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Una tarde parti hacia extrana nacion
pues lo quiso el destino,
pero mi corazon se quedo frente al mar
en mi Viejo San Juan

- Noel Estrada n3

I. Introduction

My continuing LatCritical travels take me once again to the cultural borderlands. On this occasion, I look at the competing narratives of Latinas/os in the United States. Music, particularly popular music, has always been a marker for culture. Even in exile, mi musica popular (my popular music) keeps me intellectually and emotionally connected to Puerto Rican culture while I am not living within it. But, at the same time, exile becomes the new looking glass through which I re/view mi cultura puertorriquena (my Puerto Rican culture).

The current "Latin Music Craze" n4 in United States mass media demands critical analysis from the LatCrit community. LatCrit n5 scholars have engaged in the serious discussion of cultural production - of culture generally and popular culture in particular. LatCrit theory has analyzed cultural production mostly by "Others," n6 that is, cultural production [*755] internal to outsider communities. n7 LatCritters also have studied how United States mass media portrays Latinas/os, AfricanAmericans and Filipinas/os. n8 This article will examine the competing narratives of Puerto Rican cultures in Puerto Rico and in the United States that are illuminated by the current Latin Music Craze. It will then explore how LatCritical praxis n9 can counter the problems of discrimination against and internalized oppressions n10 within the colonized Puerto Rican peoples. n11 [*756]

While the construction of cultural identities can be profoundly positive and empowering, as explored below, cultural constructs can also constitute discrimination. By negatively portraying a particular group,

the normative society can perpetuate attitudes that subordinate the targeted culture. Additionally, individual groups might even adopt some of the discriminatory tropes, thus internalizing, and in that manner accepting and perpetuating, that discrimination within their culture.

Cultural studies n12 require an unflinchingly honest approach that identifies both positive and negative aspects of any culture. But this is especially challenging in the context of the United StatesPuerto Rico colonial relationship because of the dangers inherent in the construction of multiple cultural identities within a single sovereign nation. On the one hand, the development of the concept of cultural nationhood or citizenship might be used to differentiate the colonized peoples from their colonial oppressors. n13 It can additionally be used as a source of empowerment, consciousness and pride. n14 But, on the other hand, cultural exploration might produce legitimate concerns over the dangers of nationalism n15 and cultural imperialism. n16 Accordingly, LatCrit theory [*757] must illuminate the proper balance between identifying cultural faultlines that require reform and imposing cultural imperialism that seeks a homogenized normativity n17 that only perpetuates the hegemony of the colonial power.

The remaining sections of this article will illustrate that Puerto Rican culture, particularly its popular culture, is a strong counterhegemonic affirmation of a non-sovereign form of nationhood. Puerto Rican cultural nationhood, however, competes with the negative dominant narrative imposed by the United States through its mass media culture, despite the more positive re/tellings found in the current Latin Music Craze.

Initially, Part II includes a narrative about the author's exile, and the perspective that this status brings to this study. Part III constructs a broad and complex concept of culture, centered specifically on popular culture. Popular culture can be production by and of the people, or it can be the commercial mass media product that is consumed by a large number of purchasers. This work will discuss both forms of popular culture and will contrast them with "high culture" n18 because looking down on pop culture is more often elitist than counter-hegemonic. Additionally, when popular culture represents the crossing of physical and/or cultural borderlands, hegemony and counter-hegemony depend on which side of the border you occupy. n19

In Part IV, postmodern LatCritical theory will be used to interrogate how the current Latin Music Craze might affect the competing and often conflicting narratives about the Puerto Ricans. It will also explore how faultlines exist in, and are perpetuated by, Puerto Rican culture internally, and even by the now more positive but still essentialized n20 [*758] re/telling of the Puerto Rican story in the normative United States mass media. The article concludes with a call for continuing critical analysis of popular culture that challenges power hegemonies internal and external to our communities.

II. Exile, Cultures, and Becoming the "Other"

As a result of the ongoing colonial experience, there are two Puerto Rican cultures initially: one for the island and another for the culture of the Puerto Ricans who reside outside Puerto Rico. The two are in fact linked into a broader, diverse Puerto Rican cultural experience. Additionally, there is the narrative telling of Puerto Rico by the normative United States mass media popular culture. Because the author is an exile from the island, this section analyzes his struggles along these cultural borderlands.

Many Puerto Ricans might resent an "outsider" imposing his vision on their culture. In other words, even if I am accepted as a native-born Puerto Rican, I might be accused of imposing an imperialistic, "American" n21 vision of society on our cultural nation. In the process, these critics might argue that I would be destroying the culture that I claim to be trying to defend (not to mention belong to). Because of the inherent paradoxes of exile, I want to share a personal narrative about being a boricua in exile, which, of course, is a foundation of and for my analysis.

