

Spring 1996

Comments by Angel Oquendo

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Recommended Citation

Oquendo, Ángel, "Comments by Angel Oquendo" (1996). *Faculty Articles and Papers*. 362.
https://opencommons.uconn.edu/law_papers/362

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Citation: 9 La Raza L.J. 43 1996



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Comments by Angel Oquendo

Angel Oquendo[†]

In this talk I will give a summary of the concept of what I call the Latino(a) race. I think this will be helpful for my own clarification and perhaps may contribute to opening a dialogue. I started developing this concept in a tentative and, hopefully, reflective way last year while working with Margaret Montoya and others on a panel at the Law & Society annual meeting. I also have talked about this with some of you and, of course, a fair amount with Celina Romany who is also going to be speaking here today. Next, I want to move from a description of this concept to a reflection on "practical" applications. I use quotation marks because I intend to take issue with the ordinary understanding of the practical, especially in the area of law.

The concept of the "Latino(a) race"—again in quotation marks; maybe this whole talk should be in quotation marks—is a concept toward which I have moved using, in part, the philosophical writings of the Spanish philosopher Miguel de Unamuno and critical race theory's rich literature. I have in mind the work of Derrick Bell, among others, and also the work of people who probably would not consider themselves part of this movement, such as Anthony Appiah and Cornel West.

I focus on two experiences, or maybe I should call them two aspects, of the Latino(a) experience in the United States. The first is the historical experience. This dimension is very important because it is here that the Latino(a) community distinguishes itself from all other immigrant communities in the United States. The Latino(a) community did not come to the United States; the United States came to the Latino(a) community. The two largest groups in this community, Mexicans and Puerto Ricans, are part of the United States territorial system due to the colonial expansion that took place last century. In the case of Mexicans, Mexican-Americans, and Chicanos, I am alluding to the expansion toward the Southwest and the annexation of large portions of Mexican territory. In the case of Puerto Rico, the process began with the 1898 invasion of the island and continued with Puerto Rico's subsequent colonization by the United States military initially, and later by civil forces. In both cases, the imperialistic onslaught immediately made a group of Latino(a)s part of the United States reality and created the necessary historical conditions for the subsequent massive Latino(a) migrations to the United States mainland. (In due course, I will submit that, though different, the historical experience of other Latino(a)s parallels that of Mexicans and Puerto Ricans in relevant ways. My contention will be that the concept of the Latino(a) race, which is originally founded in the Mexican and the

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Puerto Rican experience, becomes more complex, but does not change in essence as it expands to incorporate Cubans, Dominicans, Guatemalans, Salvadorans, and other Latino(a)s.)

I am convinced that this experience has colored the way the Latino(a) community is perceived in the United States and the way the Latino(a) community perceives itself. From the majority's perspective, the Latino(a) community is perceived subliminally, yet powerfully, as a conquered people. The Latino(a) community perceives itself, also perhaps in a subliminal and powerful way, as a people struggling against colonial domination. I think that this aspect of the Latino(a) experience is important because, as stated earlier, it separates the experience of the Latino(a) people from that of other immigrants. After explaining the concept of the Latino(a) race, I will illustrate why this concept may be relevant for "practice".

The other dimension that I think is central to the concept of the Latino(a) race is language. Before describing my meaning, I should offer some caveats. I do not intend to suggest that there should be a prerequisite for being a member of the Latino(a) race, i.e., that a particular language has to be spoken. I do not mean that all Latino(a)s speak a particular language; we know that is not true. But Latino(a)s typically have some kind of relationship with the Spanish language, often a mythical or an emotional relationship. If not their own language, it is the language of their parents or their grandparents. It is the language in which they heard "La nana" sung when they were kids. This is a dimension of the Latino(a) experience that is key in terms of the way this community perceives itself, on the one hand, and the way it is perceived by the majority on the other hand.

