More Than Whiteness: Comparative Perspectives on Mexican American Citizenship from Law and History

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Foreword

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...the Mexicans are a treacherous race, and have too much Indian blood in them to be trusted, however peaceable they may seem.¹

He tried to intellectualize my blackness
To make it easier for his whiteness²

INTRODUCTION

Persons of Mexican ancestry have always been a problem for those seeking to establish a bright line in the history of race in the United States. In song and print people of color have raised valid questions about the motives of those who seek to “intellectualize” color, objectify minority people, and/or castigate certain minorities for a lack of or an inappropriate “color” politics despite obvious racism and violence in places like Texas. A great degree of ambiguity and ambivalence has always defined life for Mexican-Americans and those trying to define their place in American society. In a country defined by a black-white binary, Mexican-Americans’ identity as “in-between” people has complicated their racial history in the United States.³ For every formal legal claim based on Mexican ancestry people’s status as Caucasians, there is an abundance of historical examples that disprove the actual enjoyment of the rights of whiteness by Mexican-Americans despite formal legal recognition to the contrary.⁴ If they were legally white, but denied access to

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1. Quoted in RED-LANDER (Saint Augustine, Tx.) (Nov. 6, 1845).
2. SKIN LE ARRAN, INTELLECTUALIZE MY BLACKNESS (One Little Indian 1995). The author wishes to thank to Karin Koell for finding this song.
4. See, e.g., Gary A. Greenfield & Don B. Kates, Jr., Mexican Americans, Racial Discrimination, and the Civil Rights Act of 1866, 662 CAL. LAW REV. 63 (1975). On the special role of the Texas Rangers as a paramilitary and social control force, see JULIAN SAMORA ET AL., GUNPOWDER
whiteness across the Southwest, where then do Mexican-Americans fit within the increasingly expansive definitional space of “whiteness studies” when it comes to the enjoyment of citizenship rights? \(^5\)

In the past decade, the field of “whiteness” scholarship expanded rapidly, growing out of a timely reconsideration of what W.E.B. DuBois dubbed the “social and psychological wage” accorded white workers and citizens. \(^6\) Most prominently, the work of historian David Roediger introduced a generation of historians to DuBois’ formulation, and the study of whiteness as a way to understand the functioning of racial privilege and racial thinking in America. \(^7\) After the publication of Roediger’s seminal work, whiteness studies expanded rapidly as historians uncovered the white “racial” history of American ethnics and non-African ancestry citizens. \(^8\)

Sadly, later work has often been guilty of overreach because legal and other tactical choices made by some ethnic and non-African ancestry racial groups are examined without proper historical, ethnic, or racial context. In other related literature, historians celebrate relatively short lived and un-influential movements or individuals as a way to lament the missed opportunities or novel moments of proper resistance along the road of whiteness, and/or citizenship privilege. This same line of investigation has now extended to the case of Mexican-Americans, where as one historian recently put it, individual Mexicans and Mexican-Americans made a “decision to fight for white rights for some, rather than equal rights for all.” \(^9\)

What this remark highlights is a common misunderstanding among many historians of the intricacies of diplomatic and legal strategy, two forms of communication that often require advocates to deploy available legal or political definitions rather than theoretical or ideal strategies and arguments in seeking protections for the oppressed. Why did Mexican-American lawyers and organizations make what some might


\(^8\) See, e.g., Jacobson, supra note 3.

consider the wrong decision by failing to embrace race politics and by maintaining a Caucasian status orientation in court cases and policy efforts? Perhaps if Mexican-American lawyers had made the case for Mexican-Americans as "people of color," they may have succeeded in transforming Mexican-Americans into non-white peoples without changing the underlying law. If this had happened they may very well have (depending on the era) remade Mexican ancestry peoples as ineligible for citizenship and subjected them to formal segregation laws. The obvious pitfalls of traversing the unproven terrain of racial solidarity jurisprudence was too risky considering that the eventual demise of Jim Crow and the federal government's expansion of minority rights were far from inevitable.10

One other reason for the lack of risk taking may have stemmed from the fact that most Mexican-American litigation was an underfunded and often grass roots affair and not a well organized bureaucratic effort with a functioning headquarters and annual budget. Mexican-American civil rights lawyering, prior to the founding of the Mexican-American Legal Defense and Educational Fund ("MALDEF") in 1968, lacked the organization and funding of the National Association for the Advancement of Colored People's ("NAACP") Legal Defense Fund.11 Mexican-Americans lacked the national network of membership and supportive non-minority sponsors that the NAACP relied on. Because Mexican-Americans existed outside the black-white paradigm, the reform efforts relied on a small group of lawyers and individual litigants who worked with meager budgets and their formal status as "whites" to challenge their segregation and mistreatment at the hands of Anglos.

