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BLACK AND BROWN COALITION BUILDING DURING THE “POST-RACIAL” OBAMA ERA

KARLA MARI MCKANDERS*

Moreover, I am cognizant of the interrelatedness of all communities and states. . . . Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly. Never again can we afford to live with the narrow, provincial “outsider agitator” idea. Anyone who lives inside the United States can never be considered an outsider anywhere within its bounds.

- Martin Luther King, Jr., letter from Birmingham City Jail, 1963¹

Since the election of the first African American President, with an immigrant parent, many people have claimed that we have reached a “post-racial” America. In the new post-racial America, proponents claim that the pre-Civil Rights Movement’s racial caste system of the Sixties has been eradicated.² Many scholars, however, claim that we have not entered into a

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1. A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS AND SPEECHES OF MARTIN LUTHER KING, JR. 290 (James Melvin Washington ed., 1986).

2. Sumi Cho, *Post-Racialism*, 94 IOWA L. REV. 1589, 1604 (2009). “A wide range of actors engage in post-racial rhetoric, from conservative Supreme Court Justices like Chief Justice John Roberts, to progressive politicians of color like President Barack Obama, to materialist and liberal intellectuals like Paul Gilroy, Antonia Darder and Rodolfo Torres, and Richard Ford.” *Id.* “Racism persists, but contrary to the claims of some racial demagogues, it hasn’t simply changed form or become more subtle. It is also not as prevalent or as severe as it was in the era of Jim Crow. . . . Like patriotic movements generally, antiracism now attracts yahoos and opportunists.” *Id.* at 1636 (citing RICHARD THOMPSON FORD, THE RACE CARD: HOW BLUFFING ABOUT BIAS MAKES RACE RELATIONS WORSE 27, 30–31 (2008)). See also Ralph Richard Banks, *Beyond Colorblindness: Neo-Racialism and the Future of Race and Law Scholarship*, 25 HARV. BLACKLETTER L.J. 41, 45–46 (2009) (“Some people seem to view the election of Obama as a monumental turning point in the American story, as marking the moment at which the dragon of racism was slain. . . . Some commentators have been inclined to conclude that with Obama’s victory, King’s dream has been realized, as though we have finally moved beyond the shadow cast by slavery and Jim Crow. Those who believe that the dream has been realized may well view our society as post-racial; they might want to relegate racial conflicts and division to the past. Now, they would counsel, is a time when we can and should get beyond race.”).

post-racial society.³ The concept of a post-racial society is one in which the vestiges of chattel slavery, the battles of the Civil Rights Movement of the Sixties, and affirmative action have equalized persons of color within American society.⁴ The alleged post-racial society is colorblind.⁵ Accordingly, there is no longer a need for state-sponsored policies to remedy discrimination.⁶

The proposition that a post-racial society exists, however, is undermined by the fact that 40% of black children under the age of five live below the poverty line.⁷ In addition, the level of school segregation for both Latinos and African Americans is the highest it has been since the sixties.⁸ Further, there is

3. Cho, *supra* note 2, at 1605–21 (discussing legal post-racialism in the context of instituting legal formal-equality without addressing more subtle forms of racism); Charles J. Olgetree, Jr., *From Dred Scott to Obama: The Ebb and Flow of Race Jurisprudence*, 25 HARV. BLACKLETTER L.J. 1, 1 (2009) (“Yet, for all of the progress achieved, I am not persuaded that, as some have argued, we have entered into a ‘post-racial’ America. Rather, in this foreword, written in honor of BLSA’s 25th anniversary, I hope to illustrate how, over the last 150 years, progress in advancing racial equality in the United States has ebbed and flowed. All too often, significant forward motion is followed by a dramatic backward lurch. This pattern is particularly evident when examining major legal decisions pertaining to race rendered by the Supreme Court since the *Dred Scott* decision of 1857. Each decision, along with related developments and events that shaped our nation’s discourse and attitudes about race, provides us with a foundation upon which to develop a strategy for addressing racial diversity and jurisprudence in the future.”); Banks, *supra* note 2, at 41 (“Obama’s triumph does not, as some pundits have suggested, herald a post-racial era, if by that one means a society in which race is no longer meaningful. Race remains salient and racial inequalities are too entrenched and pervasive to ignore.”); Ian F. Haney López, *Post-Racial Racism: Crime Control and Racial Stratification in the Age of Obama*, 98 CAL. L. REV. (forthcoming 2010) (using information on the disparities in the mass incarceration of men of color (Black and Latino) to rebut America’s reaching a post racial society).

4. Cho, *supra* note 2, at 1595 (“Whites advocate for race-neutral policies because society has transcended the racial moment, or civil rights area.”).

5. *Id.* at 1594 (“argu[ing] that post-racialism in its current iteration is a twenty-first century ideology that reflects a belief that due to the significant racial progress that has been made, the state need not engage in race-based decision making or adopt race-case remedies, and that civil society should eschew race as a central organizing principle of social action.”); Banks, *supra* note 3, at 41 (“Race and law scholarship would profit from the neo-racial perspective. The idea of racism and the principle of colorblindness play similar roles in contemporary discourse. Just as racial injustice is commonly traced to contemporary racism, so too is colorblindness viewed as the central impediment to policies that would further substantive racial equality. Indeed, in the view of some race and law scholars, the invocation of colorblindness is tantamount to racism.”) (citing EDUARDO BONILLA-SILVA, *RACISM WITHOUT RACISTS: COLOR-BLIND RACISM AND THE PERSISTENCE OF RACIAL INEQUITY IN THE UNITED STATES* (2d ed. 2006)).

6. Cho, *supra* note 2, at 1595 (“under post-racialism, race does not matter, and should not be taken into account or even noticed”).

7. Fred McKissack, *We Still Aren’t in a Post-Racial Society*, PROGRESSIVE, Nov. 5, 2008, available at <http://progressive.org/mp/mckissack110508.html>.

8. *Id.*

a huge disparity between whites and African Americans and Latinos in terms of recipients of health insurance.⁹

Despite the recent promulgation of the existence of a post-racial society, many questions remain. For instance: Where do persons of color go from here? Additionally, how, if at all, should Latinos and African Americans build coalitions to address the vestiges of discrimination? Finally, how can persons of color—especially Latinos¹⁰ and African Americans—use the past to move forward and create coalitions that address discrimination? In response to these questions, many scholars, advocates, and activists have suggested creating cross-racial coalitions. In response to the 2006 immigrant¹¹ marches, legal scholars Kevin R. Johnson and Bill Ong Hing proposed the possibility of African American and Latino communities joining together to create a unified

9. *Id.* (“In 2006, 20.3 percent of blacks were not covered by health insurance, compared to only 10.8 percent of whites. For Hispanics, a whopping 34.1 percent of [sic] were not covered.”). See also Andrew Grant-Thomas et al., *Natural Allies or Irreconcilable Foes? Reflections on African-American/Immigrant Relations*, 19 *POVERTY & RACE* (Poverty & Race Research Action Council, Washington, D.C.), March/April 2010, at 1 (“Many progressives also note that during this generation-long era of deepening inequality between the most affluent Americans and everyone else, African Americans and immigrants number disproportionately among our nation’s truly disadvantaged. The point could be made with respect to virtually any dimension of well-being, including poverty, health, wealth, education, criminal justice and civic engagement.”).

10. There are four different categories of Latino immigrants: (1) citizens; (2) naturalized citizens; (3) lawful permanent residents; and (4) undocumented immigrants, although, discriminatory conduct towards Latino immigrants usually fails to differentiate between the complex and varied immigration categories of Latino immigrants. See generally THOMAS ALEXANDER ALENIKOFF ET AL., *IMMIGRATION AND CITIZENSHIP: PROCESS AND POLICY* 1 (6th ed. 2008) (defining citizenship as “a term generally understood to mean full members of the state, entitled to the basic rights and opportunities afforded by the state”). Latino citizens have always resided in areas like the Southwest, and there are also naturalized Latino citizens residing in the United States. See *id.* at 84–85 (describing the process of naturalization); *id.* at 296 (“Most immigrants who choose to apply for naturalization after meeting the residence requirement—ordinarily five years—qualify rather routinely, but there is no obligation to apply for citizenship. A person may remain in [lawful permanent resident] status indefinitely.”). Examples of naturalized Latinos who become citizens are Cuban refugees and Mexican Americans residing in Texas. Another category of Latino immigrants is lawful permanent residents. *Id.* (describing lawful permanent residents as having “permanent resident status[,]” which means “that they may stay as long as they wish, provided only they do not commit crimes or a limited list of other post-entry acts that render them deportable”). The final category of Latino immigrants is undocumented immigrants, often referred to as “illegal” aliens. *Id.* (explaining that an immigrant is “a noncitizen authorized to take up permanent residence in the United States. This is a subset of the group that common or journalistic usage often labels immigrants, meaning noncitizens who have been present for a while and wish to stay indefinitely, legally or illegally.”). See also Karla McKanders, *Sustaining Tiered Personhood: Jim Crow and Anti-Immigrant Laws*, 26 *HARV. J. RACIAL & ETHNIC JUST.* 163 (2010).