I feel that even for third, fourth, or fifth generation Latino(a)s in the United States, it is a symbol of pride to be able to salt some Spanish into our conversation. Even if we speak mostly English, every once in a while we stop to say "Ave María" or "Ay bendito" and then continue. This may be a release psychologically, but it also constitutes a fundamental sign of identity. With respect to the perception that the white majority has of the Latino(a) community, language has no doubt played a crucial role. It is no coincidence that the derogatory term that cuts across Latino(a) communities is "spik" which focuses on the way Latino(a)s "spik," I mean speak, rather than the way they look. It is telling that the anti-Latino(a) movement has coalesced politically in the English-only movement. This movement is an attack on the Latino(a) identity and an attempt to destroy the Latino(a) community.

Only by coming to terms with these two dimensions, the historical and the linguistic, is it possible to understand the Latino(a) experience in the United States and what I call the Latino(a) race. This concept, which is partly built upon the experience of Mexicans and Puerto Ricans with and in the United States, has grown and continues to expand as Latino(a)s from other countries have joined the Latino(a) community within the United States territory. That community, which was once composed mainly of Mexican-Americans and Puerto Ricans, now includes Cubans, Dominicans, Guatemalans, and Salvadorans, among others. These other Latino(a) communities not only are similarly related to the Spanish language, but also have had a historical experience which in a sense

parallels that of Mexicans and Puerto Ricans. Their homelands, though not taken over in the aforementioned Nineteenth Century colonial expansion, have been impoverished to some extent by an analogous Twentieth Century neo-colonial enterprise. This enterprise has contributed to the emergence of the political, social, and economic circumstances that brought these Latino(a)s to the United States.

Now to the practical consequences of all this. The first thing I want to mention involves litigation, in the context not just of arguing cases, but imagining and dreaming them. I was enlightened of the possibility of practical application by a conversation I had with a colleague, John Brittain, an African-American law professor and distinguished civil rights litigator in Connecticut. As attorney for the plaintiffs in *Sheff v. O'Neill*, 609 A.2d 1072, he argued that de facto segregation in the Hartford schools violates the Connecticut Constitution. The Hartford schools are 96% Latino(a) and African-American. The State argued that such segregation was a consequence of segregation in housing and that the children's inferior performance could be attributed to poverty. The State insisted that to the extent that there was no intentional racial discrimination, the Constitution of Connecticut did not cover the case.

The trial court found for the defendants and the plaintiffs appealed to the Connecticut Supreme Court. In the proceedings before the Supreme Court, one of the justices pointed out that the group that was growing the most in the Hartford community was the Puerto Rican or Latino(a) group which might eventually constitute 60-70% of all students. The justice asked whether this, in and of itself, would be a problem from the perspective of the constitution. He went on to say that he could imagine a school in the wealthier town of West Hartford with 60-70% Jewish or Italian students and that he could not see why that situation would necessarily be a violation of the Connecticut Constitution.

In my opinion, one should respond to this question with full knowledge of the difference between the Latino(a) community and other immigrant groups. Here one could draw on the historical dimension of the concept of the Latino(a) race alluded to earlier. This dimension focuses on the Latino(a) historical experience and on the fact that, as previously stated, Latino(a)s did not come to the United States, but the United States came to them. Therefore, the way in which they are perceived and how they perceive themselves is fundamentally different from the way in which Italian-Americans or Jewish-Americans are perceived. To argue effectively against the educational segregation of Puerto Ricans in Hartford, one has to have a clear idea of what the Latino(a) race or the Latino(a) community is all about and how it distinguishes itself from other immigrant communities. Discrimination against Latino(a)s is unique in that it is tied to a long-standing and deep-rooted U.S. campaign of hegemonic domination in Latin America. Constitutional principles, therefore, should be less tolerant of segregation when it affects Latino(a)s than when it involves other immigrant groups. Latino(a) segregation (to some extent like African-American segregation) differs in nature from the segregation of other groups.