Along with the many comparative shortcomings facing Mexican-American legal reformers, it is also worth noting that these activists sought protection in the era before the revolutionary expansion of the Fourteenth Amendment's Equal Protection Clause.12 One problem in the historical literature is an oversimplification of legal doctrine and the injection of a moralist viewpoint into the analysis. This approach posits a belief in both the inevitability of progressive legal reform and a moral stance which argues that Mexican-American lawyers and rights organizations should have embraced a race politics because it was the right thing to do. Whatever the explanation, legal reform is neither necessarily progressive nor inevitable and the tactics deployed by Mexican-American lawyers before the opening of racial jurisprudence reflected the limitations of the legal and social system of the segregated South and Southwest and a world defined by a rather weak equal protection environment for all minorities.

It might be worth considering if Mexican-Americans were classified and

10. For a good review of this literature, see Ariela J. Gross, Texas Mexicans and the Politics of Whiteness, 195 L. Hist. Rev. 21 (2003).


12. See Brown v. Bd. of Educ., 347 U.S. 483 (1954) (expanding the meaning of the Fourteenth Amendment's equal protection clause to cover state action); Bolling v. Sharpe, 347 U.S. 497, 499 (1954) (binding the Federal government under the due process clause of the Fifth Amendment); Hernandez v. Texas, 347 U.S. 475 (1954) (expanding meaning of Fourteenth Amendment to cover groups other than the two classes of "whites" and "Negroes," such as Mexican-Americans).
considered "white" by Anglo law, to what degree did they benefit, if at all, from the "wages" of whiteness? In light of these issues, it is worth considering Dubois' view of the "wage" of whiteness. As DuBois formulated white privilege in the American South:

It must be remembered that the white group of laborers, while they received a low wage, were compensated in part by a sort of public and psychological wage. They were given public deference and titles of courtesy because they were white. They were admitted freely with all classes of white people to public functions, public parks, and the best schools. The police were drawn from their ranks, and the courts, dependent upon their votes, treated them with such leniency as to encourage lawlessness. Their vote selected public officials, and while this had small effect upon the economic situation, it had great effect upon their personal treatment and the deference shown them. White schoolhouses were the best in the community . . . and they cost anywhere from twice to ten times as much per capita as the colored schools.\(^{13}\)

If these are the social and material wages of "whiteness," then Mexican-Americans as a group, despite their legal status failed to receive the social benefits of being "white."\(^{14}\) Mexican-Americans did not receive public deference from Anglos. They did not attend high quality integrated schools, or experience respect before the courts even if they did vote in some places.\(^{15}\) Rather, many Mexican-Americans faced formal and informal bans in public and private space much like African-Americans. Certainly there were some Mexican-Americans who were able to cross the color line, but for most Mexican-Americans in places like Texas (except in those places where large border-area Mexican-American landowners or urban community leaders played a role in politics), their formal status as "Caucasians" was more rhetorical rather than real – even if they were or aspired to middle class status or even considered themselves white.\(^{16}\)

These are just some of the questions and problems considered by historians in this special volume, drawn from a roundtable organized at the Western History Association Conference in the fall of 2006. The essays in this volume bring together a group of historians to analyze and discuss Mexican-American citizenship in light of the often contradictory nature of policy formation. This roundtable was an effort to move beyond the often condemnatory historical gaze of some scholarship on Mexican-American citizenship politics and legal strategy to understand the process of policy formation among this minority group. These essays increase our

\(^{13}\) DU BoIS, supra note 6, at 700-01.

\(^{14}\) See generally MARIO BARRERA, RACE AND LABOR IN THE SOUTHWEST (1979).


understanding of the often pragmatic response of some Mexican-Americans (admittedly sometimes self identified as Caucasians) seeking protections for a Mestizo (mixed race) group who, like African-Americans, included people of diverse racial, ethnic, and linguistic backgrounds. Unraveling the complicated nature of Mexican-American identity and politics is an ongoing project, and these essays go a long way in expanding our understanding of the often pragmatic response of activists and organizations as the nature of racial jurisprudence and identity politics changed rapidly after World War II.  

