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# Bridging Gibraltar: Latinos as Agents of Reconciliation in Relations Between Black and White America

Michael V. Hernandez<sup>†</sup>

## INTRODUCTION

Every person and racial group has a unique destiny. We Latino-Americans must discern what our purpose is in this nation. As we undertake that discernment process on both an individual and corporate level, we undoubtedly will decide to pursue numerous activities that will impact all spheres of American life. Although I do not believe we have only one purpose, I believe that Latinos and Latinas are destined to serve the critical role of agents of reconciliation and healing in American race relations, particularly between black and white Americans.

The United States is in many respects the envy of the world. We have been or are known as the “land of the free and the home of the brave,” “the leader of the free world,” and the sole remaining military “super power.” We have enjoyed economic prosperity that is virtually unrivaled in world history. Countless immigrants continue to flock to this country, including a large number of people from Latin America.<sup>1</sup> Yet, America continues to suffer the consequences of its lamentable history of racial strife. I need not retrace that well-known history, for others have more than adequately undertaken the task.<sup>2</sup> Suffice it to say that race relations continue to be a significant problem in America. The idealism of the 1960’s that “we shall overcome,” fueled by the civil rights movement and the

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1. See *infra* text accompanying notes 28-29 (describing how Latinos and Latinas comprise the fastest growing minority group, and will soon be the largest minority group, in the United States).

2. See, e.g., RICHARD KLUGER, *SIMPLE JUSTICE: THE HISTORY OF BROWN V. BOARD OF EDUCATION AND BLACK AMERICA’S STRUGGLE FOR EQUALITY* (1975) (describing the struggle of African-Americans for equality in public education); JUAN PEREA ET AL., *RACE AND RACES: CASES AND RESOURCES FOR A MULTIRACIAL AMERICA* (2000) (describing America’s racial history, with particular emphasis on the experiences of American Indians and African, Asian and Latino Americans).

legislation that resulted from that movement, has been replaced by a deep-rooted cynicism that we may *never* overcome the intractable problem of racism.<sup>3</sup>

While I was travelling by plane to speak at the *First Annual Latino Symposium* at Columbia University School of Law in April 1999, I sat next to a black man with whom I conversed about many topics. He told me that he had virtually given up hope of an America without pervasive race problems. Statistical evidence shows that this man is not alone in his views. For example, *The Washington Post*, the Kaiser Family Foundation, and Harvard University recently sponsored a comprehensive survey of the opinions of African, Asian, Latino and white Americans on a variety of issues, including race.<sup>4</sup> The results of this survey show deep pessimism, particularly among African-Americans, about America's racial condition. Regarding the opinions of African-Americans, the survey found that:

- 82% believe that African-Americans face the most discrimination in America;
- 71% believe that African-Americans have less opportunity to live a middle-class life than whites, 58% believe that they are farther away from achieving the "American Dream" than they were ten years ago, and 54% cite discrimination and lack of opportunities as the major reason for it being harder to obtain that dream;
- 68% believe that racism is a significant problem in society;
- 59% believe that racial tensions have increased over the past ten years; and
- 53% believe that discrimination against African-Americans has increased over the past ten years.<sup>5</sup>

Similarly, statistics from a recent census reveal that African-Americans have made relatively little economic progress since the late 1960's. From 1969 to 1993, the median income for black households and families decreased in comparison to the median income for white households and families.<sup>6</sup> Given these facts, it is not

3. See, e.g., *infra* text accompanying notes 4-8.

4. See *The Four Americas: Government and Social Policy Through the Eyes of America's Multi-racial and Multi-ethnic Society*, [http://nivinsite.ucsf.edu/social/kaiser\\_family\\_found/2098.2f61.html](http://nivinsite.ucsf.edu/social/kaiser_family_found/2098.2f61.html) (last modified July 5, 2000) [hereinafter *Four Americas*]. I recognize the inherent problems with surveying only these four minority groups. For example, the survey did not include the opinions of American Indians, a minority group that has played a significant role in American history. Also, Asians and Latino-Americans are hardly homogenous groups given the different nationalities within those categories. Nonetheless, despite its limitations, this survey provides useful information about America's current racial climate.

5. *Id.* Eighty-three percent of all Americans believe that racism is a problem. *Id.* The 68% statistic cited in text reflects the opinion that racism is not just a problem, but a *significant* problem.