A. Ponceno (Person from Ponce) Goes to the United States: Othering Part I

In thinking about culture and nation, and the experience of Puerto Rico, I was struck by how my life's travels are effectively a metaphor for [*759] nation and colony, n22 freedom and serfdom, sovereignty and dependency. The shifting sets can be conceived as the simple boarding of a plane on one side of the Caribbean or the other--for neither of which do I need to switch passports, although I change nationalities.

I was born and raised in Puerto Rico, la Isla del Encanto--the Enchanted Island, or as others might translate it, the Island of Enchantment. It was not until I was seventeen (17), and a junior in High School, that family circumstances converged and resulted in my migration to these United States. That journey, while crossing both cultural and citizenship fronteras (borders), fortunately did not require a passport, or any obvious change in legal status n23--although when I came of age, from this side of the border, I would be able to vote for President. n24

Having finished my secondary education, both academic and cultural, in DeKalb County, Georgia, I chose to attend Emory University in Atlanta and thereafter migrated only slightly North to attend law school at Georgetown University Law Center in Washington, D.C. In the middle of the Summer of 1993, while I again was living in Puerto Rico, as I discuss below, I received a call from the Admissions Director at Georgetown, indicating that she had gathered from my admission essay that I was, and wanted to continue to be, a law teacher. She informed me that the Law Center had a Fellowship for Future Law Teachers n25 and that the selection Committee had voted to offer me that position, even though I had not applied for it. This meant that I could accelerate my plans to start my post-J.D. degree by a year because the Fellowship included a tuition waiver and a small stipend. [*760]

During the course of the Fellowship, I was introduced to the American Legal Academy by two faculty mentors. n26 They, and other members of the Georgetown faculty who also were dedicated to the fellowship, encouraged me to remain in the states as a law school teacher. n27 I was surprised to learn that there were only a handful of Latina/o and Puerto Rican law teachers in the United States. n28 Therefore, I started to take their recommendation seriously.

My journey to the legal academy is relevant to set the stage and as a metaphor for the convergence between the reality and the theory of power that makes me, as a United States citizen, both normative and "Other"--the latter of course because of my puertorriquenismo (state of being Puerto Rican). Being Puerto Rican turns me into an inferior "colored person," an "Other" in this society. n29

Describing this Othering metaphorically, my feet, which are "clean" in Puerto Rico, become "soiled" here: I become a "patisucio," which literally means to have dirty feet. It is a reference to being poor in Puerto Rico because you could not afford to buy shoes, and your bare feet were thus always dirty. My father often describes himself as a patisucio because he got his first pair of shoes in the public school--to which he walked on unpaved streets--in his barrio Bucana in Ponce. (Ironically, he used to shine shoes as a shoeless child in order to make a bit of extra money for his household.) Patisucio is also his acknowledgement of being a class outsider within Puerto Rican society. But my father acquired the honorary class privilege that accompanies education and wealth, and as a result, his children were not patisucios in Puerto Rican society. Nevertheless, when I traveled to the United States borderlands, I became a metaphorical patisucio [*761] from Puerto Rico and the dirt on my feet became code for my social construction as "colored."

In that sense, it is ironic that I have chosen not to live in my country while it suffers from colonial status. I eschew the concept of a citizenship that is legally second-class, and lacks a passport. Hence, I live in the "states" where I can better seek the benefits of my statutory American citizenship, but partly because of that statutory citizenship, I am Othered and rendered socially second-class here. Nevertheless, personal, professional and emotional links to Puerto Rico cause me to cross the cultural borderlands on different occasions and under diverse circumstances, but now with different perspectives illuminated by exile.

B. You Can't Go Home Again: Othering Part II

The pull to my Enchanted Island had me head South after earning my first law school degree to live my own version of the biblical tale known as the prodigal son. n30 Initially, a tragic, accidental journey took me to work in the U.S. Federal Court n31 within the Puerto Rican borderlands n32--making the stark reality of my two citizenships, both with a U.S. passport, come to life. n33 The U.S. District Court for the District of Puerto Rico n34 belongs to the First Circuit, n35 together with Maine, Massachusetts, New Hampshire, and Rhode Island. n36 But these state boundaries are not [*762] my fronteras (borders), the Atlantic represents the physical, political, and psychological barriers that I travel.

This particular lesson in border crossings continued when I became a member of the Bar in Puerto Rico and after my two-year federal clerkship, joined Bufete Malavet & Ayoroa (the law firm of Malavet and Ayoroa), my dad's established law practice in my home town of Ponce. I then learned about his extensive record as a subversivo, n37 which was imposed on him simply because the police thought that he believed that we ought to travel with a Puerto Rican passport. n38

A short time after I joined papi's (dad's) practice, I also started teaching Federal Courts and Puerto Rico Appellate Procedure at the Pontifical Catholic University of Puerto Rico School of Law. This exposure to the intellectual side of law n39 inspired me to pursue an academic life, a goal that led me, again, to the estadounidense (United States) borderlands. Initially, I thought this was a two-way trip, but as discussed above, fate intervened, and I chose to stay in the American borderlands, returning to Puerto Rico now only as a temporary visitor.

