

# The Law of the Noose: A History of Latino Lynching

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## I. INTRODUCTION

What do tangible things mean, and for whom do they hold meaning? In Jena, Louisiana, a noose figured prominently in the controversy over the right to sit in a certain spot on Jena High's campus and the prosecution of six black teenagers that followed.<sup>1</sup> When someone hung a length of rope, doubled back in a familiar shape, on a branch of the tree beneath which white students traditionally congregated, no one doubted its meaning.<sup>2</sup> Blacks stay away. Gather here and expect trouble.<sup>3</sup>

The noose first gained its powerful rhetorical force during the Jim Crow era.<sup>4</sup> Today, blacks, like those Jena teenagers, are by no means free of the threat of physical violence, even though the means of its communication may be more subtle and attenuated than it once was.<sup>5</sup> It is because of this

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<sup>1</sup> For a description of the events at Jena, see Paul Krugman, *Politics in Black and White*, N.Y. TIMES, Sept. 24, 2007, at A23, which describes the arrest of six black teenagers for beating a white classmate during a schoolyard dispute over the right to sit under a tree. Students who hung nooses were suspended for three days. The black students accused in the beating were charged with second degree attempted murder. *Id.* For further discussion of the events at Jena, see Andrew E. Taslitz & Carol Steiker, Introduction to the Symposium: *The Jena Six, the Prosecutorial Conscience, and the Dead Hand of History*, 44 HARV. C.R.-C.L. L. REV. 275 (2009).

<sup>2</sup> See Krugman, *supra* note 2 (describing public reaction to the appearance of the noose); Adam Nossiter, *Black Youth, Conviction in Beating Voided, Will Stay Jailed*, N.Y. TIMES, Sept. 22, 2007, at A12. For other recent incidents featuring the display of a noose, see Peter Applebome, *Racial Crisis? Or Just Rope in the Hands of Fools?*, N.Y. TIMES, Oct. 14, 2007, at A37; Jeannine Bell, *The Hangman's Noose and the Lynch Mob: Hate Speech and the Jena Six*, 44 HARV. C.R.-C.L. L. REV. 329 (2009) (discussing the symbolic significance of the noose).

<sup>3</sup> And trouble, of course, is what they found, in the form of social opprobrium and, for some, a criminal prosecution. See Krugman, *supra* note 1; Nossiter, *supra* note 2 (describing the consequences of the altercation for the black students).

<sup>4</sup> See, e.g., Barbara Holden-Smith, *Lynching, Federalism, and the Intersection of Race and Gender in the Progressive Era*, 8 YALE J.L. & FEMINISM 31 (1996), reprinted in RACE AND RACES: CASES AND RESOURCES FOR A DIVERSE AMERICA 155, 155-59 (Juan F. Perea et al. eds., 2d ed. 2007) [hereinafter RACE AND RACES] (describing Jim Crow era and the practice of lynching); see also PHILIP DRAY, AT THE HANDS OF PERSONS UNKNOWN: THE LYNCHING OF BLACK AMERICANS (2002) (providing histories of the practice of lynching); ROBERT L. ZANGRANDO, THE NAACP CRUSADE AGAINST LYNCHING, 1909-1950 (1980) (same).

<sup>5</sup> Today, a different set of practices, notably police profiling, imprisonment, and the death penalty, remind African Americans of their precarious position. See, e.g., DAVID HARRIS, PROFILES IN INJUSTICE (2003) (critiquing use of ethnic profiles by law enforcement agencies and documenting how the practice fails to achieve its own aims); RACE AND RACES, *supra* note 4, 1142-44, 1147-50; Munieer I. Ahmad, *A Rage Shared by Law: Post-September 11 Racial*

history that the sudden reappearance of the noose at Jena High was so jarring, and its intent so unmistakable.

To whom *else* would a noose carry the same meaning? Gays and lesbians? Jews? Gypsies? Probably not. Odious as the symbol may be, it does not carry the same impact for members of those groups that it does for blacks. Other symbols—a swastika, perhaps, or an epithet like “fag” or “kike”<sup>6</sup>—might, but not a noose. That symbol is linked in the public mind with this one group alone. For better or worse, blacks own the symbol and its malevolent history.<sup>7</sup>

Yet, that seeming singularity invites further examination. For example, recent research by reputable historians shows that Latinos, particularly Mexican Americans in the Southwest, were lynched in large numbers during roughly the same period when lynching of blacks ran rampant.<sup>8</sup> Few people know this. Every school child knows that blacks suffered that fate. Why do so few know about the lynching of Latinos? This Essay will attempt to answer that question. Part II reviews the history of Latino lynching. Part III explains why it is so little known. Part IV suggests that English-Only movements are a present-day form of lynching for Latinos.<sup>9</sup> The Essay concludes by urging that scholars broaden their search for mechanisms for nonblack

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*Violence as Crimes of Passion*, 92 CAL. L. REV. 1259 (2004), reprinted in RACE AND RACES, *supra* note 4, at 1106, 1107-09, 1115; Donna Coker, *Foreword: Addressing the Real World of Racial Injustice in the Criminal Justice System*, 93 J. CRIM. L. & CRIMINOLOGY 827 (2003), reprinted in RACE AND RACES, *supra* note 4, at 1131-35; David A. Harris, *New Risks, New Tactics: An Assessment of the Re-assessment of Racial Profiling in the Wake of September 11, 2001*, 2004 UTAH L. REV. 913, reprinted in RACE AND RACES, *supra* note 4, at 1144-46; Andrew Taslitz, *Stories of Fourth Amendment Disrespect: From Elian to the Internment*, 70 FORDHAM L. REV. 2257 (2002), reprinted in RACE AND RACES, *supra* note 4, at 1122-24. For the view that widespread incarceration of blacks is a form of latter-day lynching, see Joseph Kennedy, *The Jena Six, Mass Incarceration, and the Remoralization of Civil Rights*, 44 HARV. C.R.-C.L. L. REV. 477 (2009); see also Gabriel J. Chin, *The Jena Six and the History of Racially Compromised Justice in Louisiana*, 44 HARV. C.R.-C.L. L. REV. 361 (2009) (pointing out how compromised justice effects the same end).

<sup>6</sup> For analysis of these and similar epithets and symbols, see RICHARD DELGADO & JEAN STEFANCIC, UNDERSTANDING WORDS THAT WOUND 47-77 (2004), which discusses the history of such words as “kike,” “spick,” “wop,” and “nigger.”

<sup>7</sup> Applebome, *supra* note 2. Compare the noose with another symbol of racial hatred, namely the burning cross. See *R.A.V. v. St. Paul*, 505 U.S. 377 (1992) (analyzing the constitutionality of a statute criminalizing cross-burning as an instrument of terror); Richard Delgado & Jean Stefancic, *Home-Grown Racism: Colorado’s Historic Embrace—and Denial—of Equal Opportunity in Higher Education*, 70 U. COLO. L. REV. 703, 704, 724, 781 (1999) (discussing the Ku Klux Klan’s deployment of a burning cross to intimidate minorities and summon the organization’s members to rallies).

<sup>8</sup> That is, the period beginning just before the War with Mexico (1846) to about 1925 for Latinos, and the period between the late nineteenth to the mid-twentieth century for blacks. See Holden-Smith, *supra* note 4, at 155 (citing Tuskegee Institute records).