6. BLACK AMERICANS: A STATISTICAL SOURCEBOOK 235 (Lousie L. Horner ed., 1996). The median income of white households in 1980, measured in 1993 dollars, was \$30,921, while the median income of black households in 1980 was \$17,814. *Id.* In 1993, the median income of white households was \$32,960, while the median income of black households was \$19,533. *Id.* Similarly, the median income of white families in 1980, again measured in 1993 dollars, was \$37,341, while the median income

surprising that a plurality of each of the racial groups surveyed agreed that African-Americans face the most discrimination in America.<sup>7</sup>

Latino-Americans and other minorities are adversely affected by our nation's racial climate, for which black/white relations serve both as catalyst and barometer. For example, the *Post/Kaiser/Harvard* survey found that, among Latino-Americans:

- 47% believe that racial tensions have increased in the past ten years;
- 46% believe that discrimination against them has increased over the past ten years; and
- 46% believe that racism is a significant problem in society.<sup>8</sup>

In each case, the statistics represent the opinion of a plurality of Latinos and Latinas.

Despite these statistics, I want to convey hope, not despair. Our nation's racial problems should be viewed as opportunities for Latinos and Latinas to make a positive impact on society. If we choose to take up the mantle of racial healing and reconciliation, we can be a powerful and positive force for change. However, as I explain below, before we can succeed in this mission, we must move away from the traditional American adversarial method of conflict resolution. We must also recognize how uniquely equipped we are for the task of helping to bring reconciliation between black and white America. I will provide examples of how Latinos and Latinas have made and are making a difference in race relations, including those between black and white Americans. Finally, I will explain both the benefits of undertaking this task and the dangers of not doing so.

## I.

### EMBRACING A RECONCILIATION MODEL

Before we can effectively undertake the task of racial reconciliation, we must first embrace a paradigm shift away from the traditional adversarial model modern law schools impart. Despite many variations in philosophical underpinnings, the traditional approach to legal education is still predominantly case-method oriented.<sup>9</sup> Cases are the end result of litigation. The not-so-subtle message

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of black families was \$21,606. *Id.* at 241. In 1993, the median income of white families had grown to \$39,300, while the median income of black families had dropped to \$21,542. *Id.*

7. See *The Four Americas*, *supra* note 4.

8. *Id.* The statistics cited here reflect the percentage of Latinos and Latinas who believe that racism is a significant problem.

9. See Steyen I. Friedland, *How We Teach: A Survey of Teaching Techniques in American Law Schools*, 20 SEATTLE U. L. REV. 1, 27-28 (1996) (providing statistics that show that the Socratic method "remains firmly entrenched in legal education"); Janeen Kerper, *Legal Education: Creative Problem Solving vs. the Case Method: A Marvelous Adventure in Which Winnie-the-Pooh Meets Mrs. Palsgraf*, 34 CAL. W. L. REV. 351, 351 (1998) ("For over a century, the 'case method' of instruction ... has been the predominant mode of law school instruction"); David D. Garner, Comment, *The Continuing Vitality of the Case Method in the Twenty-First Century*, 2000 B.Y.U. EDUC. & L.J. 307, 307 (2000) (referring to the "widespread use of actual, decided cases as the primary material through which students gain an understanding of the law.")

sent by the case method is that litigation is the proper or best way to resolve disputes.<sup>10</sup> Law schools essentially, if not explicitly, teach people to fight their way through conflicts. There is, of course, a time to fight. We must be passionate about defending the defenseless and standing up for justice.<sup>11</sup> Yet, litigation should be used only when all reasonable efforts at peaceful resolution fail.<sup>12</sup> We must embrace a vision of peacemaking and reconciliation, seeking first ways to resolve conflicts constructively and not simply by court order.

The alternative reconciliation model is critical for American society as a whole. A quick glance at the federal and regional West reporters will verify that litigation has mushroomed in recent decades.<sup>13</sup> A recent survey by the National Center for State Courts shows that state civil case filings increased dramatically from 1984 to 1994.<sup>14</sup> Similarly, the number of civil lawsuits filed annually in federal court quadrupled from 1960 to the early 1990's.<sup>15</sup> No one could seriously argue that this trend has benefited our society or caused it to become more peaceful.<sup>16</sup> This should not be surprising. As those of us who have litigated know all too well, litigation does not bring peace. I cannot think of one example where litigation caused the parties to feel better about their relationship or the dispute. Rather, litigation breeds contentiousness,<sup>17</sup> with even the winner feeling cheated by being

10. Kerper, *supra* note 9, at 355 ("By continuing to rely on appellate cases as the primary method of teaching in the first year, we not only convey the tacit message that litigation is the problem solving method of choice, but we actually make it more difficult to introduce later instruction in other forms of problem solving.")