11. See generally Grant-Thomas et al., *supra* note 9 (acknowledging that many immigrants are not Latino, and many Latinos are not immigrants).

civil-rights agenda.¹² This idea was previously considered “[i]n October 1967 when Martin Luther King, Jr., proposed the Poor People’s Campaign.”¹³ The Poor People’s Campaign “represented a concerted attempt by [the Southern Christian Leadership Conference (“SCLC”)] to address broad economic issues with a class-based, cross-racial alliance of poor blacks, whites, Hispanics, and Native Americans.”¹⁴ The benefits of such a combined movement are numerous, one of which is the obvious benefit of having strength in numbers.¹⁵

Scholar Ian F. Haney López notes, “progressives now commonly suggest that, for politically strategic reasons, the focus should be on more ‘universal’ approaches aimed at assisting society’s most disadvantaged, without a distracting and politically unpopular focus on ‘particular’ races.”¹⁶ The argument is that if we have reached a post-racial society, there is no longer a need to develop race-based coalitions. Instead, coalitions should be formed based on issues. Events like the recent hate crimes in Staten Island, New York may undermine the prospects of a cohesive coalition building between African Americans and Latinos. In August 2010, there were various attacks against Mexican American immigrant youth by Black youth.¹⁷

This essay will place the idea of a post-racial society in the context of past coalition-building strategies between African Americans and Latinos during the Civil Rights Movement. The essay will use the issue of unequal access to employment as a way of assessing whether or not past civil-rights strategies can be used as a starting point for addressing current inequalities in light of current post-racial ideologies. Finally, the essay will discuss how intersection

12. Kevin R. Johnson & Bill Ong Hing, *The Immigrant Rights Marches of 2006 and the Prospects for a New Civil Rights Movement*, 42 HARV. C.R.-C.L.L. REV. 99, 134 (2007) (providing that “[i]n considering when coalitions can be built, four overlapping categories of ethnic political mobilization are helpful: (1) common background; (2) utilitarian; (3) shaped-by-the-mainstream; and (4) situational. . . . The common background model applies to persons with a common origin or a common culture who are more likely to work together to achieve political goals.” The second category—the utilitarian category—“is that ethnic politics is motivated by pragmatism—the perceived strategic utility of concerted ethnic action. A common interest in political and socioeconomic power keeps the group together.” In the third category—“the shaped-by-the-mainstream category—societal recognition of certain ethnic groups enhances identification and group formation.” The final category—the situational model—includes situations where “ethnicity is fluid and volitional, activated by the competition and oppression the group is experiencing.”). The authors also mention that Asian Americans should be considered in joining in the effort. *Id.*

13. I.F. Stone, *Resurrection City and the Poor People’s Campaign*, in CIVIL RIGHTS SINCE 1787: A READER ON THE BLACK STRUGGLE 574, 574 (Jonathan Birnbaum & Clarence Taylor eds., 2000).

14. *Id.*

15. Johnson & Ong Hing, *supra* note 12, at 111.

16. Haney López, *supra* note 3.

17. Kirk Semple, *Young Residents on Staten Island Try to Make Sense of a Spate of Violence*, N.Y. TIMES, Aug. 4, 2010, at A23.

and structural-racism theories can be used as a foundation for building a coalition between African Americans and Latinos.

I. EMPLOYMENT DISCRIMINATION AGAINST LATINOS AND AFRICAN AMERICANS

An examination of the U.S. labor system reveals a tiered system of unskilled labor with persons of color at the bottom. African Americans and Latinos have limited employment opportunities, which have created a caste system. For example, in September 2009, the unemployment rate for African Americans was 15.4%, and for Hispanics it was 12.7%, as compared with the national average at 9.8%.¹⁸ Within this caste system, employers hide behind a broken immigration system and past forms of discrimination against African Americans and hire Latino immigrants at depressed wages.¹⁹

Historically, African Americans started out in agricultural peonage through slavery and sharecropping. African Americans experienced relegation in a fixed-labor sector through chattel slavery where they were forced to work in agriculture throughout the South. After the Great Migration, African Americans moved from the South to the North and moved into industrial jobs.²⁰ For example, “[b]ecause most of the Farmworkers in the rural South prior to 1960 were African American, any legislation on behalf of farm workers tended to be viewed as undermining the hierarchical and racially charged social order preserved throughout the South with various Jim Crow

18. News Release, U.S. Dep’t of Labor, Bureau of Labor Statistics, The Employment Situation (Dec. 2009), http://www.bls.gov/news.release/archives/empst_01082010.pdf.

19. McKanders, *supra* note 10; Johnson & Ong Hing, *supra* note 12, at 123–24 (“In Los Angeles, young African Americans and those with limited education have experienced a small increase in unemployment due to the influx of Latina/o immigrants with limited education. However, that increase may have resulted from racial discrimination by employers. When low-skilled Latina/o workers became available employers hired them and rejected African American job applicants.”); Julie L. Hotchkiss & Myriam Quispe-Agnoli, *The Labor Market Experience and Impact of Undocumented Workers* 29 (Fed. Reserve Bank of Atlanta, Working Paper No. 2008-7c, 2008), available at http://www.frbatlanta.org/pubs/wp/working_paper_2008-7c.cfm (“Given the limited employment and grievance opportunities of undocumented workers, employers likely enjoy some monopsony wage-setting power, which is expected to put extra downward pressure on wages in labor markets that employ undocumented workers.”).

20. W.E.B. Du Bois, *The Great Migration*, reprinted in *CIVIL RIGHTS SINCE 1787: A READER ON THE BLACK STRUGGLE* 264, 264–65 (Jonathan Birnbaum & Clarence Taylor eds., 2000). African Americans migrated to escape racism, to seek employment opportunities in industrial cities (many factories were seeking help because all their white workers had been drafted into WWI), to get better education for their children, and to pursue what was widely perceived to be a better life. *Id.* Another factor behind the migration of millions of African Americans was the fact that the boll weevil, a beetle, was destroying their cotton crops. *Id.*

laws.”²¹ African Americans during the post-Reconstruction period were still viewed as property based on the labor they supplied.

Similarly in American history, Latinos were also viewed as property and valued based upon the cheap labor they provided. For example, during the post-Reconstruction period, Mexican Americans were segregated in schools to indoctrinate them to be good workers.²² In school there was a special curriculum for Mexican American children. The boys were trained in boot making and blacksmithing, while Mexican girls studied sewing and homemaking.²³ Further, the school calendar was arranged around the farming season to accommodate labor demands.²⁴ This pattern continues today with the disparate treatment of Latino agricultural and industrial workers. Their labor is exploited without providing them access to the social benefits of citizenship or membership. Immigration scholar Frances Ansley observed, “[t]his structure remains in place and continues to subordinate minority groups who remain at the bottom of the economic ladder. The main point is that both groups are adversely affected by a system that allows an ‘underclass’ of underpaid laborers to exist within the market.”²⁵

21. Greg Schell, *Farmworker Exceptionalism Under the Law: How the Legal System Contributes to Farmworker Poverty and Powerlessness*, in *THE HUMAN COST OF FOOD: FARMWORKERS’ LIVES, LABOR, AND ADVOCACY* 139, 142–43 (Charles D. Thompson, Jr. & Melinda F. Wiggins eds., 2002).

22. JAMES A. FERG-CADIMA, *MEXICAN AMERICAN LEGAL DEFENSE & EDUCATIONAL FUND, BLACK, WHITE AND BROWN: LATINO SCHOOL DESEGREGATION EFFORTS IN THE PRE- AND POST-BROWN V. BOARD OF EDUCATION ERA* 9–10 (2004) (citing RUBÉN DONATO, *THE OTHER STRUGGLE FOR EQUAL SCHOOLS: MEXICAN AMERICANS DURING THE CIVIL RIGHTS ERA* 16–17 (1997) (“[F]armers sat on school boards where they could put their educational philosophy into effect. As an instrument of exploitation, the schools often seemed to be hardly more than an extension of the cotton field or the fruit-packing shed.”)) (citation omitted). See also GILBERT G. GONZALEZ, *CHICANO EDUCATION IN THE ERA OF SEGREGATION* 100 (1990) (in Hidalgo County, Texas, there was a “widespread ‘attitude that school attendance should not be allowed to interfere with the supply of cheap farm labor’” (i.e., the unpaid labor of the children)) (citing AMBER A. WARBURTON ET AL., *THE WORK AND WELFARE OF CHILDREN OF AGRICULTURAL LABORERS IN HIDALGO COUNTY, TEXAS* 1 (1943)).

23. FERG-CADIMA, *supra* note 22, at 16.

24. *Id.* (In Santa Ana, California, the “‘Mexican schools’ operated on half-days during walnut-picking season to accommodate local agribusiness demands for child labor and yet received full per-pupil funding from the state.”).

25. McKanders, *supra* note 10 (citing Frances Ansley, *Doing Policy from Below: Worker Solidarity and the Prospects for Immigration Reform*, 41 *CORNELL INT’L L.J.* 101, 108 (2008) (“They are also hurt by a global regime that guarantees the mobility of capital while restricting the mobility of people, and pits worker against worker and community against community around the world. Such a regime drains the institutions of electoral democracy of their capacity to set ground rules for the conduct of business and the protection of human and labor rights, yet many workers are apparently all too ready to blame ‘those Mexicans’ in their various guises for the economic insecurity that dominates the current scene.”)).