<sup>9</sup> See *infra* notes 77-100 and accompanying text (demonstrating how English-Only (or Official-English) rules can (a) sever cultural connection with the past; (b) demoralize and inhibit redress; and (c) literally kill, as, for example, when an individual cannot communicate with emergency personnel); see also *infra* note 10 (summarizing the respects in which language restrictions function much like a noose).

groups that do the work of English-Only rules—suppress hopes, erase history, demoralize and frighten, and, occasionally, kill.<sup>10</sup>

## II. LATINO LYNCHING

A recent casebook *Latinos and the Law: Cases and Materials*,<sup>11</sup> summarizes much of what is known about Latino lynching. Most of the material cited therein is relatively recent, yet the numbers the authorities report are remarkably similar—597 lynchings or slightly more<sup>12</sup>—most of them dating to the same period when black lynching ran rampant, Reconstruction and the years immediately following it.<sup>13</sup> Moreover, the reasons that motivated the lynchings were similar for the two groups—acting “uppity,” taking away jobs, making advances toward a white woman, cheating at cards, practicing “witchcraft,” and refusing to leave land that Anglos coveted—with one exception.<sup>14</sup> Mexicans were lynched for acting “too Mexican”—speaking Spanish too loudly or reminding Anglos too defiantly of their Mexican-ness.<sup>15</sup> Even Mexican women, often belonging to lower economic classes,

<sup>10</sup> See Juan F. Perea, *Los Olvidados: On the Making of Invisible People*, 70 N.Y.U. L. REV. 965, 965, 967-69 (1995) (describing death from demoralization). In addition, English-Only rules may interfere with vital communications with the police during times of civil disturbance, Perea, *supra*, at 967-69, or with a foreigner’s ability to seek asylum in the United States, *id.* at 988-89. See also *id.* at 988-89 (discussing “symbolic deportation”).

<sup>11</sup> LATINOS AND THE LAW: CASES AND MATERIALS 207-09 (Richard Delgado, Juan F. Perea & Jean Stefancic eds., 2008) [hereinafter LATINOS AND THE LAW].

<sup>12</sup> See, e.g., William D. Carrigan & Clive Webb, *The Lynching of Persons of Mexican Origin or Descent in the United States, 1848 to 1928*, 37 J. SOC. HIST. 411, 413 (2003) (citing this number and declaring it conservative) [hereinafter Carrigan & Webb, *Mexican Origin*]; Rodolfo Acuña, *Crocodile Tears: Lynching of Mexicans*, HISPANICVISTA.COM (Jul. 20, 2005), reprinted in LATINOS AND THE LAW, *supra* note 11, at 207 (giving similar number but going on to mention that many more Mexicans and Mexican Americans may have been murdered for reasons similar to those motivating lynching; the line between the two crimes is indistinct); see also William D. Carrigan & Clive Webb, “A Dangerous Experiment”: *The Lynching of Rafael Benavides*, 80 N.M. HIST. REV. 265, 268 (2005) (giving the same number) [hereinafter Carrigan & Webb, *Dangerous Experiment*]; KEN GONZALES-DAY, LYNCHING IN THE WEST: 1850-1935, at 206 (2006) (listing several hundred lynchings, 132 of them of Latinos, in California alone).

<sup>13</sup> Carrigan & Webb, *Mexican Origin*, *supra* note 12, at 414 (discussing the period when most lynchings of Mexicans took place); Carrigan & Webb, *Dangerous Experiment*, *supra* note 12, at 266 (giving 1928 as the date of the last known lynching of a Mexican in the United States with the full support of the local community).

<sup>14</sup> Carrigan & Webb, *Mexican Origin*, *supra* note 12, at 418-22 (listing the most common reasons for Latino lynching); Carrigan & Webb, *Dangerous Experiment*, *supra* note 12, at 271 (mentioning lynching and vigilantism to coerce Mexican Americans to abandon their lands); *id.* at 273 (mentioning lynching of Mexicans for making advances toward Anglo women); see also ARMANDO NAVARRO, MEXICANO POLITICAL EXPERIENCE IN OCCUPIED AZTLAN 133 (2005) (describing lynching used to enforce the Foreign Miner’s Tax Law and force Mexicans off mining claims that Anglos coveted).

<sup>15</sup> Carrigan & Webb, *Mexican Origin*, *supra* note 12, at 420 (describing lynchings carried out because of the gendered construction of Mexican identity, including cheating at cards, cowardliness, carrying a concealed knife, and other unmanly traits and behaviors); *id.* at 421 (describing lynchings carried out by Anglos acting on other stereotypes of Mexicans); *id.* at 423 (describing lynchings of Mexicans based on suspicions of revolutionary sympathies and

were lynched, often for sexual offenses such as resisting an Anglo's advances too forcefully.<sup>16</sup>

Lest one think that physical brutality and harassment of Latinos ended with Reconstruction and the years immediately following it, a similar but less deadly form of violence took place during World War II, when U.S. servicemen in Los Angeles attacked young Mexican American men who loitered on street corners wearing distinctive "Zoot suits," gold watch chains, and slicked-back hair.<sup>17</sup> Although the violence amounted to beatings, forcible undressings, and other forms of nonlethal humiliation, the attacks went on for several days without official intervention.<sup>18</sup> As with the earlier wave of lynching, the World War II-era attacks targeted Mexican youths who displayed their identity too proudly and openly.

The numbers of African Americans lynched during the period in question were, of course, higher—around 3400 to 5000.<sup>19</sup> But the Latino group in the United States was much smaller then (and the Mexican American group smaller still), so that the *rate* of lynching for the two groups was similar.<sup>20</sup> As with blacks, Latino lynching went on with the knowledge and, in some cases, active participation of Anglo law enforcement authorities, especially the Texas Rangers, some of whom seemed to harbor a special animus toward persons of Mexican descent.<sup>21</sup>

Moreover, the lynching of Mexicans, like that of blacks, was often marked by hilarity and an atmosphere of righteous celebration or "public spectacle."<sup>22</sup> Those conducting the events believed they were acting in full accord with community wishes and meting out a type of informal justice.

territorial irredentism); *see also* Carrigan & Webb, *Dangerous Experiment*, *supra* note 12, at 281 (describing the role of racism in the lynching of Mexicans and Mexican Americans).

<sup>16</sup> GONZALES-DAY, *supra* note 12, at 185-87 (describing the lynching of "Josefa" or "Juanita" in California); Carrigan & Webb, *Mexican Origin*, *supra* note 12, at 421 (describing the lynching of Mexican women, especially of the "lower type").

<sup>17</sup> *See* RODOLFO ACUÑA, *OCCUPIED AMERICA: A HISTORY OF CHICANOS* 268-73 (4th ed. 2000) (describing World War II riots aimed at punishing Mexicans who flaunted their identity); NAVARRO, *supra* note 14, at 193-94, 211, 254 (describing atmosphere that pervaded the Zoot Suit riot).

<sup>18</sup> *See* RODOLFO ACUÑA, *OCCUPIED AMERICA: A HISTORY OF CHICANOS* (3d ed. 1988), *reprinted in* LATINOS AND THE LAW, *supra* note 11, at 828-32; NAVARRO, *supra* note 14, at 193-94 (citing a Los Angeles sheriff who explained that Mexicans' Indian blood predisposed them to lives of crime and delinquency and discussing coverage in the *Los Angeles Times* and *Herald Examiner* sympathetic to the attacks).

<sup>19</sup> *See, e.g.*, Acuña, *supra* note 12; Holden-Smith, *supra* note 4, at 155-56 (giving a similar figure and mentioning Tuskegee Institute records listing the number of African Americans lynched as 4743).

<sup>20</sup> *See* Carrigan & Webb, *Mexican Origin*, *supra* note 12, at 414, 430-32 app. (supporting this calculation).

<sup>21</sup> *Id.* at 416, 420-22; NAVARRO, *supra* note 14, at 108-12, 120-21, 173 (describing the organization's role in suppressing Mexican Americans); *see also* Richard Delgado, *Rodrigo's Corrido: Race, Postcolonial Theory, and U.S. Civil Rights*, 60 VAND. L. REV. 1691, 1738 (2007) (discussing oral literature complaining of brutal treatment at the hands of this group).