Going into exile while owning the passport with which to return home is a difficult choice, even though it can have some benefits, perhaps the most important of which for this discussion is the critical frame [*763] of reference that exile illuminates. However, when this critical eye is turned inward towards my own culture, I am suddenly transformed into an outsider in my own Puerto Rican borderlands.

I had always been aware of political and class faultlines in Puerto Rican society, because my family had often been both the objects and the honorary beneficiaries of those forms of elitism. n40 Although now I recognize and acknowledge the victims of racism and the unfair nature of the privilege that this discrimination creates, even racial faultlines work in my favor back on the island where I am mapped as white. But other forms of discrimination--such as xenophobia, anti-Semitism, sexism, and homophobia--were clearly illustrated for the first time by the looking glass of exile.

For example, because I am a heterosexual male, I am expected to behave in a particular way in my own community. But I am now much more aware of issues of sex and gender that conflict with those essentialist expectations. That makes sexist and homophobic conduct by my fellow Puerto Ricans in Puerto Rico difficult to take. n41 I am also much more sensitive to issues of race and to the societal privilege that Puerto Rican culture gives me because of whiteness. Finally, as an exile, I am also more attuned to the paradoxical animosity between island and mainland Puerto Rican cultures. n42

For me, "home" is Ponce, Puerto Rico. No matter how far away from it I may go, my personal, professional, and emotional travels always lead me back to Ponce. But to the extent that I now re/view La Perla del Sur (the Pearl of the South) n43 through the looking glass of exile, at least intellectually, I can never really go home again. For me, the curse of exile is that I am socially constructed by the normative United States culture as an inferior, "colored" "Other" and that I can no longer look at my own culture with the critical but uninformed vision of my youth. The next parts of this article represent a deployment of these perspectives to deconstruct the competing narratives of Puerto Rican cultures.

III. Culturas Puertorriquenas (Puerto Rican Cultures)

This discussion of culture is particularly timely because of the Latina/o musical moment that seems to have overtaken the United States [*764] English-speaking market. n44 Ricky Martin, Marc Anthony, n45 Jennifer Lopez, Enrique Iglesias, and even former Mouseketeer Christina Aguilera n46--who has re-discovered that her father speaks Spanish--and that other Latino youngster, Carlos Santana n47 are among

the most popular artists in the United States today. n48 Especially pertinent for this article is the fact that Anthony, Lopez, and Martin are Puerto Rican.

Accordingly, after laying the necessary theoretical foundation, this part of the article develops a LatCritical reaction to the Latin Music Craze in the United States which can be subdivided into two parts: (1) public portrayals of Latinas/os in general, and of Puerto Ricans in particular, as men without guns or knives, and women who are not prostitutes, and not a drug addict in sight, represent progress in the Puerto Rican/American paradigm; and (2) with all due respect to the label "Latin," this is not *mi musica latina* (my Latin Music). The discussion will be framed in the context of the competing narratives of Puerto Rican cultures across the American borderlands, including those of Puerto Ricans in Puerto Rico, Puerto Ricans in the "United States proper" n49 and that of the normative American society.

A. The LatCritical Study of Culture

Defining "culture" can be a difficult process for the critical scholar. For example, "while claiming that they had no wish to add a 165th formal definition of culture to the 164 they had examined, [two important [*765] cultural studies scholars] did finally sum up the way in which 'this central idea is now formulated by most social scientists': 'Culture consists of patterns, explicit and implicit, of and for behavior acquired and transmitted by symbols.' And 'the essential core of culture consists of traditional . . . ideas and especially their attached values.'" n50

This article analyzes popular culture as a definition of group identity, that is, the culture by and of a peoples. Accordingly, it adopts a philosophically communitarian n51 Cultural Studies view of the term, meaning that

culture is a whole way of life (ideas, attitudes, languages, practices, institutions, structures of power) and a whole range of cultural practices: artistic forms, texts, canons, architecture, mass-produced commodities, and so on. Culture means the actual grounded terrain of practices, representations, languages, and customs of any specific historical society. Culture, in other words, means not only 'high culture,' what we usually call art and literature, but also the everyday practices, representations, and cultural productions of people and of postindustrial societies. n52

However, this work also studies mass media popular culture. "Mass media" might be defined as "those media that have been derogatorily designated as 'mass culture' or the 'culture industry' by left-and right-wing intellectuals alike." n53 In distinguishing popular culture and mass media culture, Carla Freccero warns that while mass media culture can have substantial hegemonic effects, it can also be used counter-hegemonically. n54 Ultimately, she speaks of "popular culture that more closely resembles the definition of the popular as that which belongs to the people." n55

"Certainly there are significant differences between popular culture and mass media." n56 But "popular" does not necessarily mean massmedia-imposed, [*766] n57 and the art of popular culture is art. n58 In identifying and distinguishing popular culture from mass-mediaimposed culture, this article deploys the competing narratives of popular cultures both to identify hegemony and to counter it. n59

Finally, critical theory warns that one must be careful not to essentialize in this process of constructing and analyzing culture. In linking Puerto Rican ethnicity and citizenship, n60 it is imperative to avoid the evils of ethnic strife and balkanization that a hegemonic culture might impose. This article demonstrates that it is possible to celebrate a particular culture and avoid deploying it as a justification to attack fellow human beings because of their culture n61 by identifying both positive and negative forces in the competing narrative tellings of the Puerto Ricans.