By restricting the migration of unskilled laborers, immigration laws have played a role in facilitating the subordination of Latinos and persons of color.²⁶ Our economy relies on an estimated 485,000 new, low-skilled immigrant workers each year, but our immigration system provides only 10,000 visas.²⁷ This disparate policy is promulgated based on the fear that the United States would otherwise be flooded with poor immigrants who would become dependent on the U.S. government.²⁸

The key point is that African Americans and Latinos must realize that the underlying commonality unifying both groups is a rigidly stratified economic structure that relies on minorities occupying the bottom of this system.²⁹ They must also recognize that this structure continues to subordinate minority groups who remain at the bottom of the economic ladder.

II. HISTORY OF AFRICAN AMERICAN AND LATINO INTERACTIONS

Political, economic and social conflicts of interest, coupled with a ragged history of power-sharing in places where one group has predominated and broad ignorance of each other's historical and current struggles, create a potentially volatile mix. Members of both groups too often interpret sociopolitical realities in positional, zero-sum terms, whereby gains for one side imply losses for the other.³⁰

This quote describes one of the main barriers to coalition building between African Americans and Latinos. This section discusses the history of interactions between Latinos and African Americans, which has varied from common goals to differing opinions on how to address civil- and human-rights issues. In the past, African Americans and Latinos have not joined together in

26. 8 U.S.C. § 1152–53 (2006); *see also* McKanders, *supra* note 10 (citing Kevin Johnson, *The Intersection of Race and Class in U.S. Immigration Law and Enforcement*, 72 LAW & CONTEMP. PROBS. 1, 3 (2010) (citing the 1965 Immigration Act as removing quotas based on impermissible categories such as race)).

27. 8 U.S.C. § 1153(b)(3)(B) (2006); JEFFREY S. PASSEL, PEW HISPANIC CENTER, ESTIMATES OF THE SIZE AND CHARACTERISTICS OF THE UNDOCUMENTED POPULATION 2 (2005), <http://pewhispanic.org/files/reports/44.pdf>.

28. McKanders, *supra* note 10 (“This is based on the premise that the United States would experience an influx of poor immigrants into the United States who will over consume scarce public resources without restrictions.”) (citing Kevin Johnson, *The Intersection of Race and Class in U.S. Immigration Law and Enforcement*, 73 DUKE L. & CONT. PROB. (forthcoming 2010)).

29. Johnson & Ong Hing, *supra* note 12, at 119 (quoting CHRIS ZEPEDA-MILLAN, CÉSAR E. CHAVEZ FOUNDATION, BLACK CIVIL RIGHTS, IMMIGRANT HUMAN RIGHTS, AND THE NEXT GREAT AMERICAN SOCIAL MOVEMENT, *available at* http://www.chavezfoundation.org/_cms.php?mode=view&b_code=0040060000000000&b_no=511 (last visited Feb. 10, 2010) (paraphrasing a speech by Cornell West and stating “blacks and browns ‘both fail to recognize that the source of their divisions (whether ethnic/racial prejudices or economic competition), was the same—a capitalist white power structure’”).

30. Grant-Thomas et al., *supra* note 9.

advocating for their rights. Part of the explanation for the separate movements is historical. While both groups have sought full membership within American society, the strategies for seeking full membership have been markedly different.

During the fifties and sixties, Mexican Americans formed non-profit organizations to combat racial discrimination.³¹ At that time Mexican American organizations chose to advocate for their rights on separate agendas than African Americans.³² The strategies included advocating for assimilation into the American Caucasian culture.³³

Although the decision to advocate for inclusion in the Caucasian race may have been a strategic one, the concept is congruent with wanting to assimilate into mainstream American culture.³⁴ “Cultural assimilation is a process whereby members of an ethno-cultural group (such as immigrants or minority groups) are ‘absorbed into an established, generally larger community. This presumes a loss of many characteristics of the absorbed group.’”³⁵ Mexican

31. Johnson & Ong Hing, *supra* note 12, at 136 (“Minorities want wage and labor protections in the workplace, safe and affordable housing, equal access to education, and fair treatment by government and employers. The congruence of social and economic justice interests among African Americans, Asian Americans, and Latina/os is clear. They seek *full membership* in American society.”) (emphasis added).

32. Ariela J. Gross, “*The Caucasian Cloak*”: *Mexican Americans and the Politics of Whiteness in the Twentieth-Century Southwest*, 95 GEO. L.J. 337, 386 (2006) (“Though we should make common cause with the Negroes from time to time, we should not blend their issues with ours. Don’t misunderstand, I was a pioneer among the champions for Negro rights—and I am still on their side. However, while the effects of discrimination against Negro and ‘Mexican’ are essentially the same, the causes, the history, and the remedies differ broadly. Put bluntly, the Negro is mistreated because he is black and was a slave. The bases for mistreatment of *Mexicans* are much more varied and very different. Their blanket cases are based on ‘race,’ ours on ‘class apart.’”) (citation omitted).

33. *Id.* at 360 (“[B]y push[ing] Mexican Americans towards claims of whiteness in the battle for civil rights, it urged fellow Mexicans towards cultural assimilation and ‘100% Americanism,’ drawing a connection between whiteness and citizenship that would have been familiar to most Americans.”).

34. Ian Haney López & Michael A. Olivas, *Jim Crow, Mexican Americans, and the Anti-Subordination Constitution: The Story of Hernandez v. Texas*, in RACE LAW STORIES 273, 296 (Rachel F. Moran & Devon Wayne Carbado eds., 2008) (In the Southwest and Mexico, “white was alright: There had been a strong connection between color and presumptions of worth or worthlessness for centuries, ensuring a close correlation between phenotypical whiteness and elevated class standing. Correspondingly, working-class Mexicans or those with dark features (and again, these categories substantially overlapped) were much less likely either to achieve middle-class status or to insist on a white identity.”) (citing J. Jorge Klor de Alva, *Telling Hispanics Apart: Latino Sociocultural Diversity*, in THE HISPANIC EXPERIENCE IN THE UNITED STATES: CONTEMPORARY ISSUES AND PERSPECTIVES 107, 114 (Edna Acosta-Belén & Barbara R. Sjoström eds., 1988)).

35. Roy L. Brooks, *Affirmative Action in Higher Education: What Canada Can Take from the American Experience*, 23 WINDSOR YEARBOOK OF ACCESS TO JUST. 93, 202 (2005) (stating

Americans may have used this strategy as a means of not wanting to directly identify with the most oppressed members of society, African Americans.³⁶ The concept of immigrant groups not wanting to identify with African Americans is called “racial distancing.”³⁷ Racial distancing occurs when an immigrant group “[sees] themselves as being in economic and social competition with black Americans rather than as natural allies in the fight for social and political equality.”³⁸ Part of the issue was that groups did not want to identify with African Americans who were denied basic civil and human rights.

During the thirties and fifties, Mexican Americans were excluded from many of the same public accommodations and educational and employment opportunities as African Americans through de facto segregation. Like African Americans, Mexican Americans were prohibited from entering certain public accommodations. For example, segregated bathrooms in Texas had a sign for “Colored Men” and right under the sign there were Spanish words, which stated “Hombres Aqui” (men here).³⁹ Other signs stated things such as: “Mexicans and Niggers Stay Out,” “Mexicans and Dogs not Allowed in Restaurants,” “No Mexicans Served,”⁴⁰ and “No Latin-Americans or Colored

that assimilation can be the process through which people lose originally differentiating traits when they come in contact with another society or culture); *see also* López & Olivas, *supra* note 34, at 296 (during the 1920s and 1930s, “broad segments of the Mexican-origin community in the United States came to see themselves as Americans. During this epoch, Mexican community leaders embraced an assimilationist ideology; indeed, the label ‘Mexican American’ emerges from this period and encapsulated the effort to both retain pride in one’s Mexican cultural origins and to express an American national identity.”).

36. Neil Foley, *Over the Rainbow: Hernandez v. Texas, Brown v. Board of Education, and Black v. Brown*, 25 CHICANO-LATINO L. REV. 139, 140 (2005) (the new second-generation Mexicans were quick to learn that “being white was not just a racial identity; it was a property right that conferred concrete privileges and rights denied to those, like African and Asian Americans, who could not lay claim to a white identity”).

37. Paula D. McClain et al., *Racial Distancing in a Southern City: Latino Immigrants’ Views of Black Americans*, 68 J. POL. 571, 573 (2006). Both Cuban Americans and Chinese Americans forcefully resisted their social and legal designation with blacks, and Cuban Americans in Florida saw benefit in distancing themselves from blacks for competition reasons. *Id.* at 573–74.

38. *Id.* at 573–74.

39. López & Olivas, *supra* note 34, at 281, 284 (The fact that Latino attorneys were not permitted to use the same bathrooms as their white counterparts in the courtroom made the “racial caste system which degraded Mexican Americans [more than] ...an abstraction for the defense counsel, who served both as advocates for a despised group and as members of that group who were not permitted to serve on juries. [. . .] Accordingly, LULAC hoped the jury segregation case *Hernandez* would be a huge step forward in toppling a key pillar of Jim Crow system that did not allow Latinos to serve on juries).

