'of the half tongue,' or trials in which one party was an alien whose native language was not English." James C. Oldham, *The Origins of the Special Jury*, 50 U. CHI. L. REV. 137, 167 n.157 (1983). These trials would be conducted before a jury with one-half the jury being from the noncitizen's native country. History suggests that this practice, which was followed to some extent in the United States at least through the early 1800s, was based on notions of fairness to the noncitizen party. See Lewis H. LaRue, *A Jury of One's Peers*, 33 WASH. & LEE L. REV. 841, 848-66 (1976). For a history of mixed jury trials, see Deborah A. Ramirez, *The Mixed Jury and the Ancient Custom of "De Medietate Linguae": A History and a Proposal for Change*, 74 B.U. L. REV. 777.

The preference for monolingual English-speaking jurors sanctioned by *Hernandez* is in tension with the Supreme Court's observation in another context that "[m]ere knowledge of [a foreign] language cannot reasonably be regarded as harmful. Heretofore it has been commonly looked upon as helpful and desirable." Meyer v. Nebraska, 262 U.S. 390, 400 (1923); see also Martha Minow, *Striped Down Like a Runner or Enriched by Experience: Bias and Impartiality of Judges and Jurors*, 33 WM. & MARY L. REV. 1201, 1209-13 (1992) (criticizing *Hernandez* 's tacit endorsement of view of Spanish-speaking ability as a disability rather than a desirable skill for juror). A plurality of the Court did not miss the irony: "[i]t is a harsh paradox that one may become proficient enough in English to participate in trial, . . . only to encounter disqualification because he knows a second language as well." *Hernandez*, 500 U.S. at 371 (plurality opinion) (citation omitted).

Other groups have fared better under *Batson* than Latinos. For example, after *Hernandez*, the Court extended *Batson* to bar the use of gender-based peremptory challenges. *See* J.E.B. v. Alabama, 114 S. Ct. 1419 (1994).
After Hernandez, an almost unassailable reason offered for striking many Latino jurors, at least in a case involving Spanish translation, is that they speak Spanish and may not accept the Spanish translation offered by the court interpreter. Unconscious racism may play a role in the reliance on language skills in striking minority jurors. One also would expect the stricken Latino juror to be left with the firm, perhaps correct, conviction that discrimination played a role in his or her exclusion from the jury.

Moreover, if Spanish translation is a necessity for the trial, it would seem more likely that the case involves Latino parties or witnesses. The likely impact of Hernandez therefore should be obvious: Latino jurors will most likely be stricken in cases involving Latinos. That, in turn, threatens the well-settled right of the parties to a lawsuit to a jury pulled from a cross-section of the community. Perhaps more importantly, evidence


160. See Georgia v. McCollum, 112 S. Ct. 2348, 2364 (1992) (O'Connor, J., dissenting) ("It is by now clear that conscious and unconscious racism can affect the way white jurors perceive minority defendants and the facts presented at their trials, perhaps determining the verdict of guilt or innocence."); see also id. at 2360 (Thomas, J., concurring) ("[C]onscious and unconscious prejudice persists in our society and . . . it may influence some juries. Common experience and common sense confirm this understanding."); Batson v. Kentucky, 476 U.S. 79, 106 (1986) (Marshall, J., concurring) ("A prosecutor's own conscious or unconscious racism may lead him easily to the conclusion that a prospective black juror is 'sullen,' or 'distant,' a characterization that would not have come to his mind if a white juror had acted identically. A judge's own conscious or unconscious racism may lead him to accept such an explanation as well supported."). See generally Charles R. Lawrence III, The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism, 39 Stan. L. Rev. 317 (1987) (analyzing often unconscious nature of racism).

161. See Johnson, supra note 157, at 77-78.

162. See Deborah A. Ramirez, Excluded Voices: The Disenfranchisement of Ethnic Groups From Jury Service, 1993 Wis. L. Rev. 761, 762 n.5 (citing 1990 U.S. Bureau of the Census data that 75% of all Latinos speak Spanish); see also id. at 807-09 (appendix compiling 1990 Census data showing percentage of persons who speak Spanish and are bilingual and showing that some states, such as Arizona (12.6%), California (15.3%), Hawaii (12.7%), New Mexico (24.1%), New York (12.8%), Texas (14.1%), had large bilingual populations with the national average being 7.8%); Brief for the Mexican-American Legal Defense and Education Fund and the Commonwealth of Puerto Rico, Dep't of Puerto Rican Community Affairs in the United States, as Amici Curiae in Support of Petitioner, Hernandez v. New York, 500 U.S. 352 (1991) (citing statistics showing that the overwhelming number of Spanish-speakers are Latino).

Hernandez appears to have made it more difficult to challenge the striking of Latinos from juries. See Jeffrey S. Brand, The Supreme Court, Equal Protection and Jury Selection: Denying that Race Still Matters, 1994 Wis. L. Rev. 511, 605 (summarizing survey data supporting this conclusion).


Because Latinos have a significant community of noncitizens, see infra text accompanying notes 206-34, and citizenship is a general requirement for jury duty, see, e.g., 28 U.S.C. § 1865(b)(1) (1988), one might expect Latinos to already be underrepresented in the jury pool even without the language
suggests that a Latino juror will affect the outcome of deliberations in a case involving a Latino party. In essence, the all-important issue virtually ignored by the Supreme Court in Hernandez is that, in the Latino community, language is necessarily interwoven with ethnicity and national origin.

To counter and avoid legal precedent similar to Hernandez, Latino legal strategies must deviate from the race focused strategies of the African-American community. This is no small task because so much of this country's civil rights jurisprudence is based on the race paradigm. Because the Latino community is not linked together by race as that term is popularly employed, complex strategies distilling the many commonalities of Latinos must be weighed in formulating strategies for change.