11. See, e.g., *infra* text accompanying notes 48-56 (describing how Mexican-Americans and African-Americans worked together in the judicial process to end racial segregation in the public schools).

12. Kerper, *supra* note 9, at 354 (noting that, under the "creative problem solving" approach to practicing law, "[t]he adversary process is viewed as a last resort.")

13. One comparison should suffice to make the point. Volumes 1-96 of F. Supp. include cases from nineteen years (1932-51). Volumes 1-96 of F. Supp. 2d include cases from less than two years (1998 through the first half of 2000).

14. Court Statistics Project Caseload Highlights: Examining the Works of the State Courts Volume 1, <http://www.ncsc.dni.us.research.csp/csphigh1.htm> (last modified Mar. 29, 2000). During this ten-year period, domestic relations filings increased 65%, juvenile law filings increased 59%, and state civil filings increased 24%. The same survey showed that tort filings increased 63% from 1975 to 1994. *Id.*

15. PATRICK M. GARRY, A NATION OF ADVERSARIES: HOW THE LITIGATION EXPLOSION IS RESHAPING AMERICA 15 (1997).

16. See, e.g., *id.* at 8 (arguing that the litigation explosion has facilitated the development of "an indulgent culture of the self that has further eroded communal bonds, ignored individual responsibility, and weakened the web of social interdependency... undermined non-judicial methods of resolving disputes... [and] drowned out a whole array of social customs that formerly regulated much of the country's cultural and social life.").

17. See, e.g., *id.* at 13 ("Instead of providing a guide to society that helps to diminish future disputes, litigation is simply perpetuating social conflict... Rather than teaching people to live harmoniously under some accepted social rules or codes of behavior, litigation is simply inviting them to join the fight.").

forced to undergo the process to obtain justice.<sup>18</sup> By contrast, the success of alternative dispute resolution (ADR) at resolving disputes is well documented. Numerous studies have found that participants in ADR believe this method provides a fair and satisfactory method of resolving disputes.<sup>19</sup> For instance, a study conducted in California family courts found that 90% of the participants believed that the mediator not only listened to the participants' concerns but also imparted sound advice about how to resolve their disputes.<sup>20</sup> Another study conducted in the Superior Court of the District of Columbia found that parties were more likely to believe justice was done and the facts were fully developed in mediation than in litigation.<sup>21</sup> The evidence suggests that parties involved in ADR have a high rate of satisfaction with both the process and the outcome.<sup>22</sup> Given the success and growing popularity of ADR, it is not surprising that Congress recently enacted the Alternative Dispute Resolution Act,<sup>23</sup> which mandates that each federal district court must develop alternative dispute resolution programs that were previously optional. Unfortunately, law schools generally do not prepare us to pursue a reconciliation model, and they may significantly undermine that model.<sup>24</sup> If Latinos and Latinas want to make a difference in American race relations, we must embrace this alternative model and prepare ourselves to play a reconciliatory role.

An effort to improve American race relations will also require us to have a predominantly outward, not inward, focus. While we must address the needs of our

18. Cf. Monica L. Warmbrod, *Could an Attorney Face Disciplinary Actions or Even Legal Malpractice Liability for Failure to Inform Clients of Alternative Dispute Resolution?*, 27 CUMB. L. REV. 791, 819 (1997) (stating that although obtaining justice may cause the winner in litigation to achieve some level of satisfaction, in ADR both parties obtain personal satisfaction and resolution).

19. See, e.g., CLARKE ET AL., COURT ORDERED ARBITRATION IN NORTH CAROLINA: AN EVALUATION OF ITS EFFECTS (1989); COOK ET AL., NEIGHBORHOOD JUSTICE CENTERS FIELD TEST: FINAL EVALUATION TEST (1980). These surveys can be reviewed at the Report to the Legislature on the Impact of Alternative Dispute Resolution on the Massachusetts Trial Court, <http://207.79.145.14/treas/matreas/adrcomm.htm> (visited Oct. 29, 2000) [hereinafter Report on the Impact of ADR].