40. *Cisneros v. Corpus Christi Indep. Sch. Dist.*, 324 F. Supp. 599, 612 n.38 (S.D. Tex. 1970) (citing the testimony of Dr. Thomas Carter, Professor of Education and Sociology, University of Texas in El Paso).

People Accepted.”⁴¹ Public accommodations such as drinking fountains and cafeterias were also segregated.⁴² Recently, legal scholar Richard Delgado documented the untold history of Latino lynching in America during the same time.⁴³ The discrimination Mexican Americans experienced is often overlooked when describing Jim Crow laws in America.

As previously mentioned, early Mexican American strategies in advocating for their rights involved seeking inclusion as part of the Caucasian race.⁴⁴ This strategy was employed as a means of identifying with the privileged population in an effort to attain the rights and privileges to which they were entitled.

Even after slavery ended, the status of being white carried with it a set of privileges and benefits. Given this arrangement, it is hardly surprising that some minorities sought official recognition as white (and thereby the rights and immunities that came with such status). They did so because ‘whiteness’ ensured greater economic and social stability and prevented one from being the object of others’ domination.⁴⁵

This strategy involved not wanting to be classified or associated with African Americans and their struggles to combat segregation and discrimination.⁴⁶

41. Gross, *supra* note 32, at 364.

42. FERG-CADIMA, *supra* note 22, at 7 (citation omitted).

43. Richard Delgado, *The Law of the Noose: A History of Latino Lynching*, 44 HARV. C.R.-C.L. L. REV. 297, 297 (2009) (documenting the lynching of Latinos during the Jim Crow era) (citation omitted). See also FERG-CADIMA, *supra* note 22, at 7 (noting that Mexican Americans were sometimes lynched and “denied burial in white cemeteries”) (citation omitted).

44. Gross, *supra* note 32, at 343 (citing Foley, *supra* note 36, at 140 (“Mexican American commitment to a Caucasian racial identity in the 1930s through the 1950s complicated, and in some ways compromised, what at first appeared to be a promising start to interracial cooperation.”)). See also López & Olivas, *supra* note 34, at 292 (organizations like the League of the United Latin American Citizens actively “campaign[ed] [in the United States] for restrictions on Mexican immigration”) (citing DAVID G. GUTIÉRREZ, WALLS AND MIRRORS: MEXICAN AMERICANS, MEXICAN IMMIGRANTS, AND THE POLITICS OF ETHNICITY 85–86 (1995)); Foley, *supra* note 36, at 150.

45. FERG-CADIMA, *supra* note 22, at 12 (citing George A. Martinez, *The Legal Construction of Race: Mexican-Americans and Whiteness*, 2 HARV. LATINO L. REV. 321, 322–23 (1997)); see also THOMAS ADAMS UPCHURCH, LEGISLATING RACISM: THE BILLION DOLLAR CONGRESS AND THE BIRTH OF JIM CROW 189 (2004) (“[M]ore often than not, immigrants avoided allying with blacks because blacks occupied the lowest station in American society. Most immigrants realized that, in order to attain social mobility in their new nation, they must not make permanent alliances or friendships with those at the bottom of the social hierarchy.”) (citation omitted).

46. Gross, *supra* note 32, at 344 (“Texas Mexican plaintiffs brought *racial* discrimination lawsuits throughout the 1930s and 1940s at the same time they sought to be redefined as ‘white’ on the U.S. Census and all state classification forms.”); see also López & Olivas, *supra* note 34, at 297 (“Though the [*Hernandez*] decision helped to end discrimination against [Mexicans], it associated Mexican Americans with the black civil rights movement and thus threatened a white identity.”) (citing Carlos C. Cadena, *Legal Ramifications of the Hernandez Case: A Thumbnail Sketch*, in A COTTON PICKER FINDS JUSTICE! THE SAGA OF THE HERNANDEZ CASE (Ruben Munguia ed., 1954), <http://www.law.uh.edu/Hernandez50/saga.pdf>).

Mexican Americans effort to disassociate with African Americans was an attempt to ensure their entitlement to the same benefits of citizenship as Caucasians.

The cleavages within the Mexican American community, in part, caused many Mexican Americans to choose to advocate for inclusion in the Caucasian race. The main cleavage surrounded the distinction between lighter Mexican-Americans and Mexicans who were darker and mixed with Native American blood.⁴⁷ During the war between Mexico and the United States in 1846, “whites in Texas and across the nation depicted Mexicans as an innately and insuperably inferior race.”⁴⁸ In contrast, “the Anglo-Saxons were depicted as the purest of the pure—the finest Caucasians—the Mexicans who stood in the way of southwestern expansion were depicted as a mongrel race, adulterated by extensive intermarriage with an inferior [Native American] race.”⁴⁹ This caused divisions within in the Mexican American community.

The shift from aiming to identify with the Caucasian race started with the Chicano movement in the fifties, which was called the “La Raza Movement.”⁵⁰ This Movement started to label Chicanos as a non-white mestizo race,⁵¹ and was composed of “professionals, *campesinos*, students, barrio youth, women, and many other middle- and working-class groups.”⁵² The La Raza Movement centered on the idea of “how to dislodge white privilege and improve Mexican American life.”⁵³

47. Gross, *supra* note 32, at 347 (stating that the Mexicans in the Spanish race were usually lighter and those in the Mexican race were usually darker-skinned people, as “‘Spanish’ was the marker of whiteness and ‘Mexican’ meant ‘mixed-blood’ or Indian.”) (citation omitted). See also Roberto Lovato, *Juan Crow in Georgia*, THE NATION, May 8, 2008, at 20, 24 (citing a current day example of an Afro-Latino who states that she is uniquely situated as being “caught between African-Americans who don’t want to understand immigration and immigrants and Latinos who use words like ‘moreno,’ ‘negritos,’ ‘los negros,’ and other terms that are not good”).

48. López & Olivas, *supra* note 34, at 293.

49. *Id.* at 294 (citing REGINALD HORSMAN, RACE AND MANIFEST DESTINY: THE ORIGINS OF AMERICAN RACIAL ANGLO-SAXONISM 210 (1981)); see also *id.* (“[Anglos] regarded Mexicans as a colored people, discerned the Indian ancestry in them, identified them socially with blacks. In principle and fact, Mexicans were regarded not as a nationality related to whites, but as a race apart.”) (quoting ARNOLDO DE LEÓN, THEY CALLED THEM GREASERS: ANGLO ATTITUDES TOWARD MEXICANS IN TEXAS, 1821–1900, at 104 (1983)).

50. Gross, *supra* note 32, at 387 (explaining the origins of the La Raza movement after *Brown v. Board of Education*, and how it labeled Chicanos as a non-white mestizo race); see also Foley, *supra* note 36, at 149 (“[T]he Chicano/a Movement’s evocation of ‘la raza’ signif[ied] their rejection of a white racial identity and embracing their mestizo heritage”).

51. Gross, *supra* note 32, at 387

52. FERG-CADIMA, *supra* note 22, at 28 (citation omitted).

53. *Id.* (“Activists responded boldly in response to the Houston school district’s effort to circumvent a desegregation court order by classifying Mexican American children as ‘white’ to integrate African Americans and Mexican Americans while leaving white schools untouched for

III. LABOR AND EMPLOYMENT DISCRIMINATION

Both African Americans and Latinos share a common history of race-based exclusion under U.S. law. This exclusion has inhibited full membership to the benefits of American citizenship and/or legal status, which includes full participation and equal access to employment opportunities.⁵⁴ Discrimination against minority groups is endemic to the American society. During the post-Reconstruction era African Americans confronted many challenges to obtaining full membership within American society, and these challenges still exist today.⁵⁵ As described below, this common history of discrimination can serve as a basis for African Americans and Latinos to build coalitions to address civil- and human-rights violations.

A. *Unified Agenda?*

Given the history of racial distancing between Latinos and African Americans is it possible for both groups to share a unified agenda?⁵⁶ African Americans and Latinos could use this commonality as a starting point to develop a unified agenda surrounding workplace rights.

The primary point is that both groups are “clearly hurt by a domestic regime that tolerates the creation of a race-marked and vulnerable underclass within our home labor market.”⁵⁷ As explained by Professor Ansley:

[Both groups] are also hurt by a global regime that guarantees the mobility of capital while restricting the mobility of people, and pits worker against worker and community against community around the world. Such a regime drains the institutions of electoral democracy of their capacity to set ground rules for the conduct of businesses and the protection of human labor rights, yet many

desegregation purposes. . . . Their slogan during their school boycott was they were ‘Brown, not white!’”).

54. See *infra* Section III (discussing the applicability of Jim Crow laws to African-Americans and Latinos); see also Megan Irwin, *Flushing Them Out: Joe Arpaio and Andrew Thomas Are Teaching the Rest of the Nation How to Terrorize Illegal Immigrants*, PHOENIX NEW TIMES, Dec. 27–Jan. 2, 2008, at 12, 28, available at 2007 WLNR 25956527 (quoting an Arizona Hispanic resident: “I carry my passport and I carry my daughter’s birth certificate. I grew up in this country. I served in the military and became a citizen, and despite that, I still have to carry my passport and my daughter’s birth certificate because she looks brown. Like me.”).