In discussing the competing narratives of and by the Puerto Ricans, one must change frames of reference often. Although principally concerned with Puerto Rican culture in Puerto Rico, this article discusses Puerto Rican popular culture, n62 Puerto RicanAmerican [*767] popular culture, n63 American popular

culture, n64 and the mass media culture that brings all three popular cultures into coexisting and sometimes conflicting spaces within the American diaspora.

B. Gringos, Puertorriquenos, and Niuyoricans

Puerto Rico is a group of islands bordered by the Atlantic Ocean and Caribbean seas, n65 which has been a United States territory since 1898. n66 Puerto Ricans are statutory United States citizens. n67 This citizenship has produced substantial relocation by Puerto Ricans in the United States. n68 [*768] Thus, there are at least two substantial Puerto Rican communities that interact with and are distinguished from estadounidense (citizens of the United States): Puerto Ricans in Puerto Rico and Puerto Ricans in the United States.

The current Latin pop music craze reflects these borderlands: Ricky Martin was born and raised in Puerto Rico, and Marc Anthony and Jennifer Lopez were born and raised in New York City. In the Latin Music Craze, all three artists play mostly for an Angla/o estadounidense audience. In Puerto Rico, the terms that are used to distinguish the three groups of American citizens described above are gringo (used to refer to a non-Latina/o citizen of the United States who is not Puerto Rican), niuyorican (although it specifically refers to New York City, it is used to refer to persons of Puerto Rican descent born anywhere in the United States), and isleno (used to refer to Puerto Ricans from the island).

The dominant narrative about Puerto Ricans by the United States carefully cultivates the view that the people of Puerto Rico, despite their U.S. citizenship, are too brown, too Latina/o and too "foreign"--too unassimilable--to be incorporated into the United States. n69 More recently, Puerto Ricans have been portrayed as "unpatriotic" and "ungrateful" in the public discourses over the release of Puerto Rican political prisoners n70 and over the protests of the Navy's use of Vieques as a bombing range. n71 In addition to legally constructing Puerto Ricans as second-class citizens, [*769] the United States reinforces this devaluation of Puerto Rican dignity n72 by stereotyping Puerto Rican difference and Otherness. n73

The United States seeks to "Other" the Puerto Ricans as U.S. citizens who are not cultural "Americans." n74 In turn, the Puerto Ricans have culturally embraced their distinction from the gringos. Accordingly, the United States attempts to "Americanize" the Puerto Ricans that were rejected. n75

In addition to island puertorriquenos/as distinguishing themselves from "gringos," they also distinguish themselves from the niuyoricans. The Puerto Rican experience in the United States outside of the island is, in general, much more bilingual and multi-cultural than that of the islenos, which is discussed below. n76

One interesting example of the conflict between social constructions of culture can be found in competing definitions of the very word gringo. There are several stories about the derivation of the term. One argues that it comes from "green coats," thus, a reference to the uniforms worn by [*770] U.S. soldiers during the Mexican War. n77 Another story argues that the term originated in a bastardization of the song "Green Grows the Grass" allegedly sung by U.S. soldiers invading Mexico in 1847. n78 Whether the term's use in the Americas originates thusly is open to question, but it is clear that the word itself predates Mexican-US conflicts. As early as the eighteenth century, the word was reportedly used in Spain as a bastardization of the word "griego" (Greek) and was used to refer to anyone speaking a foreign tongue or with a foreign accent. n79 The usage is thus analogous to the American phrase "it's Greek to me." n80

More interestingly, Spanish dictionaries describe gringo as a simple adjective. n81 In contemporary usage in Spain, it is used to refer to a foreigner, especially one who speaks English. In Argentina, it is used to refer to white, blonde Europeans. In the Americas, it is used to refer to citizens of the United States. n82 But English dictionaries uniformly define it as a word used "disparagingly" or as a "contemptuous" reference to English-speakers generally and U.S. citizens in particular. n83 To most Spanish-speaking Latinas/os the term gringo is simply a term used to refer to U.S. citizens. It is made necessary by the fact that the United States of America is one of very few nations in the world that lacks a country name. n84 However, English speakers are uniformly told that they are being insulted, rather than properly identified.

n85 Just as their empowering [*771] native language is negatively presented to English speakers, Puerto Ricans construct themselves positively, and in turn are negatively constructed by the United States.