20. Research Update: Highlights from the 1991 California Family Court Services Snapshot Study, [http://www.courtinfo.ca.gov/courtadmin/aoc/familycourtservices/ussr/ru\\_91/ru\\_91.htm](http://www.courtinfo.ca.gov/courtadmin/aoc/familycourtservices/ussr/ru_91/ru_91.htm) (visited Oct. 29, 2000).

21. MICHAEL FIX AND PHILIP J. HARTER, *HARD CASES, VULNERABLE PEOPLE: AN ANALYSIS OF MEDIATION PROGRAMS AT THE MULTI-DOOR COURTHOUSE OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA* (1992). This survey can be reviewed in the Report on the Impact of ADR, *supra* note 19.

22. See, e.g., COLLINS ET AL., *LAKE COUNTY MANDATORY COURT-ANNEXED ARBITRATION PROJECT*, CENTER FOR LEGAL STUDIES, SANGAMON STATE UNIVERSITY (1991). This survey can be reviewed in the Report on the Impact of ADR, *supra* note 19.

23. 28 U.S.C. § 651 (Supp. 1999).

24. See GARRY, *supra* note 15, at 194-97 (explaining how a crisis in the legal academy is contributing to excessive litigiousness in American society); Kerper, *supra* note 9, at 352 ("The skills developed by the case method are at best rudimentary....Compared to more sophisticated models of problem solving, case analysis is a blunt instrument. Even worse, as a methodology it is antithetical to the effective resolution of most clients' problems.").

own people, we must also resist the temptation to focus myopically on our own problems. If we do not, we risk becoming negative, self-centered, and ultimately unsuccessful. To paraphrase President Kennedy,<sup>25</sup> we should ask not what others can do for us, but we should ask how we can help others. Similarly, we should consider the example of Jesus, who "came not to be waited on but to serve, and to give His life as a ransom for many – the price paid to set them free."<sup>26</sup> An important principle of interpersonal conflict resolution is to seek first to understand rather than to be understood.<sup>27</sup> The same principle applies to social relations among the races. We should try to understand how we can positively address others' problems rather than first demanding that others address our own.

## II.

### WHY LATINOS AND LATINAS ARE UNIQUELY QUALIFIED TO BE AGENTS OF RACIAL RECONCILIATION

There are several reasons why Latinos and Latinas are uniquely situated to serve as a positive force for racial healing in America, particularly in black/white relations. First, Latinos and Latinas comprise the fastest growing minority group in America, having increased by 38% since 1990.<sup>28</sup> It is projected that Latinos and Latinas will constitute the largest minority group by the year 2005, and that by 2050 Latinos and Latinas will comprise nearly one quarter of the population.<sup>29</sup> By sheer numbers alone, Latinos and Latinas are already a powerful force, and our influence will only grow as our numbers increase. As our influence grows, we will have increasing opportunities to impact the political culture around us, including race relations.

Second, Latinos and Latinas have achieved unparalleled success in racial intermixing and harmony. Although Latin American nations are unique, some generalizations can be made about their racial history. Due to its history of racial and ethnic assimilation and mixing, Latin America is rich in ethnic and cultural

25. A TREASURY OF THE WORLD'S GREAT SPEECHES 831 (Houston Peterson ed., 1965).

26. *Matthew* 20:28 (Amplified).

27. See, e.g., STEPHEN R. COVEY, *THE 7 HABITS OF HIGHLY EFFECTIVE PEOPLE: POWERFUL LESSONS IN PERSONAL CHANGE* 235-60 (1989); ROGER FISHER ET AL., *GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN* 22-24 (2d ed. 1991). St. Francis of Assisi captured this idea in the well-known prayer attributed to him:

Lord, make me an instrument of your peace. Where there is hatred, let me sow love. Where there is injury, pardon. Where there is doubt, faith. Where there is despair, hope. Where there is darkness, light, and where there is sadness, joy. O Divine Master, grant that I may not so much seek to be consoled, as to console; to be understood, as to understand; to be loved, as to love; for it is in giving that we receive; it is in pardoning that we are pardoned; and it is in dying that we are born to eternal life.