I. CITIZENSHIP BY TREATY, WHITENESS WITHOUT RIGHTS

Although Mexican-American and Western history scholars have taken the conquest of Northern Mexico seriously, there lacks an appreciation of this legacy of conquest in the general narrative of United States’ history. This erasure is less severe today than it was just a few decades ago, but it is still noticeable if one peruses the scant coverage of this war in history survey textbooks. The war and its aftermath deeply affected Mexican residents living in the conquered territory. It also helped establish the racialized nature of relations between Anglos and Mexican-Americans. In her essay, Guadalupe T. Luna summarizes key elements of her research into the failure of the United States’ government to abide by the “promises” of the Treaty of Guadalupe Hidalgo. The treaty ended the military occupation of Mexico and brought about the withdrawal of United States’ troops from the capital at Mexico City, yet also ceded nearly half of Mexico’s territory to the United States.

The end of the war brought United States citizenship to those Mexican citizens who remained in the conquered northern half of Mexico. The treaty granted them Caucasian status and naturalization eligibility. Although they were legally “white” this document did not make them white in the eyes of the Anglo immigrants to what is now the American Southwest. In the Southwest, Mexicans might not have been Black, but they were definitely not white. As one Texas farmer summed up this non-white caste hierarchy, “[w]e feel toward the Mexicans just like toward the nigger, but not so much.”

One of the “wages” of whiteness is the protection of property rights and the Treaty of Guadalupe Hidalgo formally recognized the property rights of those holding Spanish and Mexican titles to land in the Southwest. However, as Luna shows, the United States may have granted formal property protections to these landholders, yet it denied these rights to Mexican-American landholders through the

creation and manipulation of formal legal institutions and procedures. In this way, this new population of Mexican-Americans who might have been "white" based on class or culture lacked meaningful protection as Luna shows in her examination of *Peralta v. United States.* In *Peralta,* a privileged female land owner's heirs in possession of land in Northern California failed to secure protection because the state's archive lacked a copy of the grant, even though the grantee had complete documentation. Thus, the wages of whiteness had little value as the property rights of even elite Mexican-Americans were not protected by the United States.

II. MEXICAN-AMERICANS, CITIZENSHIP, AND THE STRUGGLE FOR MEMBERSHIP

Although they may have pursued a litigation strategy that maintained a commitment to Caucasian status, from the 1940s forward, Mexican-American activist elites and attorneys fought for a broad array of civil rights, often in coalition with whites and African-Americans. By looking at the activism of the Community Service Organization ("CSO") in the Cold War period, Shana Bernstein sheds light on the local struggle in Los Angeles, California for freedom and equality - including grass roots movements for street lighting, and against segregated public accommodations, segregated schools, and against police brutality. These efforts were often social movements that involved cooperation among Anglos, African-Americans, Jewish-Americans, Japanese-Americans, and Mexican-Americans in Southern California. It appears that non-elite and middle-class Mexican-Americans alike struggled in coalitions for citizenship rights rather than seeking privilege in "whiteness." As Bernstein shows, whiteness politics did not shape the formation of political movements in diverse admittedly urban communities or limit the ability of some Mexican American activists to cross the color line in an effort to change society for the benefit of diverse racial coalitions.

Reform movements and individual efforts aimed at expanding the rights of Mexican-American citizenship are likewise the topic of the essays by Craig Kaplowitz, Nancy MacLean, and Tom Romero. For Kaplowitz, the civil rights organization League of United Latin American Citizens ("LULAC") from its start, but increasingly after World War II, placed its emphasis on a "commitment to, or a vested interest in, life in the United States." This grew from a long-term desire on the part of the organization to struggle for the working class and middle class aspirations of persons of Mexican-ancestry living in the United States as citizens or on the citizenship track. Why did LULAC fail to fight for all persons of Mexican ancestry by privileging citizenship over ethnic affiliation? As Kaplowitz demonstrates, LULAC worked to improve conditions for Mexican-Americans at a