55. McKanders, *supra* note 10.

56. See Damien Cave, *Local Officials Adopt New, Harder Tactics on Illegal Immigrants*, N.Y. TIMES, June 9, 2008, at A16 (“Donna Tucker, executive director of the Santa Rosa County Chamber of Commerce, said illegal immigration ‘creates havoc within the system’ because businesses that used illegal labor often did not pay into workers’ compensation funds and paid workers less.”).

57. Ansley, *supra* note 25.

workers are apparently all too ready to blame 'those Mexicans' in their various guises for the economic insecurity that dominates the current scene.⁵⁸

One similarity that African Americans and Latinos often overlook is the connection between current forms of discrimination against Latinos and past discrimination against African Americans. In my paper, *Sustaining Tiered Personhood: Jim Crow and Anti-Immigrant Laws*, I examine the interconnection between Jim Crow and current anti-immigrant laws.⁵⁹ In this paper, I define anti-immigrant laws as state and local laws that are passed to target anyone perceived to be an undocumented immigrant, which often includes discrimination against U.S. citizens and lawful permanent residents. These laws seek to exclude Latino immigrants from communities in the same manner that Jim Crow laws excluded African Americans from communities. These laws have resulted from Latino immigrants moving to areas of the country that have not seen a major influx of immigrants. As a result of this influx, citizens of these formerly homogenous communities have become increasingly critical of federal immigration law. State and local legislatures are responding by passing their own laws targeting immigrants. While many legislators and city-council members state that the purpose of the anti-immigrant laws is to restrict illegal immigration where the federal government has failed to do so, opponents claim that the laws are passed to enable discrimination and exclusion of all Latinos, regardless of their immigration status.

For example, Arizona recently passed Arizona Senate Bill 1070.⁶⁰ This law permits police officers and other state agencies to identify, prosecute, and attempt to deport undocumented immigrants.⁶¹ The law allows the police to detain people they reasonably suspect are in the country without authorization and makes not carrying immigration documents a criminal offense.⁶² Residents can also sue cities if they believe the law is not being enforced.⁶³ In addition, "[t]he law creates new immigration crimes and penalties inconsistent with those in federal law, asserts sweeping authority to detain and transport persons suspected of violating civil immigration laws and prohibits speech and other expressive activity by persons seeking work."⁶⁴

58. *Id.*

59. McKanders, *supra* note 10.

60. S.B. 1070, 49th Leg., 2d Sess. (Ariz. 2010); 2010 Ariz. Sess. Laws 113.

61. KARLA MCKANDERS, SOC'Y OF AM. LAW TEACHERS, DISCRIMINATORY ARIZONA LAW MEASURES NATION'S RACIAL SENSIBILITIES (April 27, 2010), <http://www.saltlaw.org/blog/2010/04/27/discriminatory-arizona-law-measures-nations-racial-sensibilities>.

62. *Id.*

63. *Id.*

64. News Release, ACLU, Arizona Immigration Law Threatens Civil Rights and Public Safety, Says ACLU (April 23, 2010), <http://www.aclu.org/immigrants-rights/arizona-immigration-law-threatens-civil-rights-and-public-safety-says-aclu>.

Addressing how current anti-immigrant laws perpetuate discrimination may be a starting point for African Americans and Latinos to build coalitions. In examining current anti-immigrant laws it is clear that state and local governments have become savvy on how to avoid creating a law that will be found unconstitutional. Thus, state and local governments are adopting facially neutral laws that are applied against Latinos in a discriminatory manner. The promulgation of anti-immigrant laws alone may be cause for African Americans and Latinos to build coalitions to address laws that continue perpetuate racial caste systems.

Another issue that both Latinos and African Americans must address is the practice of “defensive hiring practices.” Many Latinos are excluded from being hired or are inhibited from job advancement through use of this practice. Defensive hiring practices are when employers do not hire persons perceived as undocumented immigrants based on stereotypes.⁶⁵ This means that an employer may use phenotype, a person’s language abilities, or other characteristics that may be associated with a person being an immigrant to refuse employment or consideration for a position with the employer.

In Hazleton, Pennsylvania, where the American Civil Liberties Union brought a lawsuit against Hazleton (*Lozano v. City of Hazleton*), the plaintiffs argued that “employers and landlords facing steep fines and only limited process to protect their rights, would probably choose to end a relationship with anyone accused of illegal status, whether that accusation was warranted or not.”⁶⁶ The Warren Institute of Berkley conducted a study and found a “number of cases in which United States citizens of Hispanic origin and lawful immigrants were denied employment because their lawful documents were rejected by employers suspicious even though a non-Hispanic United States citizen presented similar documents that were accepted.”⁶⁷ The concern is that employers, untrained in immigration laws, will discriminate against those perceived to be undocumented based on their perceived immigration status.⁶⁸ The main issue is the targeting of African Americans and Latinos based on their race or ethnicity, which denies both groups equal access to employment opportunities.

65. *Lozano v. Hazleton*, 496 F. Supp. 2d 477, 540 (M.D. Pa. 2007).

66. *Id.* See also Karla Mari McKanders, *Welcome to Hazleton! “Illegal” Immigrants Beware: Local Immigration Ordinances and What the Federal Government Must Do About It*, 39 LOY. U. CHI. L.J. 1, 36 (2007) (stating that the fear with passing of Immigration Reform and Control Act was that it would be discriminatory in its application, and that is why discrimination provisions were added to Immigration Reform and Control Act) (citing INST. FOR SURVEY RESEARCH, TEMPLE UNIV., INS BASIC PILOT EVALUATION SUMMARY REPORT 3 (2002)).

67. Brief for Chief Justice Earl Warren Institute on Race, Ethnicity and Diversity at Univ. of Cal., Berkeley Law School as Amicus Curiae Supporting Appellees, *Lozano v. Hazleton*, 496 F. Supp. 2d 477 (M.D. Pa. 2007) (No. 3:06cv1586).

68. McKanders, *supra* note 10, at 37.

B. *Divergent Agendas: You are Taking My Jobs!*

Leaders within both the African American and Latino communities have articulated many reasons why both groups should not join together in a unified movement to obtain equal rights and protections under the law. The reasons range from not wanting to weaken the agendas of both groups to the belief that Latinos are taking jobs away from African Americans. Further, some studies have shown that Latino immigrants bring negative views about African Americans from their home countries, which may inhibit coalition building.⁶⁹ Current civil-rights activists in the African American and Latino communities fear that combining agendas for both groups will weaken their causes.⁷⁰

When contemplating coalition building between African Americans and Latinos, the coalition must be framed from an anti-essentialist viewpoint. Additionally, the anti-essentialist frame must account for the multiple factors, like race, class, gender, and socio-economic status that influences varied opinions within the coalition.⁷¹ Thus, it is necessary to have a coalition that

69. McClain et al., *supra* note 37, at 581 (“Latino immigrants might possibly bring views of the racial hierarchies in their own countries with them to the United States.”).

70. Johnson & Ong Hing, *supra* note 12, at 112 (“Other critical theorists eschew efforts to build multiracial coalitions altogether in the quest for racial justice. They instead call for independent groups to pursue their own self-interest. These theorists fear diffusion of focus and dilution of the power and force of each distinct group’s individual message.”).

71. See Johnson & Ong Hing, *supra* note 12, at 136 (describing that “a less flexible view of collaborative mobilization can actually be dangerous. Rudimentary calls for unity or uninformed claims of an emerging uniform civil rights movement involve many interrelated risks. First among them is exclusivity. Those who do not find themselves in the description of the new movement are likely to be turned off or alienated, and that would be counterproductive. Smaller subgroups may also fear a loss of identity or voice as they are incorporated into a larger movement. In a similar vein, dominance by a particular cross-section of African Americans, Latina/os, and Asian Americans risks distorting the group’s goals or essentializing information about each group or subgroup. Maintaining a flexible vision of organizing also is consistent with the goals of promoting cultural pluralism. In coalition work, varied interests must be respected and understood; time to caucus independently from the larger coalition must be honored. Even as the coalition moves to develop a common social justice agenda, diversity defines the coalition that is being sought in a new, mass civil rights movement.”); see also Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 588 (1990) (describing anti-essentialism as “the notion that there is a monolithic ‘women’s experience’ that can be described independent of other facets of experience like race, class and sexual orientation I refer to in this essay as ‘gender essentialism.’ A corollary to gender essentialism is ‘racial essentialism’—the belief that there is a monolithic ‘Black Experience,’ or ‘Chicano Experience.’ The source of gender and racial essentialism (and all other essentialism, for the list of categories could be infinitely multiplied) is the second voice, the voice that claims to speak for all. The result of essentialism is to reduce the lives of people who experience multiple forms of oppression to addition problems: ‘racism + sexism = straight black women’s experience,’ or ‘racism + sexism + homophobia = black lesbian experience.’”).

acknowledges differences at the same time that it embraces similarities.⁷² In reality, combining agendas may strengthen both groups' larger goal of obtaining full inclusion within American society with full access to the rights of citizenship in America. This would be especially beneficial in areas like labor and employment rights where both African Americans and Latinos seek equal treatment and participation.