<sup>22</sup> GONZALES-DAY, *supra* note 12, at 100-01, 113-14, 124 (describing postcards of lynchings); Carrigan & Webb, *Mexican Origin*, *supra* note 12, at 419 (describing how lynchings often assumed the form of "public spectacle").

One historian even describes Anglo vigilantism toward Mexicans as a means of solidifying society and reinforcing civic virtue.<sup>23</sup> As with black lynchings, the ringleaders would often mutilate the bodies of the victims and leave them on display in a practice of “ritual torture and sadism.”<sup>24</sup> Accounts describe how lynch mobs would often burn or shoot the bodies of the Mexicans even after they were dead. Others dismembered the remains and cut off body parts for souvenirs.<sup>25</sup> Even the Anglo press often enthusiastically supported the events.<sup>26</sup>

Most lynchings of Latinos took place in the Southwest, especially in the states or territories of Texas, California, Arizona, and New Mexico, all of which had substantial Mexican or Mexican American populations.<sup>27</sup> Smaller numbers took place in Colorado and Nevada, with a few scattered cases in Nebraska, Oklahoma, Oregon, Kentucky, Louisiana, Montana, and Wyoming.<sup>28</sup> Similarly, most lynchings of blacks were concentrated in one region, namely the South.<sup>29</sup>

Carrigan writes that many lynchings began with a mob snatching a Mexican from the hands of the authorities, removing him from a prison cell or courthouse, and then executing him. In June 1874, a Latino man named Jesus Romo was arrested for robbery and other crimes in La Puente, Califor-

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<sup>23</sup> Carrigan & Webb, *Mexican Origin*, *supra* note 12, at 415-16 (describing the argument of Richard Maxwell Brown).

<sup>24</sup> *Id.* at 419 (describing dismembering, decapitating, repeated stabbing, and cutting out a victim’s tongue or other body parts); Holden-Smith, *supra* note 4, at 155-59 (describing the atmosphere at a number of black lynchings).

<sup>25</sup> See Carrigan & Webb, *Mexican Origin*, *supra* note 12, at 416-19; see also GONZALES-DAY, *supra* note 12, at 175-78 (describing a head preserved in a bottle). Similar mutilation, of course, often took place during black lynchings. See, e.g., Holden-Smith, *supra* note 4, at 155-56.

<sup>26</sup> See Carrigan & Webb, *Dangerous Experiment*, *supra* note 12, at 273-74 (describing favorable press coverage).

<sup>27</sup> See Carrigan & Webb, *Mexican Origin*, *supra* note 12, at 415 (listing locations of known lynchings).

<sup>28</sup> *Id.*

<sup>29</sup> See, e.g., Holden-Smith, *supra* note 4, at 155-56. Why were Latino and black lynching concentrated in these regions and not others? One possible explanation is group contagion—one incident of lynching gives surrounding society permission to carry out others. A second possible explanation is social competition-aggression theory, which holds that competition between groups for limited resources is apt to increase distrust and racism. See, e.g., Richard Delgado et al., *Fairness and Formality: Minimizing the Risk of Prejudice in Alternative Dispute Resolution*, 1985 WIS. L. REV. 1359, 1378-79 (discussing a number of theories of racial prejudice). Both approaches may explain why Latino lynching took place in the Southwest, which contained large numbers of that minority, and why most black lynchings took place in the South, where the black population was particularly concentrated. See generally Carrigan & Webb, *Mexican Origin*, *supra* note 12, at 417 (citing PATRICIA NELSON LIMERICK, *THE LEGACY OF CONQUEST: THE UNBROKEN PAST OF THE AMERICAN WEST* (1987) (describing, as Carrigan and Webb put it, the “continuing contest for cultural dominance between Anglos and non-white minorities” in that region)); Carrigan & Webb, *Dangerous Experiment*, *supra* note 12, at 271 (noting that “[c]ompetition for economic resources created a bitter ethnic rivalry . . . in . . . areas of Anglo colonization”); Carrigan & Webb, *Mexican Origin*, *supra* note 12, at 417, 422 (noting, as well, that lynching ran highest when Anglos and Latinos were in most intense competition with each other or when diplomatic relations with Mexico were tense).

nia.<sup>30</sup> Later, a group of masked men seized him from the arresting officers, took him outside, tied a rope around his neck, and hanged him to death. Local opinion celebrated the event, reasoning that Romo was a “hardened and blood-stained desperado” who richly deserved his fate.<sup>31</sup> Of course, the mob acted on unsubstantiated assertions, not a judicial trial.<sup>32</sup>

Many lynchings, like Romo’s, took place near jails and courtrooms when vigilante mobs could not wait for formal justice to proceed.<sup>33</sup> Others occurred in isolated mining camps or sparsely settled ranch areas, often with the assistance (formal or informal) of the authorities, such as the Texas Rangers.<sup>34</sup> Carrigan estimates that the number of Mexicans murdered by members of that organization may have run into the thousands.<sup>35</sup> Very few, if any, Anglos seem to have been made to stand trial for playing a part in the lynching of a Mexican.<sup>36</sup>

Lynching was so rampant and uncontrolled that the Mexican government and even the U.S. consul in Matamoros, Mexico, lodged official complaints.<sup>37</sup> Some local Mexicans fought back. Latino civil rights

<sup>30</sup> Carrigan & Webb, *Mexican Origin*, *supra* note 12, at 416.

<sup>31</sup> *Id.* (quoting L.A. STAR, June 13, 1874, at 1); *see also* Carrigan & Webb, *Dangerous Experiment*, *supra* note 12, at 275 (describing local coverage of lynching as a form of “noble and patriotic service” (quoting FARMINGTON TIMES HUSTLER (N.M.), Nov. 30, 1928, at 16)).

<sup>32</sup> Carrigan & Webb, *Mexican Origin*, *supra* note 12, at 416.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*; *see also* Delgado, *supra* note 21, at 1738 (describing oral history lamenting treatment at the hands of this group); Carrigan & Webb, *Mexican Origin*, *supra* note 12, at 425 (describing Mexican American *corridos* lamenting deaths and celebrating brave heroes who died defending their rights); NAVARRO, *supra* note 14, at 121 (describing mistreatment at hands of this group).

<sup>35</sup> Carrigan & Webb, *Mexican Origin*, *supra* note 12, at 417 (noting that the organization’s enthusiasm for punishing Mexicans ran so high that they even crossed the United States-Mexico border to arrest one, who was then returned to the United States where he was “strung up to the cross beams of the gate in the court house yard until he was dead” (quoting EL PASO TIMES (TEX.), Apr. 8, 1881)).