28. Brook Larmer, *Latino America*, NEWSWEEK, July 12, 1999, at 49-50.

29. *Id.* at 50.

diversity.<sup>30</sup> Four major groups comprise most of the region's racial and ethnic stock: indigenous Indians, *criollos* (natives of Latin America who trace their bloodline to the original Spanish and Portuguese conquerors), migrants from other European countries or from Asia, and descendents of African slaves.<sup>31</sup> Latin American nations have generally not only embraced each of these groups, but they have also embraced the practice of *mestizaje*, or racial mixing.<sup>32</sup> As a consequence, more than one-half the population of Latin America is of mixed ancestry, representing the largest mixture of African, Caucasian and Asian blood found anywhere in the world.<sup>33</sup> Of the minority who are not of mixed ancestry, a large number are indigenous people or blacks.<sup>34</sup> Indeed, blacks constitute a large percentage of the population of several Latin American countries, including Brazil, Cuba, the Dominican Republic and Haiti.<sup>35</sup> Given this history, it is not surprising that "Latin America is proud of having achieved [*mestizaje*] when attempts in other colonial areas managed at best a superficial cultural assimilation."<sup>36</sup> Latin America is of course not perfectly assimilated or free of racial or ethnic tensions. For example, longstanding conflicts between the indigenous Maya and mainstream society have plagued Guatemala and Chiapas, Mexico.<sup>37</sup> Despite such tensions, Latin America has achieved an unmatched level of racial mixing, integration and assimilation.

Similar to the ethnic diversity found throughout Latin America, many Americans who identify themselves as Latino or Latina do not trace their heritage solely to Latin American nations. Many, like me, are part Latino and part Anglo. Others, particularly those who trace their lineage to the Caribbean, are part Latino and part African. The variations are virtually endless. With this rich heritage, we share common experiences with a broad cross-section of races. Many of us can therefore identify closely with African or Anglo traditions and viewpoints.

Third, Latino-Americans have a history of experiences that have uniquely prepared us to work with black and white Americans on racial issues. Many Latinas

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30. Thomas W. Merrick, *The Population of Latin America, 1930-1990*, in *LATIN AMERICA: ECONOMY AND SOCIETY SINCE 1930* 3, 27 (Leslie Bethell ed. 1998).

31. *Id.*

32. NICOLAS SANCHEZ-ALBORNOZ, *THE POPULATION OF LATIN AMERICA: A HISTORY* 2 (1974).

33. Willard L. Beaulac, *The Fractured Continent* 13 (1980) (quoting and citing HUBERT HERRING, *A HISTORY OF LATIN AMERICA FROM THE BEGINNINGS TO THE PRESENT* 96 (1968)).

34. *Id.*

35. *Id.*; Merrick, *supra* note 30, at 29.

36. SANCHEZ-ALBORNOZ, *supra* note 32, at 65.

37. See, e.g., Martha Brant, *Reviving the Maya*, NEWSWEEK, Nov. 3, 1997, at 34; Edward Hegstrom, *Marching Toward Peace: Weapons Turn-In Gives Hope to Terrorist-Torn Guatemalan Villages*, HOUS. CHRON., Oct. 13, 1996, at 30; Michael S. Serrill, *Zapata's Revenge*, TIME, Jan. 17, 1994, at 32.

and Latinos have experienced racial or ethnic discrimination.<sup>38</sup> Many of us have witnessed discrimination against African-Americans.<sup>39</sup> Most, if not all, of us have had black friends discuss racial concerns with us. And most, if not all, of us have had white friends express their views of, and concerns about, racial issues with us. We should not take these experiences for granted or fail to capitalize on them. Few segments of society can match the wealth of personal experience and knowledge Latinos and Latinas possess for this task of racial healing.

Fourth, as the recent *Washington Post*/Kaiser/Harvard survey reflects, the views of Latinos and Latinas on racial issues tend to fall between those of black and white Americans. Among its results, the survey showed the following:

- When asked whether African-Americans have less opportunity to live a middle class life than whites, 71% of African-Americans, 45% of Latinos and Latinas and 31% of white Americans agreed.
- Though most Americans (83%) agree that racism is a problem in America, 68% of African-Americans, 46% of Latino-Americans and 38% of white Americans believe it is a significant problem.
- Regarding the question of whether Congress should limit affirmative action programs, 36% of African-Americans, 42% of Latino-Americans and 58% of white Americans agreed.<sup>40</sup>

These statistics suggest that our views naturally position us to chart a middle course between black and white perspectives. We can educate both groups on issues where there is apparent misunderstanding or confusion. As just one example, the survey reflected that a majority of white Americans incorrectly believe that African-Americans are at least as well off as white Americans in terms of income, housing, jobs and education, while a majority of Latinos and Latinas correctly understood that this is not true.<sup>41</sup> We should take steps to educate white Americans who are unaware of the relative socioeconomic status of blacks and whites. We are also uniquely situated to work with both groups on issues where some consensus already exists. For example, the survey revealed that a plurality of each of the racial groups surveyed agreed that African-Americans face the most discrimination in America and that tensions between racial and ethnic groups have increased in recent years.<sup>42</sup> We should take steps to build on such points of consensus and find constructive ways to work to decrease the racial tensions that have grown recently.