In summary, in seeking to further an agenda for social change, Latinos must start by educating dominant society, including the courts, of several critical facts. First, the idea that all civil rights questions are black/white issues must be dispelled. Many minority communities, all with diverse, though often similar problems and needs, exist and coexist throughout the nation. Second, efforts must be made to highlight the fact that race is not the beginning and the end of defining all, or perhaps many, minority com-

exclusion sanctioned by Hernandez. This becomes a significant problem if one assumes that Latinos are disproportionately represented in the criminal justice system.

164. See Jack P. Lipton, Racism in the Jury Box: The Hispanic Defendant, 5 Hispanic J. Behavioral Sci. 275 (1983). As summarized:

The jurors' ethnicity had significant effects on the predeliberation assessment of guilt of the Hispanic defendant, with Anglo jurors attributing more guilt to the Hispanic defendant than did the Hispanic jurors. In addition, Anglo jurors liked the Hispanic defendant less than did Hispanic jurors, thought that he was less intelligent than did Hispanic jurors, and rated him as more dishonest than did Hispanic jurors. However, after deliberation with jurors of both ethnic groups, the jurors' ethnicity no longer exerted a significant influence on their verdicts.

Sheri Lynn Johnson, Black Innocence and the White Jury, 83 Mich. L. Rev. 1611, 1629 (1985) (summarizing Lipton, supra, at 282); see also Cookie White Stephan & Walter G. Stephan, ¿Habla Inglés? The Effects of Language Translation on Simulated Juror Decisions, 16 J. Applied Soc. Psych. 577, 587 (1986) (summarizing studies showing that “defendants whose testimony was translated were more likely to be found guilty than defendants who testified in English by simulated jurors who did not belong to defendant’s ethnic group” and attributing results to ethnocentrism and belief that English should be spoken in U.S. courts).


165. See Miguel A. Méndez, Hernandez: The Wrong Message at the Wrong Time, 4 Stan. L. & Pol'y Rev. 193, 198 (Winter 1992-93) (making this point and emphasizing that the impact of Hernandez will be felt by “all ethnic minorities whose group identity is inextricably bound to a language other than English”) (footnote omitted); Juan F. Perea, Hernandez v. New York: Courts, Prosecutors, and the Fear of Spanish, 21 Hofstra L. Rev. 1, 15-21 (1992) (contending that exclusion of Spanish-speakers is not “race-neutral”); see also Bill Platt, Only English? Law and Language Policy in the United States 156-59 (1990) (describing interrelation between language and culture and social consequences of cultural rejection); Juan F. Perea, Ethnicity and Prejudice: Rerevaluating “National Origin” Discrimination Under Title VII, 35 WM. & Mary L. Rev. 805, 851 (1994) (hereinafter Perea, Title VII) (observing that position taken by some members of Court in Hernandez ignored the correlation between traits and race or ethnicity).
munities. For the Latino community, race is not the primary criterion for community membership. These tasks will be difficult in large part because the concept of race, as refined in the context of relations between African-Americans and whites, permeates popular perceptions of civil rights and minority issues in the United States.

III.

IMMIGRATION AND THE LATINO COMMUNITY

In her presentation at this Symposium, Professor Simon eloquently defended the contributions that immigrants have made to this country and the benefits of multiculturalism and cultural pluralism. She is not alone among academics, a label that I do not employ pejoratively. Some economists laud the economic benefits of immigrants, legal and illegal, to the nation. Though certainly not representative, one political scientist went so far as to attribute the stability of democracy in the United States to continued immigration because immigrants, generally speaking, voluntarily migrate to this nation and readily embrace its core democratic values. The prevailing political winds, however, do not wax so fondly about immigration and immigrants. Indeed, popular perceptions of immigrants have worsened dramatically in the last few years.

As the surrounding controversy suggests, immigration touches upon questions that go to the heart of the national community’s self-definition. Consequently, the subject raises deeply ambivalent feelings in the American populace that might best be described as a “love-hate” relationship. Citizens appear to “love” yesterday’s immigrants and “hate” today’s. Even in the proverbial “nation of immigrants,” public opinion polls suggest that at any given point in history a majority of the public has supported a

166. See Rita J. Simon, Address at Symposium at the University of California at Berkeley (March 18, 1994); see also Hing, supra note 92, at 876-85 (describing benefits of cultural pluralism). But cf. Karst, supra note 85, at 90 (“[N]ativist scapegoating can always find a market in a multicultural nation.”).


169. See Rita J. Simon & Susan H. Alexander, THE AMBIVALENT WELCOME, PRINT MEDIA, PUBLIC OPINION AND IMMIGRATION 46 (1993) (reviewing public opinion polls and concluding “that immigrant groups who have been in the United States longer tend to receive more positive evaluations than do recent immigrant communities, even if the earlier ones had been feared, opposed, and disliked at the time of their arrival”); Rita J. Simon, Old Minorities, New Immigrants: Aspirations, Hopes, and Fears, 530 ANNALS 61, 62 (1993) (interpreting public opinion polls as suggesting that “immigrants who arrived long ago . . . are perceived as having made positive contributions to our cultural, social, and economic life . . . [while] contemporary immigrants . . . receive negative evaluations by a majority of Americans”).
reduction in then-current levels of immigration.  

The recurring vehemence of the immigration debate illustrates that a consensus has yet to emerge.

This article will not retrace the growth in anti-immigrant sentiment in the United States. Suffice it to note that anti-immigrant rhetoric has had a distinct impact on the Latino community. Increasing reports of abuse of undocumented Mexicans by the Border Patrol affects a group that the Latino community often seeks to protect. The anti-immigrant sentiment has an impact on Latino citizens as well, as demonstrated by the adverse impact on them of certain Immigration and Naturalization Service tactics. This impact occurs despite the fact that, for many, their ancestors immigrated here generations ago. Consequently, as previously discussed, concern with the troublesome aspects of immigration is a salient difference between the agendas of the Latino and the African-American communities, whose members' rights go largely unquestioned though often unfulfilled.