<sup>36</sup> *Id.* (reporting that the figure is close to zero); *see* Carrigan & Webb, *Dangerous Experiment*, *supra* note 12, at 280 (“[T]he only Anglo convicted of the offense received a one-year sentence.”). *See also* NAVARRO, *supra* note 14, at 121. Navarro quoted a magazine writer of the time as writing: “Some . . . have degenerated into common man killers. There is no penalty for killing, no jury along the border would ever convict a white man for shooting a Mexican. . . . Reading over Secret Service records makes you feel as though there was an open gun season on Mexicans along the border.” *Id.*

<sup>37</sup> *See* Carrigan & Webb, *Mexican Origin*, *supra* note 12, at 417, 427-28; *see also* Carrigan & Webb, *Dangerous Experiment*, *supra* note 12, at 266, 282-85 (writing that it was international condemnation that ultimately spelled the end of the practice). Mexico’s protest grew out of lynching in the territory of New Mexico. *Id.* at 268. It should not be surprising that lynching in that region would elicit protest. New Mexico was part of Mexico before the war with the United States. *Id.* at 269. Moreover, the state has always been a tri-cultural region, with Anglos, Indians, and Mexican Americans sharing power. *Id.* Many of the villages, especially in the northern part of the state, have Latino mayors or sheriffs, and many of the families (including Anglos) speak Spanish as well as English. *Id.* Much intermarriage takes place. Carrigan & Webb, *Dangerous Experiment*, *supra* note 12, at 269. The region thus contains many long-term residents of Mexican lineage who are part of the power structure and others who are comfortable with that structure. As such, they were not likely to take kindly to lynching of one of their neighbors by Anglos who did not respect the region’s tenuous power-sharing. *See id.* at 269; *see also* LAURA GOMEZ, MANIFEST DESTINIES: THE MAKING OF THE

organizations lodged protests.<sup>38</sup> Some, such as mythic outlaw Joaquin Murietta, took matters into their own hands, avenging the lynching of compatriots by murdering the Anglos responsible.<sup>39</sup> Juan Cortina and Gregorio Cortes, the heroes of several *corridos*,<sup>40</sup> did the same, if not always quite so violently.<sup>41</sup> Still other Mexicans organized secret, conspiratorial societies, such as the *Plan de San Diego*, which called on Mexicans to overthrow Anglo society.<sup>42</sup> Anglos generally met these acts of resistance with ruthless, organized force and murder.<sup>43</sup>

The few U.S. historians who write about lynching of Latinos ascribe it to simple racial prejudice, protection of turf, and Yankee nationalism left over from the Mexican War.<sup>44</sup> Rodolfo Acuña compares the operative Anglo sentiment to anti-black racism and the form of special hatred that accompanies unjust wars.<sup>45</sup> *Latinos and the Law*, after reviewing the evidence, concludes that Latino lynchings are a relatively unknown chapter in United States history and part of a worldwide pattern of shaping discourse so as to avoid embarrassment of the dominant group.<sup>46</sup>

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MEXICAN AMERICAN RACE 54-56 (2008) (describing the role of Latino elites and common folk in New Mexico's history); NAVARRO, *supra* note 14, at 137-41 (describing distribution of power in that state).

<sup>38</sup> Carrigan & Webb, *Dangerous Experiment*, *supra* note 12, at 266, 282-84 (describing protests by community organizations); Carrigan & Webb, *Mexican Origin*, *supra* note 12, at 424-26 (same).

<sup>39</sup> On this mythic figure, see Delgado, *supra* note 21, at 1740; see also NAVARRO, *supra* note 14, at 103-05. On Chicano resistance in general, see ROBERT J. ROSENBAUM, MEXICANO RESISTANCE IN THE SOUTHWEST 53-67 (1981), which discusses a host of acts, large and small, by which Latinos protested their mistreatment.

<sup>40</sup> Corridos are ballads composed, often spontaneously, to celebrate an event or hero.

<sup>41</sup> See NAVARRO, *supra* note 14, at 109-17; AMERICO PAREDES, WITH HIS PISTOL IN HIS HAND (1994) (discussing Gregorio Cortes and his significance in border folklore); ROSENBAUM, *supra* note 39, at 42-49; Carrigan & Webb, *Mexican Origin*, *supra* note 12, at 424; see also Delgado, *supra* note 21, at 1739-40 (same). On the Latino oral tradition, see THE ANTHOLOGY OF HISPANIC LITERATURE OF THE UNITED STATES (Nicolas Kanellos et al. eds., 2002) [hereinafter ANTHOLOGY OF HISPANIC LITERATURE].

<sup>42</sup> See BENJAMIN HEBER JOHNSON, REVOLUTION IN TEXAS: HOW A FORGOTTEN REBELLION AND ITS BLOODY SUPPRESSION TURNED MEXICANS INTO AMERICANS (2005) (describing rebellion); NAVARRO, *supra* note 14, at 100, 317 (same); Carrigan & Webb, *Mexican Origin*, *supra* note 12, at 425 (same); see also *supra* notes 39-41 and accompanying text (describing other resistance figures); NAVARRO, *supra* note 14, at 113-15 (describing the secret organization known as Las Gorras Blancas (The White Caps)); Carrigan & Webb, *Dangerous Experiment*, *supra* note 12, at 278 (same).

<sup>43</sup> NAVARRO, *supra* note 14, at 97-120 (describing era of resistance and Anglo responses to it); Carrigan & Webb, *Mexican Origin*, *supra* note 12, at 425; see also GOMEZ, *supra* note 37 (describing role of light-skinned, wealthy New Mexican elites in the territory's social order).

<sup>44</sup> See Carrigan & Webb, *Mexican Origin*, *supra* note 12, at 416 (describing the sentiment behind anti-Latino vigilantism as institutionalized discrimination); *id.* at 417 (noting that "racial prejudice was the primary force in fomenting mob violence against Mexicans"); see also Carrigan & Webb, *Dangerous Experiment*, *supra* note 12, at 266 (noting how Anglo violence ran high in the wake of the Mexican-U.S. war).

<sup>45</sup> Acuña, *supra* note 12, at 207-208.

<sup>46</sup> See LATINOS AND THE LAW, *supra* note 11, at 208-09.

## III. OFFICIAL OBSCURITY: WHY THESE EVENTS ARE SO LITTLE KNOWN

Why are these events not better known, and why have they come to light only recently? One key reason is that the primary accounts of the *linchamientos*<sup>47</sup> appeared in community newspapers, which were printed in Spanish.<sup>48</sup> Since relatively few mainstream historians read Spanish or consulted these sources, Latino lynching remained beyond the ken of most mainstream readers. Mexicans and Mexican Americans, of course, knew full well about them. Oral culture, including *corridos*, *actos*,<sup>49</sup> and *cantares*,<sup>50</sup> told of the deaths of brave Mexicans who defied Anglo authority and paid the price.<sup>51</sup> Sung at parties, funerals, and other ritual occasions, these laments kept alive the memory of the events generation after generation.<sup>52</sup> They also celebrated heroes like Juan Cortina who stood up for their rights or exacted revenge for the murder of a friend.<sup>53</sup>

Many in the Mexican and Mexican American community knew of the lynchings, either by word of mouth or by reading about them in a community newspaper. But the events were largely missing from mainstream histories. A few early scholars, such as Carey McWilliams and Arnoldo De Leon, mentioned them.<sup>54</sup> But in contrast to black lynchings, that of Mexicans is largely absent from America's collective record and memory.

<sup>47</sup> *Linchamientos* means lynchings. It is a Spanglish word that combines the English term "lynching" with the Spanish language suffix "miento," meaning "the act of."

<sup>48</sup> Acuña, *supra* note 12, at 207-208. When Anglo newspapers covered lynchings of Latinos, the coverage was often matter of fact, Carrigan & Webb, *Dangerous Experiment*, *supra* note 12, at 271, or favorable, *id.* at 274-75. The literature on Latino lynching is, thus, sparse.

<sup>49</sup> *Actos* are skits, often improvisational, and a form of street theatre.

<sup>50</sup> *Cantares* are poetry, sometimes sung, and part of an oral tradition.

<sup>51</sup> See Carrigan & Webb, *Mexican Origin*, *supra* note 12, at 425-46 (discussing a number of these *corridos*). One such *corrido* reprinted by Carrigan & Webb is the following:

Now I go out onto roads  
 To kill Americans  
 You were the cause  
 Of my brother's death  
 You took him defenseless  
 You disgraceful Americans.

*Id.* at 426. For additional *corridos* and analysis of their types and themes, see ANTHOLOGY OF HISPANIC LITERATURE, *supra* note 41, at 115-16.