Another hindrance to coalition building is the belief that Latino non-citizen immigrants are taking low-paying jobs from low-income American citizens. Historically, during difficult economic times immigrants have been viewed as a threat to American jobs and workers' rights.⁷³ This idea has been around since the early eighteenth century, when both new immigrants and African Americans preferred to be separated.⁷⁴ During the eighteenth century:

They [the new immigrants] preferred not to be surrounded by blacks. It was not uncommon for members of one racial or ethnic minority group to despise another just as old stock white Americans despised both. The feeling was mutual. Blacks reciprocated the aversion to new immigrants moving south. Black southerners who were fortunate enough to hold industrial jobs certainly did not wish to see a flood of white immigrants moving south to compete for those jobs.⁷⁵

During the late nineteenth century, California passed "the California Labor Code provision [which] prohibit[ed] an employer from knowingly employing an alien who [was] not entitled to lawful residence in the United States if such employment would have adverse effect on lawful resident workers."⁷⁶ Support for such a provision was based on the belief that the employment of undocumented workers in "times of high unemployment deprives citizens and

72. Johnson & Ong Hing, *supra* note 12, at 135 ("Although the various communities share elements of common oppression, their individual histories, demographics, and experiences are unique. The current demographics, cultural, social, political, and economic diversity within and among groups would appear to create too many obstacles to form a single coordinated mass movement. Yet shared experiences of racism, discrimination, and economic hardship, stereotyping by the mainstream, and common political values have drawn some African Americans, Latina/os, and Asian Americans together.").

73. S. POVERTY LAW CTR., *CLOSE TO SLAVERY: GUESTWORKER PROGRAMS IN THE UNITED STATES* 3 (2007), http://www.splcenter.org/sites/default/files/downloads/Close_to_Slavery.pdf (when the Great Depression arrived, "Mexican workers were seen as a threat to American jobs"); *see also id.* at 6 (H-2 guestworker programs were designed to address possible mass influx of immigrant workers by requiring prior approval from the Department of Labor to bring in guestworkers, so employers must show that "there are not sufficient U.S. workers who are able, willing, qualified and available to perform work at the place and time needed; and, the wages and working conditions of workers in the United States similarly employed will not be 'adversely affected' by the importation of guest workers.").

74. UPCHURCH, *supra* note 45, at 189.

75. *Id.*

76. *De Canas v. Bica*, 424 U.S. 351, 352 (1976).

legally admitted aliens of jobs; acceptance by illegal aliens of jobs on substandard terms as to wages and working conditions can seriously depress wage scales and working conditions of citizens and legally admitted aliens; and employment of illegal aliens under such conditions can diminish the effectiveness of labor unions.”⁷⁷

Social-science research on whether immigrants take citizen jobs is inconclusive. The recent Julie L. Hotchkiss and Myriam Quispe-Agnoli (economists with the Federal Reserve) studied the impact of undocumented workers on native workers and found that immigrants had a minimal impact on citizen’s jobs.⁷⁸ Specifically, the study found that Mexican immigrants displaced or succeeded low-skilled African American natives in several industries in Los Angeles, Chicago, and Atlanta.⁷⁹

The potential displacement of native workers by the arrival of immigrants can result in a number of ways. If the arrival of immigrants depresses wages in a particular labor market, native workers, enjoying greater mobility, might migrate to a geographic location less inundated with immigrants or to a different industry/occupation all together. [*sic*] In addition, if native workers view the arrival of immigrants as “writing on the wall,” they may choose to seek alternative employment (geographically or sectorally) before being replaced.⁸⁰

The most significant point gleaned from this study is that in terms of guaranteeing basic rights the employment of undocumented workers places both undocumented workers and lawful residents at a disadvantage. The only way to overcome this disadvantage is to guarantee all workers basic rights, which include nondiscrimination in hiring, above substandard working conditions, and fair pay.

Today, legal scholars like Michael Olivas note, “there are data to show that people of color—those most likely to be in direct contact and competition with undocumented worker populations—are increasingly restrictionist in their attitudes towards immigration.”⁸¹ The belief is that Latinos are taking the jobs that African Americans are unwilling to perform. In May 2005, the African American community was incensed when Vicente Fox, then-President of Mexico, commented that Mexican immigrants in the United States take jobs

77. *Id.* at 356–57.

78. Hotchkiss & Quispe-Agnoli, *supra* note 19, at 1.

79. *Id.* at 4.

80. Hotchkiss & Quispe-Agnoli, *supra* note 19, at 3.

81. Michael Olivas, *Immigration-Related State and Local Ordinances: Preemption, Prejudice, and the Proper Role for Enforcement*, 2007 U. CHI. LEGAL F. 27, 28 (2007).

that not even blacks want to do.⁸² Scholars such as Kevin Johnson have cited stereotypes such as these:

Employers perceived a change in black attitudes towards the work which made them difficult to manage, and recruited migrants to replace them. Black attitudes changed because an older generation, raised in the rural south with a background and motivations similar to the immigrants of today, was replaced by a new generation who grew up in northern urban areas. These younger workers associated the jobs with inferior social status to which their race had been condemned in the United States and feared that they would be confined in them permanently through prejudice and discrimination.⁸³

The change in perception towards lower-status jobs may, in part, be a result of negative media portrayal of African Americans. For example, during the early nineteen twenties through the sixties, images such as Mr. Bojangles and Amos 'n' Andy portrayed African Americans in a degrading and demeaning manner. The media used negative images such as these to drive home the point that only unintelligent African Americans would take such positions.

Other potential barriers to coalition building are the false perceptions and prejudicial beliefs that each community has toward the other. For example, a Latino high-school student residing in Georgia complained that the past victims of Jim Crow laws, African Americans, now discriminate against him.⁸⁴ He stated, "It wasn't the white people saying things, it was black people. They didn't like Mexican kids. They would call us 'Mexican border hoppers,' 'wetbacks' and all these things. Every time they'd see me, they yelled at me, threatened to beat me up after school for no reason at all."⁸⁵ Grade school children in Staten Island, New York astutely attributed the underlying violence between African Americans and Latinos to class based distinctions. A student noted that "black classmates [were disparaging] other blacks from poorer background, and Mexican-Americans born in the United States [were speaking] condescendingly about peers born in Mexico."⁸⁶

In addition, recent hate crimes between African Americans and Latinos youth in Staten Island have caused tensions to rise between the two groups. A recent news article from the National Institute of Latino Policy estimates that:

82. *Mexican Leader Criticized for Comment on Blacks*, CNN.COM, May 15, 2005, <http://edition.cnn.com/2005/US/05/14/fox.jackson>.

83. Johnson & Ong Hing, *supra* note 12, at 122 (citing Michael J. Piore, *Can International Migration Be Controlled?*, in *ESSAYS ON LEGAL AND ILLEGAL IMMIGRATION* 21, 39 (Susan Pozo ed., 1986)).

84. Lovato, *supra* note 47, at 23.

85. *Id.*

86. *Id.*

Of the 11 assaults on Mexicans in the Port Richmond area of Staten Island since April 2010, 10 have involved Blacks attacking Mexicans. For many commentators, that statistic alone has been sufficient to presume that inter-ethnic economic competition and anti-immigrant resentment have ignited the violence.⁸⁷

Legal scholar Tanya Hernandez counters the inter-ethnic economic theory and anti-immigrant resentment as an over simplistic explanation for the violence. She explains that the violence is fueled by social exclusion which has regulated African Americans to segregated non-white areas in Staten Island. The areas in which African Americans have been living have recently undergone an influx of Latino immigrants moving into the community. For example,

Since 1990, the Latino population has increased by 77% and the Mexican population in particular has increased by 428%, much more than any other borough. Between 2000 and 2008, the number of Latinos living in Staten Island grew roughly 40 percent, according to Census bureau statistics analyzed by the City University of New York's Latino Data Project. Much of that growth has come from Mexican migrants.⁸⁸

This migration pattern, in Hernandez's opinion, has largely instigated the building of racial tensions between the two groups in "turf wars." Sociologists explain that "[w]here a racial group has long been the predominant community in an area, racially motivated crime becomes more severe with in-migration of other racial groups. While economic grievances may be infused in the rhetoric of bias crime perpetrators, the sociological data discounts the actual role of macroeconomic conditions in instigating racially motivated crimes."⁸⁹ The underlying historical and demographic differences, in part, explain the violence between the two groups.⁹⁰

Staten Island can serve as an example of where a conversation regarding coalition building can begin between African Americans and Latinos. The underlying issue that the media excludes from the conversation is that "institutionalized racism [has] limit[ed] the socioeconomic mobility of Black youths in under-resourced public schools and erects network barriers to

87. *Id.*

88. TANYA HERNÁNDEZ, NAT' L INST. ON LATINO POL'Y, BLACK-ON-MEXICAN VIOLENCE IN STATEN ISLAND (2010), available at <http://ih.constantcontact.com/fs057/1101040629095/img/345.jpg> (last visited Aug. 25, 2010).