The following discussion focuses on the integration of immigrants into the national community. The ideal of immigrant assimilation frequently is thrown in the face of immigrants from Latin American and other developing nations, often with the accusation that they wrongly refuse to assimilate. Omitted entirely from the accusations is complete recognition of the

171. See Johnson, supra note 41, at 1139, 1162-74. In California, the anti-immigrant fever hit such a fever pitch that one candidate for the California state assembly allegedly considered the use of land mines along the U.S.-Mexico border. See Bruce V. Bigelow, Candidate Denies Wanting Land Mines Along the Border, SAN DIEGO UNION-TRIBUNE, Apr. 9, 1994, at B1 (reporting that candidate denied considering this possibility but instead claimed to be merely passing on an idea proposed by a constituent).
173. See, e.g., Settlement Enjoins El Paso Border Patrol from Violating Hispanics' Rights, 71 INTERPRETER RELEASES 987 (Aug. 1, 1994) (describing settlement of case brought against Border Patrol by a class of Chicano citizens in El Paso, Texas claiming that the Border Patrol engaged in a pattern and practice of harassing and intimidating high school students and school employees on account of their color and physical appearance); Murillo v. Musegades, 809 F. Supp. 487, 490-97 (W.D. Tex. 1992) (entering preliminary injunction in this lawsuit before settlement); Suzanne Espinosa, Snafu Underscores Civil Rights Issues, S.F. CHRON., Oct. 22, 1993, at A1 (reporting that in Santa Maria, California, a U.S. citizen of Mexican ancestry — who had never been to Mexico — was arrested by the Border Patrol while repairing his parent's roof and, later that day, was deported to Mexico); Lee Romney, The Suspicion is Mutual; Latinos in Pomona Say They're Documenting the Border Patrol's Enforcement Tactics, L.A. TIMES (San Gabriel Valley ed.), Feb. 3, 1994, at J8 (reporting that Border Patrol had become notorious in one southern California city, in which Latinos constitute a majority, for questioning the citizenship status of Latino citizens, even the city's mayor, Eddie Cortez).
174. See supra text accompanying note 79.
complexity of the assimilation process for people of color. Culture, language, class, and color make assimilation more difficult for them than for white "ethnics" of past immigrant generations.

Another important question to be explored is how the assimilation myth applies to undocumented immigrants within the nation's borders, many of whom are from Mexico. Although many are contributing members of the nation, and undoubtedly part of the community in a general sense, they never are fully assimilated into the Latino community, much less U.S. society. Latinos, themselves ambivalent about the undocumented, sometimes view undocumented persons as more of a hindrance than a possible political advantage. To deal with the reality of the situation, and possibly to strengthen the overall political power of the Latino community, this perception must change.

A. Limits to the Assimilation Ideal for Immigrants of Color

The immigration ideal in the United States, as reinforced by the ever-popular "melting pot" metaphor, views immigrants as necessarily assimilating and acculturating into dominant society. As the myth would have it, immigrants to the United States have the implicit obligation to assimilate into mainstream society. They should learn English, shed the culture of their native country, and become uniquely "American."

In part because many who immigrate here embrace and pursue the "American Dream," assimilation and acculturation to some extent occur

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175. See infra text accompanying notes 206-34.

176. See Karst, supra note 85, at 83-84 (analyzing how "melting pot" metaphor came to stand for immigration assimilation and conformity).

177. The classic study of this topic is Milton Gordon, Assimilation in American Life (1964).

178. As one commentator has observed, "Implicit in the American 'melting pot' myth is the notion that immigrant or foreign cultures should blend into the fabric of American society. This attitude belligerently insists that assimilation and 'Americanization' should be the goal, and salvation, of immigrants." Carlos Villarreal, Culture in Lawmaking: A Chicano Perspective, 24 U.C. Davis L. Rev. 1193, 1196-97 (1991) (footnotes omitted).

179. See Perea, supra note 152, at 328-50 (discussing historical relationship between anti-immigrant and English-only movements); see, e.g., Arthur M. Schlesinger, Jr., The Disuniting of America 107-10 (1992) (criticizing bilingual education spurred by a "flood of immigration from Spanish-speaking countries" and emphasizing that "a common language is a necessary bond of national cohesion in so heterogeneous a nation as America"). But cf. Meyer v. Nebraska, 262 U.S. 390 (1923) (invalidating prohibition of instruction in public schools in any language other than English for children who had not completed eighth grade).

180. See William M. Newman, American Pluralism: A Study of Minority Groups and Social Theory 59 (1973) ("The central tenet of the assimilationist position was that new groups must conform to the cultural tradition of the majority or dominant group."); Hing, supra note 92, at 870-75 (describing position of assimilationists); see also George J. Sanchez, Becoming Mexican American: Ethnicity, Culture, and Identity in Chicano Los Angeles, 1900-1945, 87-107 (1993) (describing efforts in Los Angeles to "Americanize" Mexican immigrants).
among all immigrant groups.\textsuperscript{181} The transitions, of course, have not always been smooth and frequently have been rocky. Almost without exception, every immigrant generation at least initially encountered difficulties.\textsuperscript{182} For the most part, assimilation after some time was possible for many immigrants from Europe, such as the Germans and the Irish.\textsuperscript{183} Some groups, however, have found the assimilationist model to be problematic. Chinese immigrants are a prime example. They came to this country, contributed their labor, and later were the subject of the wrath of the political process as exemplified by a series of laws designed to exclude them from the United States.\textsuperscript{184} They were criticized for refusing to assimilate.\textsuperscript{185} They were scapegoated for society's woes.\textsuperscript{186} To shield themselves from racism, many Chinese immigrants lived, and to this day continue to live, in ethnic enclaves in urban centers.\textsuperscript{187}