The dominant narrative of the Puerto Rican has traditionally been imposed by United States mass media. In contrast, the Puerto Ricans on the island have a powerful culture that I call *mi cultura Puertorriquena*, which is described in the next part of the article.

C. *Mi Cultura Puertorriquena* (My Puerto Rican Culture) n86

As hurricane Debby approached Puerto Rico, and it started to become clear that the storm would not make a direct hit on the island, *El Nuevo Dia*, a daily newspaper, put the following headline on its web site: "Esperando a Debby Alcapurria en Mano." n87 The headline can be translated as "Waiting for Debby, with Alcapurria in Hand." An *alcapurria* is a mixture of mashed green banana and *yautia* (tannier), stuffed with beef or pork, and then deep fried. n88 Waiting for a hurricane--after boarding up the house, getting supplies, and picking up any items that might become missiles in a wind storm--with a cold drink and an *alcapurria*, while listening to the radio, is an apt symbol of Puerto Rican culture. n89

More generally, while reflecting a social consciousness distinct from that of its two colonial rulers, Puerto Rican popular culture is both the product and the prisoner of 500 years of history under Spanish and United States colonial rule. Puerto Rican culture is not ideal; it has racialized, ethnicized, and gendered faultlines that will be engaged in this article, but it is different from the United States' culture. However, to put it simply, culturally, Puerto Rico was a Latin-American country when the first United States troops came ashore in Guanica in 1898. Today, it is still a culturally Latin American country, populated by Latinas and Latinos. n90 [*772]

The law and its institutions, starting with those imposed by the Spaniards, are an important part of Puerto Rican culture. Both reflect a mixture of our two colonial rulers. In the area of constitutional, criminal, administrative and procedural law, Puerto Rico has a system that has been forged by United States' influence. n91 In private law, especially those areas covered by the Civil Code, n92 Puerto Rico bears an unmistakable Spanish influence. n93 Despite the clash of the two different legal cultures, n94 Spanish civil law on the one hand, and Anglo-American common law on the other, both have managed to co-exist, producing a uniquely Puerto Rican legal system. n95

But while the rules of law might reflect a multi-colonial mixture, the language used in the law is Spanish, n96 which is incontrovertibly the dominant language on the island, n97 and is the language of local administration [*773] and public education. n98 Significantly for this work, Spanish is also the language of the popular arts, n99 and, hence, culture. n100 As will be shown here, Puerto Rico's cultural tropes--dietary and celebratory, including musical--are uniquely *puertorriquenas/os*.

Dietary practices have long been considered an essential part of a culture, and Puerto Rico is no exception. Although there are Puerto Rican Jews and Moslems, n101 the strict dietary rules of those religions do not apply to the Puerto Rican staple diet. n102 Accordingly, pork is a major part of the diet, especially on celebratory occasions, n103 and shellfish and all other forms of seafood are traditional foods as one would expect in a

tropical island. n104 Rice, red beans, *tostones* or *mofongo*, n105 and the daily loaf of bread are staple foods. *Panaderias* (bread stores) can be found in almost every neighborhood, invariably offering *pan de agua* (water [*774] bread) or *pan de manteca* (bread with lard). n106 Rum, made from sugar cane, is the national alcoholic drink. n107 *Piraguas*, shaved ice covered in syrup, and home-made ice creams made with local fruits are very popular in the tropical heat and are traditionally served from movable carts.

Shared celebrations, such as *fiestas patronales* (patron saint festivals) and important holidays, also mostly of a religious origin, such as Christmas and Holy Week, mark Puerto Rican culture. The Patron Saint festivals are celebrated in every municipality in Puerto Rico, and the matter is even regulated by Puerto

Rico's laws. n108 The celebration always includes food, drink, and music of all kinds, but dance music, especially salsa, attracts the most people. Traditionally, one day of the patronales will be dedicated to honoring and remembering the ausentes (absent persons), usually persons who have migrated away from the town. In fact, many Puerto Ricans living in the United States choose this date to return to their home towns.

In an example of some United States influence, but adapted to the Puerto Rican way, Thanksgiving is now celebrated, but mostly it marks the start of the Christmas holiday. n109 The content of the Christmas celebration, and its length, however, are much different from the United States traditional celebration; they are definitely Puerto Rican. Parrandas, very common during Christmas, are basically large moving parties in which a musical serenade is brought to a friend or family member's home. In exchange for good music and the company of friends, the home owner welcomes the group into the house and gives them food and drink. n110 The traditional Christmas foods are lechon asado (roast pig), arroz con gandules (rice with pigeon peas), pasteles (a mixture of tannier and green plantain, stuffed with beef, pork or chicken, wrapped in [*775] banana leaves). n111 For dessert, coquito (Puerto Rican coconut eggnog) n112 and arroz con dulce (rice flavored with coconut milk and sweetened with brown sugar). n113 The Christmas holidays include the Epiphany, January 6, n114 the date when children usually get toys. n115 The overall celebration lasts beyond the Epiphany into the so-called octavas and octavitas--a full eight days of further partying or religious observance, depending on the participants. n116

Turning specifically to musical heritage as a vehicle of a singular culture, this piece will now present the history and development of musica popular Puertorriquena (Puerto Rican popular music).