89. *Id.*

90. *Id.* ("The contrast between New York State hate crime reduction and Staten Island hate crime increase illustrates that it is where a racially homogenous group wishes to preserve their residential homogeneity that racially motivated crime will be deployed as a 'turf defense.' The social-psychological dynamic of 'turf defense' in turn helps explain how socially excluded young Black men in Staten Island can be involved in anti-Latino immigrant hate crimes despite the fact that surveys of African Americans in the United States show that African Americans disproportionately have positive social attitudes about Latino immigrants.")

promising employment opportunity, it is not so surprising that youthful social frustration might be misdirected to desperately trying to maintain racial dominance over the limited physical space accorded to Blacks.⁹¹

It is the misguided perception of inter-ethnic violence and the misunderstood institutionalized racism that facilitates the conflicts.⁹² The media, however, perpetuates the hate crimes between the groups without examining the underlying causes, historical institutionalized racism, which facilitates misunderstandings between both groups. This, however, is where the conversation needs to begin between both groups. These types of discriminatory perceptions must be addressed during the course of coalition building.

IV. SIXTIES CIVIL-RIGHTS MOVEMENT AS A MODEL FOR COALITION BUILDING

Throughout the civil-rights era, African Americans and Latinos fought against discriminatory laws and practices and engaged in active resistance against subordination.⁹³ “African Americans employed economic power to challenge White supremacy and Jim Crow laws through boycotts. Well after the initial establishment of segregation laws, Blacks fought segregation on streetcars and in insurance contracting not only through legal challenges, but with their pocketbooks.”⁹⁴

One of the first Fourteenth Amendment cases during the Civil Rights Era was the 1954 case, *Hernandez v. Texas*, a jury-discrimination case.⁹⁵ The *Hernandez* case was one of the first cases that the Warren Court heard regarding racial discrimination.⁹⁶ *Hernandez* was decided before the Supreme Court heard *Brown v. Board of Education* and was being argued when the

91. *Id.*

92. HERNÁNDEZ, *supra* note 88.

93. James W. Fox, Jr., *Intimations of Citizenship: Repressions and Expressions of Equal Citizenship in the Era of Jim Crow*, 50 HOW. L.J. 113, 161–62 (2006) (“[D]espite comprehensive social, political, and economic subordination of African Americans, they were able to resist and created “comprehensive community structures designed ‘to ensure that Black needs for health care, education, and social services were met[.]’”) (quoting Darlene Clark Hine, *The Briggs v. Elliot Legacy: Black Culture, Consciousness, and Community Before Brown, 1930-1954*, 2004 U. ILL. L. REV. 1059, 1065 (2004)).

94. *Id.* at 169.

95. López & Olivas, *supra* note 34, at 292–93 (in *Hernandez*, the attorneys chose to litigate the case from a perspective of the “other white” strategy which involved not classifying Mexican Americans as a distinct racial group); *see also* Brief for Petitioner at 38, *Hernandez v. Texas*, 347 U.S. 475 (1954) (No. 406) (arguing that although some individuals may be deemed legally white, “frequently the term ‘white’ excludes the ‘Mexican’ and is reserved for the rest of the non-Negro population”).

96. López & Olivas, *supra* note 34, at 289–90.

Supreme Court granted certiorari to *Brown v. Board of Education*.⁹⁷ It is worth noting that “[d]uring the case, attorneys were corresponding with Thurgood Marshall as both Mexican-American and African American legal strategies were progressing on parallel tracks in Texas.”⁹⁸ While *Brown* addressed the harm of segregation and the applicability of the Equal Protection Clause to African Americans, *Hernandez* addressed the preliminary question as to whether Mexican Americans were even a protected classification under the Fourteenth Amendment’s Equal Protection Clause.⁹⁹

The lawyers argued that “Mexican Americans were unfairly excluded from jury service, tying their absence to a larger pattern of discrimination.”¹⁰⁰ Surprisingly, at the time of this case Mexican Americans comprised 14% of the population in the United States, and there was no Hispanic juror representation.¹⁰¹ The Supreme Court found that the plaintiffs had to prove that Mexican Americans were a distinct class separated from whites within their community before they could be afforded protection under the Fourteenth Amendment.¹⁰²

The plaintiffs showed proof of the negative attitudes of the community toward children of Mexican descent. Primarily, Mexican children were required to attend segregated school for the first four grades. In addition, Mexican Americans were segregated from public accommodations.¹⁰³ For example, one restaurant displayed a sign announcing “No Mexicans Served.”¹⁰⁴ Further, during the trial, the attorneys pointed out that even in the courthouse the bathrooms were segregated. There were separate bathrooms for white men and women, and persons of color. The bathroom for the persons of color had a sign that stated “Colored Men” and right under in Spanish were the words “Hombres Aqui,” which meant “men here.”¹⁰⁵

After the attitudes of the community were established, the Court examined whether Mexicans as a class were subjected to unreasonable differential treatment.¹⁰⁶ The Court found the fact that no Mexicans served as jurors for 20

97. Michael A. Olivas, *Hernandez v. Texas: A Litigation History*, in “COLORED MEN” AND “HOMBRES AQUI”: *HERNANDEZ V. TEXAS* AND THE EMERGENCE OF MEXICAN-AMERICAN LAWYERING 53, 209 (Michael A. Olivas ed., 2006).

98. *Id.* at 214–15.

99. FERG-CADIMA, *supra* note 22, at 23.

100. *See* López & Olivas, *supra* note 34, at 291.

101. *Id.*

102. *Hernandez v. Texas*, 347 U.S. 475, 479 (1954) (“The petitioner’s initial burden in substantiating his charge of group discrimination was to prove that persons of Mexican descent constitute a separate class in Jackson County, distinct from ‘whites.’”) (citation omitted); *see also* FERG-CADIMA, *supra* note 22, at 24–25 (describing the “‘community attitudes’ test”).

103. *Hernandez*, 347 U.S. at 479.

104. *Id.*

105. López & Olivas, *supra* note 34, at 281, 284.

106. *Hernandez*, 347 U.S. at 478.

years evinced discriminatory treatment. The Supreme Court held that the Texas practice of excluding Mexican Americans from juries violated the Equal Protection Clause of the Fourteenth Amendment.¹⁰⁷

Westminster School District of Orange County v. Mendez was another seminal school-desegregation case for Mexican Americans.¹⁰⁸ This case was a precursor to *Brown v. Board of Education*. *Mendez* dismantled California's separate-but-equal public school system.¹⁰⁹ In this case, de jure segregation occurred through California's Education Code, which forbade "Indian children or children 'of Chinese, Japanese, or Mongolian parentage,' . . . from attending other schools once such separate schools were established."¹¹⁰ Even though African Americans and Mexican American children were not segregated by law, de facto segregation practices prevented them from attending the same schools.¹¹¹

In *Mendez*, the plaintiffs filed a class-action suit alleging violations of the Due Process and Equal Protection clauses of the Fourteenth Amendment. Specifically, the complaint alleged that the Orange County Schools maintained a "concerted policy and design of class discrimination against persons of Mexican or Latin descent of elementary school age by defendant school agencies."¹¹² In particular,

[D]efendant agencies [maintained] a policy, custom and usage of excluding children or persons of Mexican or Latin descent from attending, using enjoying and receiving the benefits of the education, health and recreation facilities of certain schools within their respective districts and school systems, and of requiring children or persons of Mexican or Latin descent to attend certain schools in the aforesaid districts reserved for and attended solely and exclusively by persons of this particular racial lineage.¹¹³

Mexican American children were segregated based on the premise that non-English-speaking children should be sent to separate schools.¹¹⁴

Thurgood Marshall and the National Association for the Advancement of Colored People¹¹⁵ submitted an amicus curiae brief that many scholars

107. See generally *id.* at 478–82.

108. *Westminster Sch. Dist. of Orange County v. Mendez*, 161 F.2d 774 (9th Cir. 1947); see also FERG-CADIMA, *supra* note 22, at 15.

109. *Id.*

110. FERG-CADIMA, *supra* note 22, at 15 (citations omitted).

111. *Id.* (detailing that in 1880, African Americans were removed from the law but segregation continued in practice).

112. Brief for the National Association for the Advancement of Colored People as Amicus Curiae at 3, *Westminster Sch. Dist. of Orange County v. Mendez*, 161 F.2d 774 (9th Cir. 1947) (No. 11, 310) [hereinafter Amicus Brief].

113. *Id.* at 4.