While ignoring the difficulties of assimilation for immigrants of color, current anti-immigrant forces, apparently seeking to enforce the perceived assimilation obligation, accuse today's immigrants of refusing to assimilate by maintaining their language and culture.\textsuperscript{188} The nexus between ethnocentric concerns about preserving the "American" identity and anti-immigrant forces can be seen by the close ties of the English-only movement to immigration restrictionists.\textsuperscript{189} Evidence, however, suggests that immigrants are assimilating to some degree. Mexican immigrants, for example, by necessity tend to learn English.\textsuperscript{190} The alliance of English-only and immigration

\textsuperscript{181} See Nathan Glazer & Daniel P. Moynihan, Beyond the Melting Pot xxxiii (2d ed. 1970) (noting that each immigrant ethnic group brought a distinctive political and economic culture to this country that was shaped by U.S. culture and that a new identity was forged); Karst, supra note 85, at 95-96 (discussing indicia of immigrant assimilation focusing on economic opportunity).

\textsuperscript{182} The classic analysis of the difficulties is Oscar Handlin, The Uprooted (2d ed. 1973).

\textsuperscript{183} See Karst, supra note 85, at 81-104.


\textsuperscript{185} See, e.g., The Chinese Exclusion Case, 130 U.S. 581, 595 (1889) ("It seemed impossible for [the Chinese] to assimilate with our people or to make any change in their habits or modes of living. . . . [People on the west coast saw] great danger that at no distant day that portion of our country would be overrun by them unless prompt action was taken to restrict their immigration.").

\textsuperscript{186} See supra text accompanying notes 86-87 (discussing economic factors influencing passage of Chinese exclusion laws); see also Allport, supra note 89, at 243-59 (analyzing use of some groups as scapegoats by "in-groups").

\textsuperscript{187} See Hing, supra note 143, at 49-51.

\textsuperscript{188} See Anthony Lewis, Abroad at Home: The Politics of Nativism, N.Y. TIMES, Jan. 14, 1994, at A29 (rebutting this claim of restrictionist groups).

\textsuperscript{189} See Perea, supra note 152, at 343-46; see also Chavez, supra note 3, at 91-92 (describing resignation of Linda Chavez from position as President of English-only organization after learning of "anti-Hispanic" memorandum written by group's founder).

\textsuperscript{190} See Latino Voices, supra note 48, at 42 (reporting survey results showing that over 60% of U.S.-born Mexican-Americans spoke only English or more English than Spanish in the home); Rodolfo O. de la Garza et al., Mexican Immigrants, Mexican Americans, and American Political Culture, in
restrictionists again illustrates the special significance of language, not simply color and other physical differences, to the Latino community.\textsuperscript{191}

The perception of a so-called assimilation problem has grown with the changing demographics of immigration.\textsuperscript{192} The elimination of national origin quotas from the United States immigration laws in 1965 have had a striking impact. These quotas had institutionalized discrimination in admissions of immigrants into the United States and effectively limited immigration of people of color to this nation.\textsuperscript{193} Their repeal resulted in the migration of a more diverse group of immigrants to the United States, particularly more people of color from developing nations.\textsuperscript{194} These immigrants for a variety of reasons have found it more difficult than many previous immigrant generations to fully assimilate into mainstream U.S. society.\textsuperscript{195}

\textbf{Immigration and Ethnicity, supra note 5, at 227, 247 (reporting similar results and that majority of Mexicans speak some English).}

\textsuperscript{191} See supra text accompanying notes 154-65 (analyzing impact of Supreme Court peremptory challenge decisions on Latino community).

\textsuperscript{192} For a much more nuanced analysis of some of the current difficulties of assimilation facing immigrants, see Alejandro Portes & Min Zhou, \textit{Should Immigrants Assimilate?}, \textit{PUB. INTEREST}, Summer 1994, at 18.

\textsuperscript{193} See \textit{Aleminkoff} & \textit{Martin}, supra note 46, at 52-57 (describing national origin quota system and its elimination from United States immigration laws in 1965); see also \textit{Hing}, supra note 143, at 79-120 (describing rapid changes in Asian-American communities after 1965 due to lifting of national origin quotas); Stephen H. Legomsky, \textit{Immigration, Equality and Diversity}, \textit{31 COLUM. J. TRANSNAT'L L.} 319, 326-30 (1993) (analyzing history of U.S. immigration policies affecting ethnic composition of nation). The impact of the national origin quotas and their elimination can be seen in part in the aggregate immigrant figures from 1820-1991; over 37.2 million Europeans immigrated to the United States compared to 6.3 million persons from Asia, 14.3 million persons from the Americas (including 4.3 million persons from Canada and Newfoundland) and about 367,500 persons from Africa. \textit{See INS Statistics 1991, supra note 48, at 30.}

\textsuperscript{194} See \textit{INS Statistics 1991, supra note 48, at 20 (presenting data of immigrants granted lawful permanent residence in the United States in fiscal year 1991 showing that 14 of top 15 nations, which sent 77.5% of new immigrants (nearly 52% from Mexico) to United States, were developing nations populated by people of color); Jeffrey S. Passel & Barry Edmonston, \textit{Immigration and Race: Recent Trends in Immigration to the United States, in IMMIGRATION AND ETHNICITY, supra note 5, at 31 (study of changing demographics caused by flow of "new" immigrants to United States, particularly immigration's impact on racial and ethnic composition of U.S. population); see also David M. Reimers, Still the Golden Door: The Third World Comes to America (1985) (describing changing demographics of immigrants in post-World War II period); Georges Sabagh, Los Angeles, A World of New Immigrants: An Image of Things to Come?, in \textit{Migration Policies in Europe and the United States} 97 (Giacomo Luciani ed., 1993) (analyzing new diversity in immigration in transforming Los Angeles).}