22. The United States unilaterally rejected section 10 of the Treaty of Guadalupe Hidalgo (1848), and in so doing, required perfected titles for all Mexican and Spanish grants in the newly ceded territories. This worked a hardship on those parties who because of war, or other frontier conditions, perhaps failed to perfect title. See, e.g., *Cessna v. United States,* 169 U.S. 165 (1897).
time when domestic workers experienced direct or indirect competition from both legal contract labor and illegal or undocumented labor flows from Mexico, two policies supported by agricultural and business interests. In this time of immigration and labor competition, LULAC leaders often compared themselves to “white” ethnics. Yet at the same time, Mexican-Americans were often quite poor and suffered horrible social, health, and educational conditions in the United States living daily lives defined by a brown-white color line. When civil rights and social rights protections expanded in the 1960s, LULAC shifted tactics and increasingly sought protections for Mexican-Americans as a distinct racial group. In this light, a form of racial pragmatism appears to have defined LULAC’s organizational response to issues of race, minority status, and governmental programs in the period following the landmark changes in civil rights law and policy after the triumph of race based civil rights and the emergence of the “Chicano” civil rights movement.

Continuing this thread of analysis, MacLean shows how pragmatism was long an approach used by Mexican-American organizations and leadership when it came to questions of racial status and legal protection. MacLean examines the Civil Rights Act of 1964 as a window into Mexican-American identity and politics. She shows how when the legal terrain and political environment changed to allow for a shift from “whiteness” to an acknowledgement of minority status or “brownness,” Mexican-American organizations took a “sharp turn” and built meaningful and lasting coalitions with African-Americans and other minorities. This is not to say this road to the protections of minority status or “color” was an easy one. Mexican-Americans as a group had been nearly ignored by the New Deal and the expanding welfare state of the post World War II period. MacLean shows how difficult it was for Mexican-Americans to put their community’s problems of poverty, racism, health, and other issues on the national agenda. MacLean ends with a discussion of the long-term prospects for continued alliances between African-Americans and Mexican-Americans in a period of political and economic change.

Romero likewise focuses attention on the changing legal, social, and political mechanisms that enabled a shift from Caucasian status to minority status among Mexican-Americans. Expanding his “possessive investment in color” analysis, Romero shows how the Mexican-American Legal Defense and Education Fund (“MALDEF”) constructed the “color” status of Mexican-Americans as they unmade a “white” identity and created one as an identifiable minority group. LULAC and other Mexican-American civil rights organizations from across the political spectrum increasingly argued that Mexican-Americans experienced unique forms of discrimination that required solutions different from those designed to remedy African-American inequality. In making the case, MALDEF rejected assimilation per se, and called on the government to recognize difference as they fought for the “non-Whiteness” and “non-Blackness” of Mexican-Americans even as

25. Johnson, supra note 16, at 50-51 (discussing efforts on the part of Mexican American reformers to identify with ethnic immigrants).
26. See Kaplowitz, supra note 23.
28. See id.
the new language of racial identity politics. 30

In many ways, the growth of a civil rights infrastructure brought Mexican-Americans and African-Americans together as often unstable allies.

CONCLUSION

As people of Mexican ancestry again face the onslaught of discrimination brought by nativists and anti-immigrant forces today, it is instructive to look back and unravel the often-pragmatic history of racial and ethnic politics of Mexican-Americans. Mexican-Americans certainly deployed "whiteness" as a tactic when it was the only available legal strategy to seek remedies in an age defined by the black-white binary and real issues of citizenship and naturalization eligibility. To do otherwise might have brought a formalization of the de facto segregation and discrimination faced by Mexican-American people every day in the United States. Yet, when the legal tide shifted in favor of a more expansive understanding of race and politics in the United States Mexican-American rights organizations joined African-Americans and abandoned the politics of whiteness. Now, there are problems with this racial orientation as it has evolved since its expansion as immigration to the U.S. test the limits of identity and minority status benefits and the utility of remedies and reforms designed to counteract past prejudice suffered by citizenship groups. One often hears of elites from the Spanish-speaking world becoming "Latino" to qualify for many of the benefits of "color" despite the fact that these individuals suffered no past discrimination within the United States. This globalization of color and multicultural politics has led some commentators to call for economic justice first and the consideration of race as only one of several factors considered especially when it comes to elite institutional policies and the cosmopolitan class of multicultural elites who many feel reap the benefits of past civil rights litigation within the United States. 31 These essays are presented here as a way to engage the past history of racial reform among Mexican Americans and as part of an ongoing effort to understand the context, history, and activism of those who worked to expand the meaning of citizenship for minorities in the United States. 32

30. See id.
32. For a path breaking and promising new approach to these issues, see Ariela J. Gross, The Caucasian Cloak: Mexican Americans and the Politics of Whiteness in the Twentieth-Century Southwest, 95 GEO. L.J. 337 (2007).