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38. Cf. *The Four Americas*, *supra* note 4 (noting that a plurality of Latinos and Latinas surveyed believed that discrimination against them has increased recently).

39. See *id.* (noting that a plurality of Latinos and Latinas surveyed believed that African-Americans face the most discrimination in America).

40. *Id.*

41. *Id.*

42. *Id.*

Even the created order of the world graphically symbolizes how Latinos and Latinas are situated to serve as a bridge in black/white relations. The Iberian Peninsula literally bridges Western Europe and Northwest Africa. Spain is of course part of contiguous Europe, but only the narrow Strait of Gibraltar separates it from Africa. Thus, the location of the European nation to which most of Latin America traces much of its heritage reflects a separation between the African and Anglo worlds that we are uniquely situated to address.<sup>43</sup> The narrow gap between Spain and North Africa also suggests that our first priority might be to build a bridge to African-Americans to find ways to partner with them in addressing their own struggles and the mutual problems they and we face.

### III. EXAMPLES AND PROPOSALS

There are many practical steps we can take to make a difference in black/white relations. As the late, former Speaker of the U.S. House of Representatives, Tip O'Neill, was fond of saying, "All politics is local."<sup>44</sup> Our primary focus should be to make a difference in our immediate surroundings. We should seek out opportunities to work for racial justice in our local communities and to educate non-minorities about the lingering effects of racial discrimination.<sup>45</sup> We must also help those in power find creative solutions to racial problems. We should partner with organizations that are already dedicated to solving racial problems constructively and peacefully. Those of us in the legal profession should embrace the ADR model of conflict resolution and seek out opportunities to serve as arbiters in discrimination disputes, especially those involving other races. We Latino and Latina law professors can focus our scholarship on race issues that confront all minorities and not just those that affect Latinos and Latinas.

Latinos and Latinas should develop organizations that are dedicated to addressing racial problems that affect all ethnic groups, including working to improve black/white relations (perhaps called "Gibraltar Societies"). Fortunately, some Latinos and Latinas are already working with other minority groups to address race problems. Recently, leaders of several prominent black and Hispanic organizations signed an agreement to promote solidarity on various political issues, including those involving race and discrimination.<sup>46</sup> At the *First Annual Latino*

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43. Spain's relations with North Africa have not always been peaceful. Muslims from North Africa ruled Southern Spain for nearly eight hundred years, from the eighth to the fifteenth century. HELEN WATTLEY AMES, *SPAIN IS DIFFERENT* 7 (1992). This contentious period of Spanish history did, however, contribute to Spain's multicultural heritage, which includes influences from both Africa and Europe. *Id.* at 7-9.

44. See THOMAS P. O'NEILL, JR., *ALL POLITICS IS LOCAL, AND OTHER RULES OF THE GAME* xv (1995).

45. See, e.g., *supra* text accompanying note 41 (explaining how a majority of white Americans mistakenly overestimate how well off African-Americans are with regard to income, housing, education and jobs).

46. Ana Mendieta, *Blacks, Hispanics Will Combine Clout: Jackson, Latino Leaders Focus on Business, Politics*, CHI. SUN TIMES, Aug. 4, 1999, at 17.

*Symposium* at Columbia University School of Law in April 1999, several law professors described how they and some of their colleagues were, among other things, working toward furthering intergroup/coalitional justice. We should support such efforts provided they promote racial reconciliation and justice for all Americans.

My own experiences show ways we can assist people in other communities, including African-Americans. Having grown up in Richmond, Virginia, the capital of the Confederacy, I witnessed countless examples of racial problems. Later, as a practicing attorney in Richmond, I volunteered for Strategies to Elevate People (STEP), an organization that mobilizes the manpower and resources of suburban churches to assist residents and churches in several inner cities across the country, including in Richmond. Through STEP, I witnessed the plight of inner city blacks and worked with several residents of a public housing project. More recently, I had the privilege of serving as pro bono counsel for a group of residents of another public housing project, Washington Park, in Portsmouth, Virginia. Washington Park is heavily contaminated by lead. Other attorneys, principally the Lawyers' Committee for Civil Rights Under the Law in Washington, D.C., and I have represented the residents, who are all black, in their effort to persuade the U.S. Environmental Protection Agency to relocate the residents permanently.<sup>47</sup> I believe the reason the residents and I have had a productive working relationship is because they know I understand and am sympathetic to their problems and concerns.