<sup>52</sup> NAVARRO, *supra* note 14, at 116-17; Delgado, *supra* note 21, at 1738-40.

<sup>53</sup> See *supra* notes 39-41 and accompanying text. Juan Cortina was a member of a prominent Texas family that had suffered indignities and land loss at the hands of Anglo settlers and courts. When Cortina saw a sheriff pistol-whipping a drunken *vaquero* who worked for his mother, Cortina shot the sheriff and left town with the *vaquero*. Two months later, he led a posse of sixty friends into Brownsville, where he exacted revenge on Anglo merchants and released all the Mexican prisoners in the local jail. When a force of Anglo and Mexican national guardsmen attempted to arrest him, it suffered a resounding defeat. Cortina's actions received widespread support from the local populace, which believed he was an agent of justice. It took the U.S. Army to defeat him and his insurgent group. See ROSENBAUM, *supra* note 39, at 41-51 (describing Cortina and other insurgent Mexicans during this period).

<sup>54</sup> See Carrigan & Webb, *Mexican Origin*, *supra* note 12, at 412 (discussing the role of these two early scholars).



Why would this be? The oversight, as mentioned, may be in part a product of many Americans' simply not speaking Spanish.<sup>55</sup> Another explanation may be that some authorities in the academic mainstream may have come across evidence of the practice but minimized it, instead focusing overwhelmingly on black lynching and slavery.<sup>56</sup> Still others might have failed to examine it out of sheer inertia. Scholars of all disciplines adhere, consciously or not, to a paradigm or common understanding of events. Since Latino lynching falls outside the dominant paradigm of American history, the few historians and writers who came across reference to it may have afforded it scant treatment.<sup>57</sup>

For some scholars, the invisibility of Latino lynching is neither accidental nor surprising. An emerging school of scholarship known as postcolonial theory describes how colonial societies almost always circulate accounts of their invasions that flatter and depict them as bearers of justice, science, light, and humanism.<sup>58</sup> The native or colonial subjects, by contrast, emerge as primitive, hapless, or even bestial in their depictions.<sup>59</sup> These natives are in need of the civilizing force of the invading power, which arrives in the form of superior administration, better use of the land and its resources, and, of course, a higher form of justice.<sup>60</sup>

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<sup>55</sup> See Acuña, *supra* note 12; Carrigan & Webb, *Mexican Origin*, *supra* note 12, at 429 (citing a Wisconsin newspaper that reported in 1916 that "there are still lynchings in the far west, especially along the Mexican border . . . although they escape the average collector of statistics" and that "[t]he subject is one that invites searching inquiry"); see also *supra* notes 46-48 and accompanying text.

<sup>56</sup> See, e.g., Carrigan & Webb, *Mexican Origin*, *supra* note 12, at 413, 429 (suggesting that the invisibility of Latino lynching is due to historians' "narrow racial emphasis upon African Americans and their regional emphasis upon the South"); Juan F. Perea, *The Black/White Binary Paradigm of Race: The "Normal Science" of American Racial Thought*, 85 CAL. L. REV. 1213 (1997) (describing the common practice of placing the African American experience at the center of discourse and marginalizing that of other groups).

<sup>57</sup> See Carrigan & Webb, *Mexican Origin*, *supra* note 12, at 413 (noting that some historians employed a "neat binary division" in which they recorded lynching victims as either black or white, including in the latter category Native American, Mexican American, and even Asian American victims of lynching); Perea, *The Black/White Binary Paradigm of Race*, *supra* note 56 (explaining how the binary paradigm of race marginalizes Latinos' concerns and histories); Richard Delgado, *Rodrigo's Fifteenth Chronicle: Racial Mixture, Latino-Critical Scholarship, and the Black-White Binary*, 75 TEX. L. REV. 1181 (1997) (same); see also NAVARRO, *supra* note 14, at 1-5, 8-10, 97-98, 123 (discussing the internal-colony model of Mexican American history).

<sup>58</sup> See Delgado, *supra* note 21, at 1703-18 (describing this school and some of its principal themes). Are domestic Latinos an internal colony of the United States? Notes 64-65 and the accompanying text, *infra*, suggest that the answer is yes. See also LATINOS AND THE LAW, *supra* note 11, at 3, 48, 128 (explaining the internal-colony model); Delgado, *supra* note 21, at 1697-99 (same).

<sup>59</sup> See Delgado, *supra* note 21, at 1714-18. On the image of the bestial minority man, see Richard Delgado & Jean Stefancic, *Images of the Outsider in American Law and Culture: Can Free Expression Remedy Systemic Social Ills?*, 77 CORNELL L. REV. 1258, 1265, 1268, 1273-75 (1992). On the stereotypical depiction of Latinos during the period in question, see GONZALES-DAY, *supra* note 12, at 29-38.

<sup>60</sup> See, e.g., Delgado, *supra* note 21, at 1717-18.

One such scholar, Edward Said, writes that the West paints the Orient as exotic, unknowable, and foreign in order to legitimize its hegemony over that region and its people, and to persuade itself that its history of imperialism is entirely justifiable.<sup>61</sup> Scholars from other previously colonized regions, including India, Pakistan, Africa, and Latin America, and a few from the West, sound many of the same themes. The colonial subject emerges as unruly, dark, untrustworthy, and in need of tutelage, discipline, and punishment.<sup>62</sup> In such accounts, if the conqueror oversteps, beating a native to death, for example, or punishing an innocent victim, the act is often excused as a mere matter of excess—the right idea gone awry.<sup>63</sup>

Naturally, the official histories of colonization are written from the perspective of the conqueror and, understandably, show her in the best possible light. Might this account, in part, for the invisibility of Latino lynching in standard American history books? Rodolfo Acuña writes that Latinos living in the United States are, for all practical purposes, an internal colony of the United States.<sup>64</sup> If so, postcolonial theory may explain key elements of the relationship between the conquering Anglos and the subjugated Latinos, particularly in the Southwest, including the prevalence of lynching and vigilante justice.<sup>65</sup> The next section will focus on whether, and to what extent, this legacy lives on today.

<sup>61</sup> See EDWARD SAID, *CULTURE AND IMPERIALISM* 100 (1993) (describing Western literature's tendency to represent foreign cultures in this fashion).

<sup>62</sup> See JOHN-MICHAEL RIVERA, *THE EMERGENCE OF MEXICAN AMERICA* 2-4 (2006); SAID, *CULTURE AND IMPERIALISM*, *supra* note 61, at xii-xiii, 100, 162; Abdul R. JanMohamed, *The Economy of Manichean Allegory*, in *THE POSTCOLONIAL STUDIES READER* 18, 18 (Bill Ashcroft, Gareth Griffiths & Helen Tiffin eds., 1995); see generally Rudyard Kipling, *The White Man's Burden: The United States and the Philippine Islands*, *McCLURE'S MAG.*, Feb. 1899, at 290-91 (poem encouraging white men to engage in colonization and imperialism over "new-caught, sullen peoples, Half-devil and half-child"). Some of the Western scholars include JanMohamed, *supra* (UC-Berkeley); Ashcroft, *supra* (University of New South Wales, Australia); and Chantal Thomas (University of Minnesota Law School).

<sup>63</sup> See generally Carrigan & Webb, *Mexican Origin*, *supra* note 12 (attributing this to Anglo-American racism).

<sup>64</sup> See RODOLFO ACUÑA, *OCCUPIED AMERICA: THE CHICANOS' STRUGGLE TOWARD LIBERATION* (1972) (describing Chicano liberation movement); RODOLFO ACUÑA, *OCCUPIED AMERICA: A HISTORY OF CHICANOS* vii-ix (2d ed. 1981) (explaining author's use of the internal-colony analogy); ROBERT BLAUNER, *RACIAL OPPRESSION IN AMERICA* (1972) (explaining theory of domestic colonialism); NAVARRO, *supra* note 14, at 1-5, 8-10, 97-98, 123 (discussing Mexicano community as a colonized people); see also *supra* note 58 (discussing internal-colony model for understanding the Latino condition and noting the role of conquest, in particular that of Puerto Rico and the U.S. Southwest).