Popular music in particular represents the Puerto Rican identity. Notwithstanding the current Latin Music Craze, prominently displaying a homogenized product by Puerto Ricans Marc Anthony, Jennifer Lopez, and Ricky Martin, there is general agreement on many diverse forms of Puerto Rican popular music. However, there is a strong debate over whether there is a single specific Puerto Rican "national music," driven by the overall debate between defenders of "high culture" versus "popular culture," which is often reduced to questions of class and race. [*776]

The traditional view is that the Danza, a waltz-like salon dance music usually composed by classically trained musicians, is the Puerto Rican national music. n117 Danza is most definitely Puerto Rican, but it is the music adopted by and associated with the upper class and cannot fairly be considered the "National" music in the context of cultura popular (popular culture). n118 The alternative candidates for the title of national music are salsa, especially favored by those who defend the African influence in Puerto Rican culture, and the seis, a music produced by the Puerto Rican jibaro, the agricultural peasant of the mountains. Jose Luis Gonzalez, in his critical essay *El Pais de Cuatro Pisos*, n119 bemoans both the classist and racist use of Danza, with its inherent denial of the African experience, as well as the cult of the jibaro, which he likewise associates with an enforced preference for whiteness. n120 [*777]

However, the jibaro seis has a powerful and legitimate claim to being a Puerto Rican national popular music that is neither classist nor racist. It was the music of the true jibaro, the poor peasant farmer of Puerto Rico. This music has other prominent characteristics: (1) it was born in Puerto Rico in the nineteenth century; (2) it has had a strong and long-standing influence in Puerto Rican music generally; (3) it is easily identified by most Puerto Ricans as "Puerto Rican music;" and (4) it is still popular music today. n121 Additionally, the seis uses the most important native musical instrument, the cuatro. n122 Long before salsa or its historical antecedents like the plena had appeared, the seis was the music of poor, that is, most puertorriquenas/os. n123

This article is not concerned with awarding the title of Puerto Rican national musical form, but ultimately, the debate over Puerto Rican national music serves clearly to underscore two things: one, the richness and diversity within Puerto Rican culture; two, the debate also discloses the problematics of race and class that

can be found in the racially-mixed cultura india, espanola y africana (Indian, Spanish, and African culture) of Puerto Rico. n124

Music and dance create a link between the three major influences within the Puerto Rican peoples. The Taino natives engaged in dances, often designed to tell important tribal stories, called Areytos. n125 The Puerto Rican criolla/o n126 was often accused of being much too interested [*778] in dancing. n127 Even the now-much-too-respectable Danza was considered "scandalous" by some conservative criollas/os, who criticized the closeness of the dancers and their movements. n128 Today, salsa n129 and merengue n130 keep the puertorriquenas/os moving together fast, and boleros (slow ballads), a bit more slowly.

Music is naturally an essential element of daily life as well as of special occasions. n131 Music can be designed for dancing, listening, or both. The result is the constant presence in Puerto Rico of big bands that play dance music, and smaller groups that play music to be listened to and/or to be danced. The best example of the latter are the Trios (three person groups) that specialize in boleros. n132 The big bands were initially the precursors of salsa and are now the main practitioners of it, with the Sonora Poncena n133 and El Gran Combo de Puerto Rico n134 celebrating fifty years [*779] in show business this year. n135 Today, salsa is undoubtedly the most popular form of Puerto Rican music. n136

Popular music is a part of the cultural fabric of the Puerto Ricans not simply because of its capacity to entertain and to make people move, but also because it often presents an unflinching look at the realities and hardships of daily life. For example, the baquine is a party to celebrate that a baby who died during or shortly after birth has gone to heaven without suffering the hardships of life on earth. n137 Specifically as to Christmas tradition, the book *Navidad que Vuelve* (Christmas Returns) examined the song *Los Reyes No Llegaron*, n138 (The Wisemen/Kings did not Arrive) which was a perfect description of the level of poverty in Puerto Rico in the 1950s. *Los Reyes* tells the story of a young orphan who thinks that the wise men have forgotten him, because they did not bring him a present. n139 Another poignant example of a song carrying a message of economic hardship is *Lamento Borincano* (Puerto Rican Lament), a song that describes the toil involved in a day in the life of a farmer in Puerto Rico at the beginning of the twentieth century. n140