We should not underestimate the impact we can have as we strive to achieve racial justice for all Americans and racial reconciliation for estranged groups. Interracial cooperation has had a profound impact on America, although some of those efforts have not been widely noticed. For example, although it may not be widely known, the cooperative efforts of blacks and Mexican-Americans played a significant role in the abolition of racial segregation in our public schools.<sup>48</sup> In *Mendez v. Westminster School District of Orange County*,<sup>49</sup> eight years before the landmark decision in *Brown v. Board of Education*,<sup>50</sup> Mexican-American parents in Orange County, California brought an equal protection challenge to the racial segregation in their local public schools. The NAACP filed an amicus brief on behalf of the plaintiffs that served essentially as a practice run for the arguments that later carried the day in *Brown*.<sup>51</sup> This intergroup advocacy succeeded. Notwithstanding *Plessy v. Ferguson*,<sup>52</sup> the District Court held that racially

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47. See Marianne Lavelle, *Poor Residents Say EPA Hasn't Got the Lead Out*, NAT'L L. J., Oct. 24, 1994, at A1 (describing at length the residents' plight and briefly explaining my efforts to assist them). The USEPA finally agreed in February 2000 to relocate the residents of Washington Park and shut the housing project down. See Stephanie A. Crockett, *Judge Finalizes Agreement to Raze Washington Park*, VIRGINIAN-PILOT, Apr. 13, 2000, at B6.

48. See Juan F. Perea, *The Black/White Binary Paradigm of Race: The "Normal Science" of American Racial Thought*, 85 CAL. L. REV. 1213, 1242-47 (1997), 10 LA RAZA L.J. 127, 156-61 (1998).

49. 64 F. Supp. 544 (S.D. Cal. 1946), *aff'd on other grounds*, 161 F.2d 774 (9<sup>th</sup> Cir. 1947).

50. 347 U.S. 483 (1954).

51. See KLUGER, *supra* note 2, at 399-400.

segregated public schools *per se* violated the Equal Protection clause.<sup>53</sup> Although the Ninth Circuit later affirmed solely on narrow statutory grounds,<sup>54</sup> the district court opinion in *Mendez* prompted scholars to question the constitutionality of segregated public schools and thus helped pave the way for the opinion in *Brown*.<sup>55</sup> “The NAACP’s efforts in support of the Mexican-American plaintiffs in [*Mendez*] provide an example of early coalition between Blacks and Latinos/as to defeat ... racism”<sup>56</sup> and serve as a model for future interracial efforts to achieve racial progress and reconciliation.

Similarly, due to the joint efforts of blacks and Latinos, Florida recently became the first state to establish a statewide, state-funded affirmative action scholarship program (“Minority Participation in Legal Education Program” or “MPLE Program”) designed to increase the numbers of blacks, Latinos and other minorities practicing law.<sup>57</sup> In 1990, a Racial and Ethnic Bias Study Commission formed by the Florida Supreme Court published a report that listed the critical shortage of minority law students, attorneys and judges as a significant impediment to the dispensation of justice to minorities in Florida.<sup>58</sup> In response, two state schools, one predominantly black, the other predominantly Latino, sought to have a law school started at their campuses. These efforts initially divided blacks and Latinos and led to a stalemate in the effort to remedy the problem of minority underrepresentation in the Florida legal community.<sup>59</sup> The stalemate was ended when a black legislator in the state house and a Latino State Senator co-sponsored a bipartisan, biracial compromise bill to create the MPLE Program. A coalition of blacks and Latinos worked together to have this program enacted into law.<sup>60</sup> As one commentator noted:

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52. 163 U.S. 537 (1896). Although *Plessy* involved public accommodations, the Supreme Court later explicitly extended the separate but equal doctrine to public schools. See *Gong Lum v. Rice*, 275 U.S. 78, 86-87 (1927) (rejecting an Equal Protection challenge to a Mississippi statute that segregated “white” and “colored” public school children).

53. *Mendez*, 64 F. Supp. at 547-51.