\textsuperscript{195} This in part may result from their color and other physical characteristics. \textit{See Newman, supra note 180, at 216 ("Visible social traits not only provide an easily recognizable point for prejudice and discrimination but can also have severe social consequences for members of groups that are physically distinct from the rest of the population."). The class of the new immigrants, many of whom come from developing nations with few skills, also comes into play. See Borjas, supra note 167, at 115-33.}

The recent immigrants from Asian and Latin American nations face many of the same hurdles to assimilation — language and the perception of physical difference — that the Chinese faced a century ago. These problems were not of the same magnitude for previous European (and European-looking) immigrant groups. Although many of the "new" immigrants acculturate, learn English, and the like, they remain different in physical appearance from the dominant Anglo population.

As a whole, the Latino population, even that part that traces its ancestry in the United States many generations, has not fully assimilated into dominant U.S. society. The continued existence of separate and unequal Latino communities, as well as distinct Latino cultures, illustrates that assimilation of the traditional mode has not been complete. Discrimination against Chicanos of darker skin color or with a more indigenous physical appearance continues to be a problem. Mere "Latino" appearance may result in distinctively different treatment by the Border Patrol than that received by Anglos. A Spanish surname may have a negative impact on one's ability to secure employment. Similarly, language and accent discrimination limit the ability of Latino immigrants to fully assimilate into mainstream U.S. society.

More generally, racism as broadly defined may have longer staying power than ethnocentrism in the United States. As used in this context, ethnocentrism refers to antipathy toward ethnic groups, particularly white ethnic groups while racism refers to antipathy toward people of different races, as that term is ordinarily used. White "ethnics" find it easier to as-

196. See supra text accompanying notes 86-87, 184-87.
197. See generally SANCHEZ supra note 180 (analyzing Mexican cultural adaptation without substantial economic mobility). Differences in the Latino community may exist in this regard. See Silvia Pedraza-Bailey, Cuban Political Immigrants and Mexican Economic Immigrants: The Role of Government Policy in Their Assimilation, in HISPANIC MIGRATION AND THE UNITED STATES: A STUDY IN POLITICS 68 (Gastón Fernandez et al. eds., 1987) (concluding that, due to government refugee assistance, Cubans have found it easier to assimilate than Mexican immigrants).

Assimilation difficulties may be greater for Asian-Americans in some ways than Latinos. Assuming the validity of a concept of race, see LÓPEZ, supra note 138, at 10-53 (criticizing various theories of "race" and arguing that race is a social construct), Latinos are diverse in terms of race while Asian-Americans are apt to be racially identifiable. In addition, Latinos run the range of phenotypes, including those who do not even suggest that they are "persons of color" in the literal sense of the term. See supra text accompanying notes 131-33.

198. See supra text accompanying notes 131-33.
199. See, e.g., Gonzalez-Rivera v. INS, 22 F.3d 1441 (9th Cir. 1994) (rejecting Border Patrol's claims that factors other than "Hispanic appearance" resulted in the decision to stop undocumented Mexican and finding that stop was predicated solely on person's "Hispanic appearance").
200. See Perea, Title VII, supra note 165, at 837-38 (noting that well-known actor Martin Sheen had changed his name from Ramon Estevez to enhance his chances at success). Ironically enough, Sheen portrayed Confederate general Robert E. Lee in the movie GETTYSBURG (Turner Home Entertainment 1993).
201. See Perea, supra note 152.
similate than immigrants of color. A fifth generation Chinese-American, even if in many ways assimilated culturally, economically, and otherwise, in all likelihood stares racism in the face at some point in his or her life. A similar occurrence seems much less likely to be the case for a similarly-situated fifth generation German or Irish-American, whose ancestors upon immigrating to the United States may have been viewed as different and foreign. Able to more easily blend into mainstream culture through intermarriage and acculturation, European immigrants are more able to shed their "immigrantness" and "foreignness" than people of color. Depending on phenotype and intermarriage, the fifth generation Chicano more likely will have an assimilation experience resembling that of Chinese-Americans than German-Americans.\(^2\)

The limits on Latino assimilation, whatever the cause, adversely affect the ability of Latinos to influence the political process. Past immigrant generations were embraced by urban political machines and, over the long haul, were integrated into the political process.\(^2\) This has occurred to a much lesser extent for the Latino community. A large long term lawful permanent resident population has not naturalized and thus, however assimilated culturally and otherwise, has not become part of the formal political process. Political assimilation through political participation is critical for constructive change for the Latino community.\(^2\)

\section*{B. The Undocumented: A Place in the Latino Community?}

A significant undocumented population lives in the United States.\(^2\) It is difficult to conceptualize how the portion of this population that is Latino fits into the larger Latino community. Undocumented workers are in the country unlawfully and consequently have limited rights. They may be deported if apprehended by the immigration authorities and can be quickly