Music can also be a teaching tool that allows the singer to bypass society's problems, such as illiteracy, and still educate. n141 Music can overcome many challenges, sometimes plainly containing political subtexts. Puerto Rican popular music, with its oral tradition, represents an important form of resistance in a repressive colonial society. [*780]

In the colonial context, cultural expression takes on the added dimension of political self-awareness and assertiveness. n142 Songs also recognized Puerto Rico's wish for independence n143 and accompanying self-awareness as peoples during the Spanish colonial period. Lola Rodriguez de Tio provided a call to arms in the revolutionary version of *La Borinquena*, n144 the Puerto Rican national anthem (now with different lyrics). n145 Puerto Ricans have also engaged in the use of song as a vehicle for resistance with the second colonial rulers. n146 For example, Andres Jimenez's "El Jibaro," demands that Puerto Ricans stand up to the American tyranny, by exclaiming "¡Cono, despierta boricua!," which is loosely translated into "damn wake up people of Puerto Rico." n147

As just prominently shown with the example of its music, Puerto Rican culture is a rich and diverse tapestry that does indeed mix Native, Spanish and African heritage. n148 It is a strong culture that is rightly proud, if perhaps unaware, of its cultural faultlines, although there is serious ongoing debate about the matter. Nevertheless, it is a culture based on shared social experiences, consistent with its tropical origin. The shared symbolism of the Spanish-speaking, pastel-eating, coquito-drinking experience, among many other complex relationships, produces the Puerto [*781] Rican culture. n149 The remaining sections of this article will explore the relationship between the Puerto Rican culture described above and the narratives of the current Latin Music Craze, contextualized in postmodern LatCritical theory.

IV. Postmodern Travels through Fronteras Culturales (Cultural Borderlands)

In the current deconstructionist postmodern age, the idea of liberal universalism is rejected as being "merely a cover for an imperialistic particularism." n150 Postmodernism n151 also points out the theoretical shortcomings of current philosophical movements and warns against the mistakes of extremism, at any end of the philosophical spectrum. n152 This is especially true when one engages in Cultural Studies.

The articles in this symposium which focus on culture study and on the many re/presentations of Latinas/os interrogate which culture owns which aspects of those re/presentations. My perspective is a bit different. I see *mi cultura latina* as something that I embrace and which represents me, while crossing the many borderlands produced by colonialism and exile. In other words, I see my cultural realities and contexts, from a postmodern perspective. This construct is made possible by a theoretical distinction between popular or people's culture and political culture, that is, between cultural and political citizenships.

I have argued in other works that the Puerto Ricans must be able to develop "shared identities" n153 within their own community as political [*782] and cultural citizens of the Republic of Puerto Rico, or within the United States community, as political citizens of the United States who have their culture respected by the normative society. n154 To construct the Puerto Ricans as cultural "citizens of the world," n155 or even of the United States, would constitute an imposed homogeneity. Conversely, however, this construct might imply an imposition of a homogenized United States Angla/o culture, which would be equally essentialized. n156

I reject the notion that being Puerto Rican (or American, or Irish) first and a citizen of the World second is morally questionable or irrelevant. n157 This argument implies that nationalism may be deployed as a positive force, n158 as long as it is limited by a pluralistic communitarian [*783] consciousness. n159 In this context, Puerto Ricans should be able to choose to be Puerto Rican patriots, n160 and more generally, peoples of the world should be able to choose a national affiliation.

But nationalism, either Puerto Rican or American, cannot become dogma. n161 Just as Puerto Ricans should be respected as a minority culture within the United States, they should respect disenfranchised communities within the Puerto Rican peoples, either under American or Puerto Rican sovereignty. Puerto Ricans would be making a choice between legal and political sovereignty for themselves, or cultural sovereignty within a supranational political culture. n162 This requires Puerto Rico and the United States to live up to the ideal described by Jurgen Habermas of a diverse "political culture" that exercises "constitutional patriotism." n163

The perspective of the many Puerto Rican borderlands will now become our changing frame of reference, viewed through a postmodern [*784] lens. The current Latin Music Craze both challenges and reinforces faultlines imposed on Puerto Rican culture by the normative United States society, and those internally imposed by the essentializing forces within Puerto Rican society. The next sections of the article will focus specifically on faultlines and how they are challenged by or reflected in the work of the new Latina/o artists.