114. *Mendez v. Westminster Sch. Dist. of Orange County*, 64 F. Supp. 544, 546 (S.D. Cal. 1946), *aff'd*, 161 F.2d 774 (9th Cir. 1947).

acknowledge was a dry run for *Brown v. Board of Education*.¹¹⁶ The brief powerfully conveys the benefit of collaboration between the African American and Latino communities in advocating for equal citizenship rights for all minorities through the dismantling of the separate-but-equal education facilities in California.¹¹⁷ The amicus brief was premised on the idea that “[o]ur democracy is founded in an enlightened citizenry. It can only function when all of its citizens, whether of a dominant or of a minority group, are allowed to enjoy the privileges and benefits inherent in our Constitution.”¹¹⁸

In this brief, Marshall acknowledged the broad reach of the Fourteenth Amendment, stating that:

The Fourteenth Amendment to the Federal Constitution was designed primarily to benefit the newly freed Negro, but its protection has been extended to all persons within the reach of our laws. By its adoption Congress intended to create and assure full citizenship rights, privileges and immunities for this minority as well as to provide for their ultimate absorption within the cultural pattern of American life.¹¹⁹

Marshall also recognized the importance of our country’s international obligations to prohibit discrimination on the basis of racial or religious reasons under the Charter of the United Nations and the 1945 Act of Chapultepec in Mexico City.¹²⁰ Marshall advocated for equal citizenship rights for all groups in America. This idea is congruent with the idea of present-day coalition building between African Americans and Latinos based on the premise, as Marshall stated that:

[T]he effect of segregation on the minority citizen sometimes results in the creation of just such an attitude—a feeling of “second-class citizenship” which expresses itself in criminality and rebellion against constituted authority.

The segregated citizen cannot give his full allegiance to a system of law and justice based on the proposition that “all men are created equal” when the community denies that equality by compelling his children to attend separate schools. Nor can the white child learn this fundamental of American citizenship when his community sets a contradictory example.

Educational segregation creates still another barrier to American citizenship. It promotes racial strife by teaching the children of both the

115. The NAACP continuously advocated for full citizenship rights both civil and political for all American citizens and has dedicated itself to work for the achievement of a functioning democracy as conceived by the Founders of this Republic and for equal justice under the Constitution and the laws of the United States. Amicus Brief, *supra* note 112, at 1–2.

116. Foley, *supra* note 36, at 111.

117. See generally Amicus Brief, *supra* note 112.

118. *Id.* at 31.

119. Amicus Brief, *supra* note 112, at 5–6.

120. *Id.* at 8.

dominant and minority groups to regard each other as something different and apart. And one of the great lessons of human history is that man tends to fear and hate that which he feels is alien.¹²¹

Contrary to the assertions of racial classifications that Marshall put forth in the NAACP amicus brief; during the case the plaintiffs stipulated that there was no question of race discrimination.¹²² The plaintiffs preferred to use the strategy of classifying Mexicans as white rather than falling within a protected minority group. Even though the Court ultimately held that Mexican Americans were entitled to equal protection under the law,¹²³ the holding was not based upon Mexican Americans being a protected classification. This holding resulted in “Texas style integration” where Mexican Americans were integrated with African Americans to satisfy court decrees prohibiting segregation.¹²⁴

The case that overruled the separate-but-equal doctrine was *Brown v. Board of Education*.¹²⁵ In this case, the Supreme Court “held that segregation of children in public schools solely on the basis of race, even though the physical facilities and other tangible factors may be equal deprives the children of the minority group equal educational opportunities, in contravention of the Equal Protection Clause of the Fourteenth Amendment.”¹²⁶ Prior to *Brown*, courts had upheld the *Plessy v. Ferguson* separate-but-equal doctrine stating “equality of treatment is accorded when the races are provided substantially equal facilities, even though these facilities be separate.”¹²⁷ The Supreme Court found that the Fourteenth Amendment was intended to remove all legal distinctions among all persons born or naturalized in the United States.¹²⁸ In making its decision the Supreme Court examined the intangible effects of segregation on African American children, noting “the policy of separating races is usually interpreted as denoting the inferiority of the Negro group.”¹²⁹

121. *Id.* at 18.

122. FERG-CADIMA, *supra* note 22, at 19.

123. *Mendez*, 64 F. Supp. at 551.

124. FERG-CADIMA, *supra* note 22, at 26; *see also* Foley, *supra* note 36, at 111 (describing a lawsuit in Corpus Christi, where “parents of African American and Mexican American school children brought suit against the school district for busing ethnic Mexicans to predominantly black schools . . . while leaving Anglo schools alone”) (citations omitted).

125. *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1953).

126. *Id.* at 483.

127. *Id.* at 488.

128. *Id.* at 489.

129. *Id.* at 493–94.

V. CONCLUSION: VIABLE SOLUTIONS FOR FORMING COALITIONS TO ADDRESS DISCRIMINATION

Post-racialism poses special challenges to coalition building. An impediment to addressing race-based discrimination is that “[p]ost-racialism rejects the centrality of race as an organizing feature in American society and holds that policymakers formulate social and legal remedies best without any consideration of group identity, especially racial identity.”¹³⁰ The post-racial movement’s need to renounce race calls for refined strategies and coalition building to address the more subtle forms of discrimination that exist today.

The intersection and structural-racism theories provide frameworks for addressing more subtle forms of discrimination. The intersection theory posits that social constructs interact on multiple levels to manifest societal inequality.¹³¹ Under the intersection theory, race, class, religion, nationality, sexual orientation, and gender coalesce to perpetuate subordination in our society. Further, the structural-racism theory provides that racism is inherent to society’s institutions. Under the structural-racism theory, because racism is deeply embedded in social constructs it is difficult to address racism on multiple levels.

Both of these theories are relevant in addressing how our country builds upon past progress in continuing to move toward equality. In order to address current discrimination *all parties must* examine social institutions and what is inherently accepted within these institutions. This is where it is important for different groups to join together and bring different perspectives in advocating for systemic change. The perspectives of Latinos and African Americans can shed light on racism that is hidden by long-term societal practices giving rise to post-racial ideologies. In other words: “Without the trust born of solid relationships, racial and xenophobic tensions invariably emerge and partnership development becomes episodic at best. In sum, relationship-building measures must be central to the alliance and should precede any efforts at political or grass-roots mobilization.”¹³²

Given the current political climate and the statistical evidence on the status of African Americans and Latinos in our country, it appears that developing coalitions to address various issues that both groups face is a wise strategy.¹³³ A main part of coalition building involves developing trust between both

130. Cho, *supra* note 2, at 1603.

131. Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1245 (1991).

132. Grant-Thomas et al., *supra* note 9.

133. This strategy is not posed as a strategy wherein race is ignored or overlooked on the basis of addressing larger coalition-based issues. Cho, *supra* note 2, at 1624 (critiquing post-racial ideologies as calling for the framing of issues on a larger universal level versus race-based issue framing).

groups.¹³⁴ Strategies that acknowledge that social constructs intersect with race, gender, and class to create a system in which African Americans and Latinos find themselves disproportionately in unskilled labor positions, without access to health care, without access to similar educational opportunities, and in lower classes than their white counterparts will create trust between both groups and facilitate coalition building. Further, it may be wise for Latinos who are of mixed immigration status to seek to form coalitions with various groups who can advocate on their behalf. This would be the perfect opportunity for both Latinos and African Americans to band together and address issues that affect them.

In coming up with a strategy to address discrimination against Latinos and African Americans, an issue is whether or not the federal government today is able to maintain the role of the protector of individual rights, as it did during the Civil Rights Era, and, as in the Civil Rights Era, whether *de jure* changes will give way to societal changes in ideology. This question is also complicated by the fact that many believe that since the election of President Obama America has reached a “post-racial” society, wherein racism does not exist.

To facilitate this goal, a potential starting point is to build coalitions modeled after Martin Luther King’s 1968 Poor People’s Campaign. The Poor People’s Campaign “was to be a multi-racial effort to embarrass the federal government into taking a more protective response to the plight of the economically destitute.”¹³⁵ The Poor People’s Campaign planned to start with a demonstration where “waves of the nation’s poor and disinherited” would protest until the federal government responded with new policies.¹³⁶ Additionally, the coalition had a specific strategy in which its members advocated for “\$30 billion annual appropriation for a comprehensive antipoverty effort, a full-employment act, a guaranteed annual income, and construction funds for at least 500,000 units of low-cost housing per year.”¹³⁷

Although it is questionable whether such demands would be effective today, the underlying concept is valuable. The idea embraces targeted joint action of multiple constituents, like African Americans and Latinos, with a strong unified agenda. Further, Thurgood Marshall’s *Mendez* amicus brief provides a framework for how groups with diverse interests can jointly

134. Grant-Thomas et al., *supra* note 9.

135. Leroy D. Clark, *A Tribute to Dr. Martin Luther King Jr.: A Man of Peace and Wisdom*, 2 WIDENER J. PUB. L. 431, 431 (1993).

136. Michael Ratner & Eleanor Stein, *W. Haywood Burns: To Be of Use*, 106 YALE L.J. 753, 767 (1996).

137. *Id.*

advocate for the implementation of equal citizenship under the Fourteenth Amendment.¹³⁸

As Latinos and African Americans move forward in attempting to combat racial and ethnic discrimination, we must be mindful that racial justice ebbs and flows. This is congruent with Derrick Bell's philosophy of "racial realism," which acknowledges that continuing to work for racial justice comes in "short-lived victories that slide into irrelevance as racial patterns adapt in ways that maintain white dominance."¹³⁹ In light of this consideration, the task is twofold: first, building coalitions to alert the federal government (the executive, legislative and judicial branches) of unlawful discriminatory actions; and second, continuing to work toward societal changes in the opinions that are held regarding racial and ethnic minorities.

138. See generally Amicus Brief, *supra* note 112.

139. Derrick Bell, *Racial Realism*, 24 CONN. L. REV. 363, 373-74 (1992).

CRIMINAL EVIDENCE