<sup>65</sup> Might one argue that blacks, too, are an internal colony of the United States? Although the question lies beyond the scope of this paper, I believe that the answer is no. Unlike Puerto Ricans living in Puerto Rico—for all practical purposes a colony of the United States—or Mexican Americans living in parts of the Southwest that were once Mexico, the ancestors of most blacks arrived in the United States by means of slavery, not conquest. See HOWARD ZINN, *A PEOPLE'S HISTORY OF THE UNITED STATES: 1492-PRESENT* (1995), reprinted in *RACE AND RACES*, *supra* note 4, at 97, 99-102; *RACE AND RACES*, *supra* note 4, at 102-04, 105, 108, 109-12, 114-26, 129-33; BENJAMIN B. RINGER & ELINOR R. LAWLESS, *RACE-ETHNICITY AND SOCIETY* (1989), reprinted in *RACE AND RACES*, *supra* note 4, at 19, 24; BENJAMIN FRANKLIN, *OBSERVATIONS CONCERNING THE INCREASE OF MANKIND* (1755), reprinted in *RACE AND*

#### IV. ENGLISH-ONLY MOVEMENTS AND THEIR CONNECTION TO LATINO LYNCHING

Movements to declare English the official language of the United States have gathered momentum beginning with the early advocacy of U.S. Senator and former university president S.I. Hayakawa and political operative John Tanton.<sup>66</sup> Currently, over half the states declare English their official language, and the current wave of anti-immigrant sentiment has spurred a movement in Congress to pass national legislation to that effect.<sup>67</sup> Meanwhile, many cities and towns gripped by anti-immigrant fervor have enacted ordinances forbidding behavior thought to be associated with Latino immigrants, including the speaking of Spanish.<sup>68</sup> A number of workplaces have begun insisting that their employees speak English exclusively, either when interacting with the public or each other.<sup>69</sup> Even a few taverns and other

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RACES, *supra* note 4, at 104-05; THOMAS JEFFERSON, NOTES ON THE STATE OF VIRGINIA, QUERY XIV (1787), *reprinted in* RACE AND RACES, *supra* note 4, at 105-08; FREDERICK DOUGLAS, THE MEANING OF THE FOURTH OF JULY FOR THE NEGRO, ROCHESTER, NY (1852), *reprinted in* RACE AND RACES, *supra* note 4, at 112-14; Herbert Aptheker, *Negro Slave Revolts in the United States 1526-1860* in *ESSAYS IN THE HISTORY OF THE AMERICAN NEGRO* (1973), *reprinted in* RACE AND RACES, *supra* note 4, at 126-29; Frederick Douglas, The Dred Scott Decision: Speech delivered before American Anti-Slavery Society, New York (May 11, 1857), *reprinted in* RACE AND RACES, *supra* note 4, 133-34. Thus, the dynamics of their suppression differ from those that one finds in connection with Latinos. See Delgado, *supra* note 57 (noting that much of current antidiscrimination law is based on the Thirteenth and Fourteenth Amendments, which seek to eliminate the vestiges of slavery). The two groups suffered systematic destruction of their culture and, later, a system of media stereotypes. See, e.g., Delgado & Stefancic, *supra* note 59, at 1258, 1261-67, 1273-75 (discussing the histories and set of stereotypes that developed for the two groups). Yet the Latino experience and civil rights agenda are slightly different from the African American version. The objective of the Latino agenda, in simplest terms, is to abolish the badges and incidents of Conquest—including loss of ancestral lands and cultural and language rights—not to abolish the badges and incidents of slavery.

<sup>66</sup> JEAN STEFANCIC & RICHARD DELGADO, NO MERCY: HOW CONSERVATIVE THINK TANKS AND FOUNDATIONS CHANGED AMERICA'S SOCIAL AGENDA 9-19 (1996) (discussing the Official-English movement); Juan F. Perea, *Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English*, 77 MINN. L. REV. 269 (1992) (discussing the same movement and its targeting of Latinos and other recent immigrants).

<sup>67</sup> On the Official-English movement and its recent surge, see Perea, *supra* note 66; NAVARRO, *supra* note 14, at 445, 448, 452, 480, 521; S.I. Hayakawa, *English is the Key to Opportunities of American Life*, READING EAGLE (Mar. 20, 1990), *reprinted in* LATINOS AND THE LAW, *supra* note 11, at 230-32; RICHARD RODRIGUEZ, HUNGER OF MEMORY: THE EDUCATION OF RICHARD RODRIGUEZ (1982), *reprinted in* LATINOS AND THE LAW, *supra* note 11, at 247-49. Most of this sentiment seems aimed at Latinos and other recent immigrants.

<sup>68</sup> LATINOS AND THE LAW, *supra* note 11, at 473-74, 477; Paul Vitello, *Rift over Illegal Immigration Leads to Talk of Secession*, N.Y. TIMES, Dec. 16, 2006, at B12, *reprinted in* LATINOS AND THE LAW, *supra* note 11, at 474-77; Mexican American Legal Defense and Education Fund, *Memo-Letter to Hazleton, Pennsylvania City Government* (July 12, 2006), *reprinted in* LATINOS AND THE LAW, *supra* note 11, at 478-80.

<sup>69</sup> See, e.g., *García v. Spun Steak Co.*, 998 F.2d 1480 (9th Cir. 1993), *reprinted in* LATINOS AND THE LAW, *supra* note 11, at 652-58; *Rivera v. Coll. Of DuPage*, 445 F. Supp. 2d 924 (N.D. Ill. 2006), *reprinted in* LATINOS AND THE LAW, *supra* note 11, at 668-70. These places of business appear to be especially incensed at the speaking of Spanish, and not other European languages, like French or Italian.

places of public accommodation have begun requiring patrons to speak English while on their premises.<sup>70</sup>

Those who support this movement argue that declaring English the official language will promote Americanism and civic values. They also believe it will encourage immigrants to assimilate and acquire a proficiency in English, thereby avoiding the formation of permanent ghettos and a balkanized national culture.<sup>71</sup>

At the same time that the English-Only movement has been gaining force, a related movement urges the abolition of bilingual education in public schools.<sup>72</sup> Its backers sound many of the same themes familiar from the English-Only movement. According to them, allowing immigrant schoolchildren to learn in both languages will slow their acquisition of English and send the message that adoption of American ways is a choice rather than a practical and patriotic necessity.<sup>73</sup> Both the English-Only and anti-bilingual movements sprang up around the time that Latino immigration increased and gained national attention. The two movements are related in that both aim to discourage the speaking of foreign languages, the first in governmental functions and the second in schools. Many of the same organizations and leaders who back one movement also back the other.

Given that the policy underpinnings of these measures seem insecure and alarmist,<sup>74</sup> what is really going on? It would seem that, in addition to sending signals and parceling out validation—who belongs to America—one of these laws' functions might be to regulate history and knowledge of the past.<sup>75</sup> For example, they send a message that the U.S. is an inherently

<sup>70</sup> See, e.g., *id.* at 652-58.

<sup>71</sup> Hayakawa, *supra* note 67, at 910. *But see* Perea, *supra* note 66, at 347 (arguing against this view).

<sup>72</sup> See *LATINOS AND THE LAW*, *supra* note 11, at 250; *NAVARRO*, *supra* note 14, at 133, 451-52, 458-59. *Cf.* *Lau v. Nichols*, 414 U.S. 563 (1974) (holding that a lack of bilingual instruction for Chinese students unable to speak English violated Title VII of the 1964 Civil Rights Act).