\begin{itemize}
  \item \textit{203.} See Kevin R. Johnson, \textit{Free Trade and Closed Borders: NAFTA and Mexican Immigration to the United States}, 27 U.C. \textit{Dav}is \textit{L. Rev.} 937, 949-50 (1994) (relating story of fifth generation Chicano who, after making presentation on human rights abuses along U.S./Mexico border, was asked by a person in the audience at the symposium why he did not go back to Mexico).
  \item \textit{204.} See ROBERT A. DAHL, WHO GOVERNS? DEMOCRACY AND POWER IN AN AMERICAN CITY 32-51 (1961).
  \item \textit{205.} It also may result in more general assimilation. See \textit{Karst, supra} note 85, at 93 ("[F]or any cultural group, active participation in politics is a step along the path to assimilation. Political party activity makes people feel like insiders.").
  \item \textit{206.} See INS STATISTICS 1992, \textit{supra} note 2, at 179-80 ("By October 1992, the resident illegal alien population is estimated to have grown to about 3.2 million."). The most current INS statement is that "[t]he estimated total unauthorized immigrant population residing in the United States grew from 2.2 million in 1988 . . . to 3.4 million in October 1992, an average annual growth of about 300,000." IMMIGRATION AND NATURALIZATION SERVICE, \textit{Estimates of the Unauthorized Immigrant Population Residing in the United States, By Country of Origin and State of Residence: October 1992 13} (Apr. 1994). As of October 1992, California was the state with the largest number of undocumented persons with about 1.4 million, or 43\% of the total. \textit{Id.} at 15. Contrary to popular perception, "‘only’ 39\% of the total unauthorized population in 1992 was from Mexico." \textit{Id.} at 21.
\end{itemize}
physically ejected from the community. However, undocumented persons at some level unquestionably are part of the community.\textsuperscript{207} They live here, participate in the labor force, and contribute to the economy through their employment, consumption, and other economic decisions.

Though economic participants in the U.S. society, undocumented persons are excluded from the political community and are barred from the formal political process. They cannot participate in the political fray and indeed may well deeply fear any form of political involvement.\textsuperscript{208} In their absence, undocumented persons often are blamed in the political process for such things as draining public benefit programs to committing crime to taking "American" jobs.\textsuperscript{209} The undocumented also are not accorded the full rights of citizenship in the realm where their participation is in much demand. In the employment market where business interests value their low wage labor, they are easily exploited because of their immigration status.\textsuperscript{210}

\textsuperscript{207} See David A. Martin, Due Process and Membership in the National Community: Political Asylum and Beyond, 44 U. Pitt. L. Rev. 165, 202 (1983) (recognizing that "[t]he mere fact of common residence, even illegal residence, establishes a certain measure of community membership") (footnote omitted).

For analysis of the relative membership rights of various members of the national community, including citizens, lawful permanent residents, applicants for admission (including asylum applicants), and "clandestine entrants" and a proposed distribution of differential constitutional rights among these groups, see Martin, supra. For a critique, see T. Alexander Aleinikoff, Aliens, Due Process and "Community Ties": A Response to Martin, 44 U. Pitt. L. Rev. 237 (1983); see also Alexander M. Bickel, The Morality of Consent 53-54 (1975) (celebrating fact that concept of citizenship means little under U.S. Constitution); Mathews v. Lucas, 427 U.S. 495, 520 (1976) (Stevens, J., dissenting) ("Habit, rather than analysis, makes it seem acceptable and natural to distinguish between . . . alien and citizen.").

For a discussion of the perplexing duality of undocumented persons, see Linda S. Bosniak, Exclusion and Membership: The Dual Identity of the Undocumented Worker Under United States Law, 1988 Wis. L. Rev. 955.

\textsuperscript{208} See Johnson, supra note 41, at 1232-33; see, e.g., American-Arab Anti-Discrimination Committee v. Meese, 714 F. Supp. 1060 (C.D. Cal. 1989) (addressing lawfulness of efforts to deport noncitizens on charges of affiliation with political organization). Michael Walzer has perceptively analyzed the "tyranny" of barring "guest workers," who enjoy a status analogous to that of undocumented workers, from having any say in the political process. See Michael Walzer, Spheres of Justice 56-61 (1983); see also John Higham, Send These to Me: Immigrants in Urban America 68-69 (rev. ed. 1984) (describing Mexican migration to United States and stating that undocumented Mexican immigrants "became the American equivalent of the 'guest worker' in Western Europe, but without the protections the latter enjoyed") (footnote omitted).

\textsuperscript{209} In California, for example, Governor Pete Wilson has blamed "illegal aliens" for the fiscal woes of state and local government. See, e.g., Daniel M. Weintraub & Bill Stall, Wilson Would Expel Illegal Immigrants from Schools, L.A. Times, Sept. 16, 1994, at A1 (quoting Wilson voicing support for initiative that would bar undocumented persons from receiving public benefits and attending public schools, and stating that "[w]e cannot educate every child from here to Tierra del Fuego"). For a most recent summary and analysis of the economic consequences of undocumented immigration, see Michael Fix & Jeffrey S. Passel, Immigration and Immigrants: Setting the Record Straight (1994).

In that and other realms, they live "shadowed lives" on the periphery of society, always facing the devastating potential of apprehension by the Immigration and Naturalization Service and later deportation to their native country.

The Latino community must resolve the issue of the place of undocumented persons, particularly undocumented Mexicans, in any larger political movement. As previously mentioned, Latinos are not of one mind on the issue. One famous example involved the difficulties encountered by the late Cesar Chavez, as president of the United Farm Workers (UFW), in establishing a position on undocumented immigration. The difficulty resulted from the fact that growers hired undocumented Mexicans as strikebreakers in attempts to break the union while, at the same time, undocumented laborers constituted part of the union’s membership. Despite the ambivalence, the Latino leadership, as suggested by the Mexican American Legal Defense and Education Fund’s decision to proceed with Plyler v. Doe, frequently has attempted to protect the rights of undocumented Mexicans in this country.