Earlier I hinted at the second convergence point between theory and practice when I talked about the English-only movement. This is a very dangerous political movement. Some major political figures have

embraced the concept of an official language recently, but this political operation has been in place for a long time. We can see its consequences not just in the political arena, but also in the legal arena. With a concept of the Latino(a) community along the lines suggested here, one is able to see very clearly that this movement is not just an attempt to protect cultural integrity in the United States. It is actually an attack on a particular community. The code language is "English-only". I think that the powerful, though subliminal, message is that there is no place for a Latino(a) community in the United States.

The third and last convergence point between theory and practice comes up in the context of law schools. I consider teaching law part of the legal practice. At any rate, the concept of the Latino(a) race that I have suggested could have an impact on our legal pedagogical endeavors.

This semester I have been teaching a seminar on comparative law. The course is entitled "Issues in Latin American Law" and is taught in Spanish. The administration's complete support of this course was wonderful. I think it is very important that it is taught in Spanish and that it is open to all students, regardless of their level of Spanish. We are pretty flexible in allowing some English to sprinkle into our discussion. For this kind of project to continue, it is essential that all students (particularly Latino(a) students) interested in taking Spanish get law school credit.

My previous reflections on the Latino(a) race point to a particular understanding of the meaning of teaching law in Spanish. Introducing the Spanish language, which lies at the core of Latino(a) identity, to our law schools could be seen as a very small part of an effort to strengthen the sense of common destiny among Latino(a)s. First in the law schools, and later as professors and students become active as Spanish-speaking lawyers,. In the community at large, the Spanish language will find social affirmation and validation. The Latino(a) community, through its language, will be able to move closer to self-realization and self-empowerment in society at large. Further, encouraging non-Latino(a)s to become more familiar with the Spanish language might help Anglos appreciate our culture and help us Latino(a) overcome our "otherness".

In addition, I think that my seminar is related to the concept that I have been trying to develop because the course is not just a random discussion of different topics in Latin American law. We focus on particular contexts where there is a concrete conflict between two legal traditions. The seminar affords us an opportunity to grasp the historical and intellectual clash between the United States and Latin America, which is essential to the emergence of the Latino(a) race.

In the seminar we first discuss the Puerto Rican civil code. This code and its interpretation were traumatized after the United States invaded Puerto Rico. The United States attempted to impose its own common law system on Puerto Rico and created a supreme court first manned (and I underscore this) by U.S. English-only judges who did not speak a word of Spanish. We also discuss the effort by Puerto Ricans to recapture the civil law tradition and the Latin American legal legacy.

Another part of this course involves NAFTA, the North American Free Trade Agreement. I argue that, from the perspective of procedural law, this agreement is dominated by the United States common law perspective. My focus in the course is on the dispute resolution

mechanisms. I try to show that these mechanisms are essentially a creature of U.S. common law. The extent to which NAFTA's procedural provisions simply reproduce the U.S. Federal Rules of Civil Procedure and the Rules of Appellate Procedure is astonishing. We then read a few articles about Mexican civil procedure. We see how it involves a different conception of procedure and how this conception could have enriched the debate on dispute resolution. In many respects, Mexican civil procedure is part of the civil law tradition. It is similar to German civil procedure, at least in terms of the underlying picture of procedure. German civil procedure, however, has never been treated as backward by scholars in the United States and is often proposed as a model. Mexican civil procedure, on the other hand, is seen as the epitome of backwardness. The aim in this section of the course is to realize how a comparative perspective can bring new insights to the international law debate and to discuss why such a perspective was never taken seriously in NAFTA negotiations.

As I said at the beginning, I am interested in starting to think about the ways in which these concepts of race and identity can be introduced into practice in order to make it more invigorating and illuminating. The point is not simply to make the practice more interesting. I am convinced that in many respects the practice becomes more effective if merged with theory in an enlightened way.

Thank you.