<sup>73</sup> *Lau*, 414 U.S. 563, *reprinted in* *LATINOS AND THE LAW*, *supra* note 11, at 251-53; *Serna v. Portales*, 499 F.2d 1147 (10th Cir. 1974), *reprinted in* *LATINOS AND THE LAW*, *supra* note 11, at 261-69; Kevin R. Johnson & George A. Martinez, *Discrimination by Proxy: The Case of Proposition 227 and the Ban on Bilingual Education*, 33 U.C. DAVIS L. REV. 1227 (2000) (discussing a California referendum limiting bilingual education in the public schools of that state).

<sup>74</sup> For the view that language uniformity is not necessary for social harmony, and noting that a number of U.S. states have been officially bilingual during parts of their histories, see Perea, *supra* note 66, at 273, 309-28, which discusses official bilingualism in New Mexico, Pennsylvania, Louisiana, and elsewhere. *See also* *Meyer v. Nebraska*, 262 U.S. 390 (1923) (striking down a Nebraska rule forbidding the teaching of any language other than English). Common sense leads one to conclude that most immigrants are highly motivated to learn English since speaking English is a practical necessity for getting a job and making one's way in U.S. society.

<sup>75</sup> *See* Perea, *supra* note 66, at 309-28 (pointing out that for much of its history English enjoyed no special status in the United States, and that, indeed, several states conducted their business in two or more languages for many years without dire consequences); *see also* Frank W. Wu, *Burning Shoes and the Spirit World: The Charade of Neutrality*, 44 HARV. C.R.-C.L. L. REV. 313, 316-17 (2009) (discussing other types of pressure to assimilate).

English-speaking country, when, in fact, it is a product of many different streams of immigration, ethnicities, and tongues.<sup>76</sup> Although the literature on Official-English devotes little attention to this feature, when one thinks about that movement in connection with historic events, its regulatory function emerges clearly.

Consider how a Latina child brought up in a Spanish-speaking household is apt to acquire knowledge about the group's treatment in the United States through discussion with parents and grandparents. That treatment is full of matters such as: a war of aggression<sup>77</sup>; seizure of lands in the Southwest<sup>78</sup>; broken treaty obligations<sup>79</sup>; Jim Crow laws directed against Mexicans<sup>80</sup>; brutal Texas Rangers<sup>81</sup>; crooked lawyers and land surveyors who conspired to deprive Latinos of their ancestral lands<sup>82</sup>; and one hundred ten years of colonial status for Puerto Rico.<sup>83</sup> And then there is lynching, the most lethal form of mistreatment of all.

But imagine a Latina child who does not speak Spanish, or only speaks it poorly because the surrounding culture punishes her for speaking it, and the school authorities do not provide the education that would enable her to preserve fluency in the two languages as she matures. Such a child would be unable to converse with her grandparents about life in the Southwest or Puerto Rico. She would be unable to absorb the cultural record through newspapers like *La Opinion* that carried accounts of all the events described above.<sup>84</sup> Such a child could easily grow up believing that lynching was largely a problem for blacks, that civil rights and the struggle for equal dignity were largely black affairs, and that racism and stereotypes maligning Spanish-speaking people were simply cases of bad luck or tasteless humor unconnected with a history of colonialism and oppression.<sup>85</sup>

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<sup>76</sup> See Perea, *supra* note 66, at 272.

<sup>77</sup> See RACE AND RACES, *supra* note 4, at 288 (conquest of Mexico).

<sup>78</sup> See *id.* at 308-20 (fraudulent deprivation of ancestral lands).

<sup>79</sup> See *id.* at 296-302 (violations of the Treaty of Guadalupe Hidalgo).

<sup>80</sup> See Juan F. Perea, *Buscando America: Why Integration and Equal Protection Fail to Protect Latinos*, 117 HARV. L. REV. 1420 (2004), reprinted in RACE AND RACES, *supra* note 4, at 329-33 (struggling against segregated schools).

<sup>81</sup> See ROSENBAUM, *supra* note 39, reprinted in RACE AND RACES, *supra* note 4, at 326 (surviving deadly hostility of Texas Rangers).

<sup>82</sup> See RACE AND RACES, *supra* note 4, at 308 (fraudulent deprivation of ancestral lands).

<sup>83</sup> See Ediberto Roman, *Empire Forgotten: The United States' Colonization of Puerto Rico*, 42 VILL. L. REV. 1119 (1997), reprinted in RACE AND RACES, *supra* note 4, at 376-79 (describing conquest of and colonization of Puerto Rico); RUBIN FRANCIS WESTON, RACISM IN U.S. IMPERIALISM (1972), reprinted in RACE AND RACES, *supra* note 4, at 370-75 (same).

<sup>84</sup> See *supra* notes 48-51, 54-56 and accompanying text.

<sup>85</sup> This is, of course, the standard civics-class view. Consider, however, how learning about almost any case of Latino lynching could resonate with a young Latino's experience and prompt her to see connections with her own experience, for example, of stereotypical treatment at school, cultural images that malign her people, or police harassment and profiling of Latino drivers. The case of Rafael Benavides, whose lynching Carrigan and Webb describe as the last known one of record, is typical of many others. See Carrigan & Webb, *Dangerous Experiment*, *supra* note 12, at 266. Benavides, an uneducated manual laborer who was both a husband and a father, assaulted the wife of an Anglo rancher who was away on a hunting trip.

Postcolonial scholars from several continents have identified language as a principal field on which the subaltern citizen struggles for recognition and equal treatment. Writers such as Trinh Minh-ha,<sup>86</sup> Chinua Achebe,<sup>87</sup> Haunani-Kay Trask,<sup>88</sup> Ngugi wa Thiong'o,<sup>89</sup> and Frantz Fanon<sup>90</sup> point out how the colonial subject who is forced to speak the colonizer's tongue loses contact with her own people. Indeed, until recently, American and Australian administrators required young Indian or aboriginal children to attend boarding schools, where they learned to reject their own culture, acquire English, and forget their native language.<sup>91</sup>

A similar phenomenon can set in, the postcolonials point out, when a foreign writer like Thiong'o or Fanon writes for an audience of Western readers. The writer, who may be a staunch anti-colonialist and spokesperson for the native resistance, unintentionally chooses terms, topics, and metaphors that will resonate with Western readers living in both the occupied land and the home country of the occupying force. She softens her punches and tries to find common ground with them. Thiong'o considers this a serious mistake, for the colonial language subtly incorporates the worldview of the conquering society through terms like "folk medicine," "tribe," "responsible

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*Id.* at 276. Sheriff George Blancett assembled a posse that quickly rounded up Benavides, who was hiding in an abandoned house nearby. *Id.* at 268. When the fugitive refused to come out, the posse fired a volley into the house, wounding him in the abdomen. *Id.* Benavides was then arrested and taken to a nearby hospital, where doctors told them he had little time to live. *Id.* at 265. On learning of Benavides' crime—attacking a white woman—the surrounding community was inflamed. *Id.* at 267-68. Four masked men burst into the hospital, seized Benavides, and bundled the dying man into the back of a pickup truck. *Id.* at 265. A second truck with six other men sped along with the kidnappers' vehicle to a farm a few miles away; the kidnappers forced their victim to stand on the back of one of the trucks, tied a rope around his neck, and fastened the other end to a nearby tree. *Id.* When the driver accelerated, the body fell, snapping the man's neck. *Id.* Benavides, who would almost surely have died anyway, thus expired without due process or the benefit of a trial. Was he guilty? Innocent by reason of insanity? Did he really assault the farmer's wife (as opposed to, for example, becoming her lover and then having an angry quarrel with her)? Why did none of his murderers stand trial? We will never know the answers—but questions like these could easily form in the mind of a young Latino child, just as they likely would in that of the trained legal reader.