In light of the adverse consequences of the government’s immigration policies on Latino citizens, the concern of Latinos with the treatment of the undocumented is entirely understandable. Civil liberties of Latinos frequently are jeopardized by overzealous immigration enforcement and the efforts to apprehend undocumented Mexicans. For example, in International Molders' and Allied Workers Union No. 164 v. Nelson, the rights of Latino citizens, as well as the undocumented, were infringed by Immig-

211. See Leo R. Chavez, Shadowed Lives: Undocumented Immigrants in American Society (1992); see also Plyler v. Doe, 457 U.S. 202, 218-19 (1982) (referring to "'shadow population' of illegal migrants" creating potential for "permanent caste . . . encouraged by some to remain here as a source of cheap labor, but . . . denied the benefits . . . available to citizens and lawful residents") (footnote omitted).

212. See supra text accompanying note 76.

213. See Dick Meister & Anne Loftis, A Long Time Coming: The Struggle to Unionize America’s Farm Workers 205-07 (1977) (describing United Farm Workers (UFW) resistance to growers’ hiring of "illegal aliens" as strikebreakers and quoting Cesar Chavez as referring to "the worst invasion of illegal aliens in our history" before coming to understanding with Mexican-American organizations on treatment of undocumented persons); Robert B. Taylor, Chavez and the Farm Workers 218, 287-88 (1975) (noting that UFW contacted Immigration and Naturalization Service to report that growers were employing "illegal aliens" to break strikes). Two commentators have concluded that the inability of the UFW and other organizations to improve the conditions of farmworkers is attributable to low wage undocumented labor and that the only way to improve conditions is to better control immigration. See Philip L. Martin & David A. Martin, The Endless Quest: Helping America’s Farm Workers 170-78 (1994).


215. See supra text accompanying notes 171-74.

igration and Naturalization Service raids in the workplace attempting to apprehend "illegal aliens." Still, some litigation efforts, such as *Plyler v. Doe*, would primarily benefit undocumented Latinos if successful. 217

The fortunes of Mexican-American citizens, lawful permanent residents, and undocumented persons are linked in a number of important ways. The undocumented Mexican population in the United States faces multiple disadvantages. Besides being of Mexican ancestry, they are not citizens. Rather, they are in this country in violation of the law and deportable upon discovery by the authorities. As Chicanos are well aware, certain disadvantages attach to the mere fact of Mexican ancestry, for citizens as well as lawful permanent residents. 218 However, the disadvantages facing the undocumented are even more formidable. 219 Economic exploitation, political impotence, and constant fear are some of the most obvious.

The distinctions among Latino citizens, lawful permanent residents, and undocumented persons greatly complicate efforts to build a shared "Latino" agenda.220 A critical question for the Latino leadership is how much of the community's limited political and other resources will be devoted to issues surrounding the undocumented. 221 The issue of illegal immigration is unlikely to disappear for Latinos in the near future. As both legal and illegal immigration from Latin American countries continues, the Latino community is slowly changing, as is the nation as a whole.

217. *See supra* text accompanying notes 22-27 (analyzing *Plyler*). Of course, at times, protecting the rights of the undocumented seeking immigration benefits that would allow them to remain in this nation in the long run may increase the constituency of Latino organizations. *See, e.g.*, Reno v. Catholic Social Services, Inc., 113 S. Ct. 2485 (1993) (challenging implementation of program created by Immigration Reform and Control Act of 1986 that would allow certain undocumented persons to become legalized).

218. *See supra* text accompanying notes 131-36 (discussing phenotype, national origin, Spanish surname and other discrimination against Latino citizens and lawful permanent residents).

219. *See, e.g.*, Ugalde v. W.A. McKenzie Asphalt Co., 990 F.2d 239, 241 (5th Cir. 1993) (employment discrimination action in which supervisor allegedly referred to employee as "wetback"); Rojas v. Richardson, 703 F.2d 186, 188 (5th Cir. 1983) (negligence action in which plaintiff was referred to as "illegal alien" in closing argument to jury); *cf* Audrey Macklin, *Foreign Domestic Worker: Surrogate Housewife or Mail Order Servant?*, 37 McGill L.J. 681, 686-87 (1992) (observing that foreign domestic workers in Canada face disadvantages of lack of citizenship, race/ethnicity, class, and sex-role stereotyping).

220. The laws offer differential rights to Latinos depending on immigration status. For example, the Supreme Court has held that, while Title VII of the Civil Rights Act of 1964 bars national origin discrimination against citizens, it does not bar discrimination on the basis that a person is a lawful permanent resident as opposed to a citizen. *See Espinoza v. Farah Mfg. Co.*, 414 U.S. 86 (1973). Other laws, however, protect lawful noncitizens. *See INA § 274B, 8 U.S.C. § 1324b (1988) (barring discrimination by employers on the grounds of citizenship status for immigrants lawfully in the United States). The undocumented, of course, receive no such protection.

221. *See Arturo Gándara & César Sereseres, U.S.-Latin American Relations under the Carter Administration 15* (1980) ("Clearly, Mexican-Americans must reassess whether the political efforts expended in the promotion and defense of Mexico and Mexican citizens is the best use of the limited resources of the Chicano community while its own social and economic needs remain unmet."); *see also* Rodolfo O. de la Garza, *Political Elite Perceptions of the Undocumented Worker: An Empirical Analysis* (1981) (analyzing views of Chicano leadership on immigration).
One frequently unappreciated fact is that the isolation of undocumented persons inhibits the power of the Latino community as a whole. In terms of the formal political process, the potential benefit of undocumented immigrants has been ignored. There is a potential political benefit if these new immigrants become legal permanent residents and eventually naturalize. The undocumented may be eligible under certain circumstances to become permanent residents and ultimately citizens eligible to vote. In addition, undocumented persons are part of the total population considered in reapportioning legislative seats. Their population therefore adds promise to the already burgeoning Latino political power.