54. See *Westminster Sch. Dist. v. Mendez*, 161 F.2d 774 (9<sup>th</sup> Cir. 1947) (holding that the school district could not segregate Mexican students because California law did not include Mexicans among the racial or ethnic groups designated for segregation).

55. See, e.g., Perea, *supra* note 48, at 1245-46, 10 LA RAZA L.J. at 159-60 (citing and quoting Note, *Segregation in the Public Schools – A Violation of “Equal Protection of the Laws”*, 56 YALE L.J. 1059, 1060 (1947), and Note, *Segregation in Schools as a Violation of the XIVth Amendment*, 47 COLUM. L. REV. 325, 326-27 (1947)).

56. *Id.*

57. See Lyra Logan, *Florida’s Minority Participation in Legal Education Program*, 53 U. MIAMI L. REV. 743 (1999).

58. *Id.* at 744.

59. *Id.* at 744-45.

60. *Id.* at 746.

One reason the Black/Latino coalition succeed[ed] is that the two groups found common ground. They temporarily put aside individual desires and began to work toward a shared and widely supported ultimate goal.... [T]he story of the Minority Participation in Legal Education Program in Florida has been a model lesson in coalition building and maintenance. It shows how two minority groups can stop fighting over limited resources, can acknowledge a common goal and then pool their power to attain it.<sup>61</sup>

The joint efforts of Latinos, Latinas and African-Americans in *Mendez* and in Florida are in the spirit of Dr. Martin Luther King, Jr.'s vision of a coalition of African-Americans "with his black brothers of Africa, and his brown and yellow brothers of Asia, South America and the Caribbean, ... moving with a sense of cosmic urgency toward the promised land of racial justice."<sup>62</sup>

### CONCLUSION

As the numbers of Latinos and Latinas continue to rise rapidly, blacks will soon no longer comprise the largest minority group in this nation.<sup>63</sup> If, instead of working with and for blacks, we insist on a "Latino/Latina first" perspective and compete with blacks for the same slices of a finite political pie, African-Americans will see us as a political threat and we will quickly be at odds with them. This will only exacerbate an already undesirable racial climate and ultimately undermine the effort to achieve racial justice for all minorities, including Latinos and Latinas. As Yale Law Professor Harlon L. Dalton has warned:

For too long, we [blacks] have viewed other people of color primarily as rivals for "the crumbs that fall from the master's table." Occasionally, we have sought to unite with them, but it doesn't take much for us to lapse back into a thinly disguised free-for-all.... [A]s we head into a century in which [minorities] collectively will become the majority, we need to make sure that we develop new patterns of relating so that we do [not] become enmeshed in an even more complex version of king of the hill.<sup>64</sup>

Unfortunately, Professor Dalton's warning has already become a reality in urban areas, like Los Angeles, where Latinos and Latinas have recently outnumbered

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61. *Id.* at 746, 748.

62. Martin Luther King, Jr., Letter from a Birmingham Jail (1963), in PEREA ET AL., *supra* note 2, at 1102.

63. See *supra* text accompanying note 29 (noting that Latinos and Latinas are projected to comprise the largest minority group in America by 2005).

64. HARLON L. DALTON, RACIAL HEALING 206, 210 (1995).

blacks and political and social unrest has characterized the relations between the two communities.<sup>65</sup>

If we take Professor Dalton's warning to heart, embrace the interracial model that led to the desegregation of our public schools and to the adoption of the Florida MPLE Program, and work to achieve justice for all racial groups, including African-Americans, African-Americans and other minorities will be more inclined to help us address our matters of concern. Moreover, if we constructively address the problems that African-Americans and others face, white Americans may increasingly trust us and thus be more receptive to our needs. As we take advantage of the opportunities available to us, and invest in creating new opportunities, we can improve America's racial climate and help meet the needs of all Americans, including our own people. If we fail to meet this challenge, we face certain conflict with the black community that will ultimately undermine the goal of achieving racial justice for all minorities. That will be a loss not just for the black and Latino communities, but for all Americans.

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65. See, e.g., Emily Adams, *Compton to Create Office for Racial Concerns*, L.A. TIMES, Sept. 22, 1994, at B3; Emily Adams, *Black, Latino Tension to be Summit Topic*, L.A. TIMES, April 28, 1994, at J3; Alex Pud'Homme, *Browns vs. Blacks: Once Solidly United in the Fight for Equality, America's Two Largest Minority Groups Have Turned on Each Other in a Fight for Power*, TIME, July 29, 1991, at 14.