<sup>86</sup> TRINH MINH-HA, *WOMAN, NATIVE, OTHER* 47-76 (1989).

<sup>87</sup> See, e.g., CHINUA ACHEBE, *THINGS FALL APART* (1952) (recounting the disintegration of a proud, highly purposive village under the impact of English colonialism).

<sup>88</sup> See HAUNANI-KAY TRASK, *FROM A NATIVE DAUGHTER* 3, 21 (1993) (discussing the consequence of forcible training in English for Hawaiian culture and society).

<sup>89</sup> See Ngugi wa Thiong'o, "Moving the Center": *An Interview by Charles Cantalupo*, in *THE WORLD OF NGUGI WA THIONG'O* 219-20 (Charles Cantalupo ed., 1993) (observing that whenever a conqueror suppresses the language of a group, its individual members suffer); see also NGUGI WA THIONG'O, *DECOLONIZING THE MIND: THE POLITICS OF LANGUAGE IN AFRICAN LITERATURE* 4 (1986) (same).

<sup>90</sup> FRANTZ FANON, *BLACK SKIN, WHITE MASKS* 17-18, 27 (Charles L. Markmann trans., Grove Press 1967) (1952) (highlighting how adopting the colonizer's language can transform and assimilate the native's identity).

<sup>91</sup> See, e.g., Allison M. Dussias, *Let No Native American Child Be Left Behind: Re-envisioning Native American Education for the Twenty-First Century*, 43 *ARIZ. L. REV.* 819 (2001), reprinted in *RACE AND RACES*, *supra* note 4, at 741-45.

leadership,” “civilization,” and “advance.”<sup>92</sup> The writer finds it practically impossible to make an argument for liberation in a language whose very terms de-legitimize the native culture. The effort to do so ends up sounding quaint, sentimental, or even ridiculous.<sup>93</sup>

In recent years, United States civil rights scholars have made similar arguments for a distinctive “black voice” and for storytelling and narrative analysis in legal scholarship.<sup>94</sup> Recently, a few have been applying postcolonial insights to the debate about voice and narrative, finding support in the work of Edward Said, who wrote that the power to narrate is the power to destroy<sup>95</sup>; Braj Kachru, who writes that “the English language is a tool of power, domination, and elitist identity, and of communication across continents”<sup>96</sup>; or Simon During, who writes that “[f]or the post-colonial to speak or write in the imperial tongues is to call forth a problem of identity, to be thrown into mimicry and ambivalence.”<sup>97</sup> These scholars find inspiration, as well, in Frantz Fanon, who insists that the native must forcefully assert her identity on penalty of succumbing to despair and spiritual annihilation.<sup>98</sup> Recent studies of the second generation of Latino immigrants in the United States show that their children who are born here exhibit much higher rates of depression, drug-taking, and crime than their parents, who immigrated to the United States as adults.<sup>99</sup> Might the severed connection with their culture and history, accelerated by failure to learn Spanish, be contributing to this increase in pathology and social distress?<sup>100</sup> My suspicion is that it is, and that this constitutes an implicit form of lynching.

<sup>92</sup> See THIONG’O, *supra* note 89, at 4, 23, 27-29; Ngugi wa Thiong’o, *The Language of African Literature*, in THE POST-COLONIAL STUDIES READER, *supra* note 62, at 285, 287.

<sup>93</sup> See Ngugi wa Thiong’o, *On the Abolition of the English Department*, in THE POST-COLONIAL STUDIES READER, *supra* note 62, at 438 (urging abolition of the English department at an African university).

<sup>94</sup> See, e.g., PATRICIA WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* 5-14 (1991) (noting that the arcane vocabulary of Anglo-American law flattens discourse and obscures insights about race, power, and authority); Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411 (1989) (discussing storytelling in general); Richard Delgado, *When a Story Is Just a Story: Does Voice Really Matter?*, 76 VA. L. REV. 95 (1990) (defending storytelling).

<sup>95</sup> See SAID, *CULTURE AND IMPERIALISM*, *supra* note 61, at xii-xiii.

<sup>96</sup> Braj B. Kachru, *The Alchemy of English*, in THE POST-COLONIAL STUDIES READER, *supra* note 62, at 291, 291.

<sup>97</sup> Simon During, *Postmodernism or Postcolonialism Today*, in THE POST-COLONIAL STUDIES READER, *supra* note 62, at 125, 125.

<sup>98</sup> FANON, *supra* note 90, at 141-210; see also NAVARRO, *supra* note 14, at 2 (discussing the anti-colonial writing of Algerian psychiatrist Frantz Fanon).

<sup>99</sup> See ALEJANDRO PORTES & RUBÉN G. RUMBAUT, *LEGACIES: THE STORY OF THE IMMIGRANT SECOND GENERATION* 276-81 (2001) (discussing high incidence of depression and self-destructive behavior in the children of Mexican immigrants).

<sup>100</sup> See *supra* notes 77-85 and accompanying text (positing a mechanism by which this occurs).

## V. CONCLUSION

English-Only laws and practices, then, emerge as much more than misguided efforts to achieve national uniformity or a pleasing linguistic sameness. Rather, reminiscent of lynching and other harsh practices, they inhibit adults in the ordinary business of work and conversation, and convey the message that outsiders are not welcome unless they behave according to standards set by others. They sever the cultural cord from one generation to the next and hide histories of aggression, unprovoked war, lynching, segregated schools, and stereotypical treatment at the hands of media and the entertainment industry going back at least 150 years. They inhibit righteous indignation and efforts to achieve redress, while leaving the young defenseless against mistreatment that they are ill-equipped to understand or counter.

English-Only orthodoxy is, thus, a form of lynching in at least two senses. Although not in itself physically lethal, it can inflict great psychic and cultural damage. Further, it conceals from view events—including actual lynchings—that call out for exposure and reparative justice. English-Only laws and workplace rules are, in the words of this Essay's title, aspects of the law of the noose. They are like a silken cord that tightens the more one struggles. If one stands still and does not resist, the cord will not choke. But the price is to go through life with a silken rope around one's neck. As with the teenagers at Jena, the cord operates as a highly coercive sorting mechanism. You belong here; you, there.

We should emphatically reject any such laws and practices. Moreover, scholars should unearth other laws and customs that operate on distinct minorities the way language regulation operates on Latinos.<sup>101</sup> Otherwise, marginalized groups will find themselves in a condition similar to that which the postcolonial scholars describe—alienated from themselves, co-opted, and unable to mount serious, concerted resistance to illegitimate authority if not dead.<sup>102</sup>

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<sup>101</sup> See, e.g., KENJI YOSHINO, *COVERING: THE HIDDEN ASSAULT ON OUR CIVIL RIGHTS* (2006) (describing social pressures on gays and lesbians to conceal their sexual orientation from others); Devon Carbado & Mitu Gulati, *Working Identity*, 85 *CORNELL L. REV.* 1259 (2000) (noting how workplaces often subtly coerce minorities to adopt a nonthreatening, conformist identity and how this exacts high psychic costs); STEPHEN FELDMAN, *PLEASE DON'T WISH ME A MERRY CHRISTMAS* (1997) (discussing how pressures emanating from Christian practices and demands take a toll on Jewish people). The reader is invited to ponder which other practices and traditions subordinate outsider groups in ways that do not readily fall under current antidiscrimination law.

<sup>102</sup> See text and notes 9-10 *supra* (describing "Death by English" and describing how English-only Language orthodoxy can kill, including impairment of emergency medical services, spiritual demoralization, and symbolic deportation).