This potential upside must be viewed with caution. Although Latinos in theory might appear to stand to gain as a result of capitalizing on the presence of the undocumented, it is not necessarily the case that there is any special affinity between U.S.-born Latinos and immigrants from Mexico or other Latin American countries. Indeed, at times these groups may share few commonalities and experience conflict and resentment. For example, a U.S.-born Chicana, whose family has lived in the United States for many generations, may have few if any contacts with Mexico. She may not speak Spanish. She may have little in common in terms of class, culture, and other characteristics with a Mexican citizen who recently entered the country unlawfully.

To complicate matters, many undocumented Mexicans have a binational identity that may tend to lessen their interest in domestic U.S. politics. Many years of Mexican migration to the United States have developed extensive "binational kinship-employer networks" between the two nations that foster migration. A significant number of Mexicans migrate back

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224. See supra text accompanying notes 126-30 (discussing heterogeneity of the Latino community); see also PASTOR, supra note 108, at 15-19 (noting tensions in Latino community in wake of violence in South Central Los Angeles and that challenge for Latino leadership was to better represent the diverse Latino community, including the growing Central American immigrant community).

and forth between the two nations, working in the United States for a time with intermittent visits to Mexico that maintain ties with their native country. They are part of an integrated economy that is artificially separated by an international border. Their transnational identity transcends boundaries and may undercut deep political allegiances to either nation.

If the complications are overcome, organizing the undocumented community as a part of a larger Latino movement is a possibility. There are historical antecedents for such organization. Among Mexican-Americans, there is a long history of mutual aid societies (mutualistas) as well as fraternal and social organizations, such as the League of Latin American Citizens. With the United Farm Workers being the most well-known recent example, Mexican-Americans have a history of labor organization and political activism. At times, the undocumented have been involved in such efforts. Undocumented drywallers in Los Angeles, for example, recently went on strike protesting working conditions.

Obviously, there are strong impediments to such organizing efforts, most importantly the precarious legal status of undocumented persons. Moreover, the labor markets in which many participate constantly change. Still, with so many undocumented persons in this country, or-

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227. For an accessible account of the artificial nature of the U.S.-Mexico border, see William Langewiesche, CUTTING FOR SIGN (1993).

228. The North American Free Trade Agreement, see supra note 117 (citing treaty), creates interesting possibilities for dealing with the transnational identities of many Mexicans. The trade accord, and its opening of the borders to commerce, may unleash pressures to allow freer legal migration between the United States and Mexico. See Johnson, supra note 203, at 977. Thus, the trade accord may increase the number of potential Latino voters and diminish the perceived significance of immigration as a public policy issue. Such a development, in turn, might resolve one of the more difficult issues for the Latino community.

229. See, e.g., Richard Steven Street, ORGANIZING FOR OUR LIVES: NEW VOICES FROM RURAL COMMUNITIES (1992) (describing variety of organizing efforts of undocumented persons in rural communities in California). Central Americans have been active in community organization in some localities. See Acuña, supra note 1, at 446.


231. See generally Day, supra note 37; Taylor, supra note 213.


233. See Susan Alva, The Struggle for Immigrant Rights and Community Activism, 14 CHICANO-LATINO L. REV. 92, 96 (1994); Marla Cone, Oppressed Take a Stand in Drywallers’ Strike, L.A. TIMES, Sept. 7, 1992, at A1. This is not the first strike of this nature. See, e.g., Gilbert G. Gonzalez, The Mexican Citrus Picker Union, The Mexican Consulate, and the Orange County Strike of 1936, LAB. HIST., Winter 1994, at 48. Efforts have been made over the years to organize undocumented workers to protect them against exploitation by employers and harassment by the Immigration and Naturalization Service. See Acuña, supra note 1, at 234-35.

234. See, e.g., Lora Jo Foo, The Vulnerable and Exploitable Immigrant Workforce and the Need for Strengthening Worker Protective Legislation, 103 YALE L.J. 2179, 2181-88 (1994) (describing changing nature of urban sweatshops in garment industry exploiting immigrant labor); Christian Zolniski, The
ganization and mobilization is a necessity if there is any hope of incorporating them into any broad-based reform movement.

IV.
CONCLUSION

This article offers some preliminary thoughts about the issues that must be addressed in evaluating the efficacy of legal strategies for change for the Latino community. These tentative thoughts are designed to identify some of the important questions in building a Latino vision of change for the twenty-first century.

To recapitulate, the Latino community must develop creative strategies for change tailored to the characteristics and needs of its unique constituency. It is not feasible to continue to pursue predominantly race-based strategies that have been employed — at times successfully — by the African-American community. Latinos are not of a single race but are part of a community defined by many other characteristics, including language and culture. In developing strategies for change, it is critical to keep in mind that litigation in and of itself has not proven to be a panacea. However, it may play an important role in facilitating change and defending previous gains.

In formulating novel strategies for change, attention must be given to reconstructing a civil rights coalition among minority and other communities that has a unified focus and voice. Though changing demographics may improve the potential for Latino success in the coming century, a coalition is essential in the short term in light of the low levels of Latino electoral participation. Attention also must be focused inward on the extremely diverse Latino community to determine the true common interests, concerns, and goals of a truly eclectic group of communities.

Latinos also must consider the fluid changes resulting from continued immigration to the United States. Legal immigration to the United States from Latin American countries, especially Mexico, offers the promise for increasing political clout. Although undocumented persons from Mexico cannot vote, they are viewed by the dominant society as part of the Latino community. Mistreatment of undocumented persons has spill-over effects on Latino citizens. Even setting aside humanitarian and other concerns, the place of the undocumented in any larger political movement therefore is an important issue for Latino activists to address.

_{Informal Economy in an Advanced Industrialized Society: Mexican Immigrant Labor in Silicon Valley, 103 Yale L.J. 2305, 2308-31 (1994) (reporting results of ethnographic study of Mexican immigrants in low income neighborhoods in Silicon Valley in California and illustrating changing nature of immigrant labor markets in local economy)._