A. Faultlines in and about Puerto Rican Cultures

The Spanish Colony of 1493 to 1898 created, for worse and for better, the Puerto Rican culture described above. But this society is not the culture of the Taino natives who greeted Columbus in the Caribbean; n164 it is not the culture of the Africans, free and enslaved, who came or were brought to the Island; and it is not the culture of the conquistadores (conquerors), Spanish or estadounidense. Rather, it is a separate and distinct hybrid. n165 The Spaniards effectively designed the blueprint for the gender, cultural, religious, ethnic, and racial mix in the island by conquering and destroying the natives, raping the native women, bringing in settlers, allowing immigration, and importing African slaves. The Spanish then proceeded legally to define and organize their practically constructed local society. n166

Within this complex context, the Puerto Ricans started to construct a Puerto Rican selfhood--a separate and distinct history. n167 As a result of that process, the prevailing society in Puerto Rico is today Spanish-speaking, largely Catholic, and racially diverse. Unfortunately, like many [*785] other societies, Puerto Rican culture is also heteropatriarchal, n168 sexist, n169 racist, n170 homophobic, n171 and elitist. n172

An empirical study of Puerto Rican "intolerance" found that the test subjects were openly willing to admit a strong dislike for homosexuals--who were the identified group that was most likely to suffer from discrimination. n173 The same study also identified xenophobia n174 and class discrimination n175 among Puerto Ricans. Xenophobia and so-called class discrimination, however, are often codes for racism in Puerto Rican society. n176 Nevertheless, despite its internal faultlines, fundamentally, Puerto Rican culture is different; it is "Other"--used here in its positive sense--than the normative narrative about the Anglo United States culture and the Puerto Ricans within it.

West Side Story (WSS) is probably the dominant narrative telling of the Puerto Rican story for estadounidense. An untitled essay attributed to Mort Goode accompanies the compact disc with the original songs of this musical. It describes the scene accompanied by the song "America" as a "playful argument . . . between Anita ([played by] Chita Rivera) and two homesick Puerto Rican girls [played by unidentified actresses] over [*786] the relative merits of life back home and in Manhattan." n177 Although the lyrics might be described as "interesting," the manner in which this song was performed is offensive, with affected language that mirrors only the worst of stereotypes about Puerto Ricans. Moreover, WSS presents Puerto Rican men only as poor, uneducated gang members. Puerto Rican women are likewise poor and violent, but they are also the objects of racialized desire.

The current Latin Music Craze has changed the dominant narrative of WSS, on balance for the better, although WSS had set a very low threshold to overcome. Below, the article will discuss the good, bad, and troubling aspects of the new narrative telling of the Puerto Ricans represented by the success of Ricky Martin, Jennifer Lopez, and Marc Anthony. n178

B. Commodification in the Current Latin Music Craze

Initially, this part must distinguish between identifying cultural faultlines and deploying culture to justify bad behavior. n179 Specifically, the commodification n180 of Latinas/os in the current Latin Music Craze [*787] illustrates faultlines that must be corrected rather than forgiven. Even the consumption of the products of these newly popular artists within Latina/o culture represents an internal form of commodification. And Puerto Rican culture includes other forms of commodification. n181 On the other hand, there are positive aspects to the current narrative telling of the Puerto Rican story in America. By way of introduction however, I will point out that I am not seeking to blame the artists for the shortcomings of the society to which they sell their product.

The narrative record of the current Latin Music Craze is mixed, as professors Bender and Ehrenreich discuss. In his contribution to this symposium, Professor Bender deftly analyzes the current crop of Latina/o pop artists that have become popular among the larger American audience. He specifically focuses on language as a possible source of both positive re/construction of the Latina/o narrative and the danger of cultural homogenization. In her contribution to the symposium, Professor Nancy Ehrenreich writes about rejecting interpretations of Anglo/a interest in Latin productions as either good or bad. n182

Perhaps I am essentializing or just missing something, but I do not see Marc Anthony as the "Hot Latin Lover." However, the American mass media clearly disagrees and presents the salsa singer in often racialized sexual constructs. n183 Nevertheless, Ricky Martin and Jennifer Lopez are very clearly and consistently commodified as racialized, hypersexual bodies. n184 [*788]

As Professor Bender tells us, Ricky Martin is the hot Puerto Rican tamale. n185 His videos shown on MTV are carefully choreographed to show a "Latin" hypersexuality. The portrayal represents some progress simply because Martin is not a knifewielding member of a criminal gang, as Puerto Rican men

were depicted in WSS. However, the construct of Martin as an object of desire is a patent form of commodification of his racialized body. He is "teenage eye candy," the essentialized "Hot Latin Lover." n186

Jennifer Lopez also presents a mixed picture. She is depicted as beautiful in a "different" way, and she is not the desperately poor, uneducated woman of WSS, which represents progress. But the construct of her image is equally commodified. She is a hypersexual racialized body, who is in fact essentialized into one "magnificent" body part: her ass. n187 Never have so many references to one ass been heard in United States media. n188 Then there was "the Jennifer Lopez dress" at the Forty-Second Grammy Awards Ceremony. n189 The construct of Latinas as beautiful, self-assured women is progress, their racialized commodification leaves room for critical praxis. n190 [*789]

C. The Myth of Latina/o Homogeneity

In addition to their sexualized commodification, the three Puerto Rican artists and the other performers in the current Latin Music Craze are often the objects of the Myth of Latina/o Homogeneity. This essentialized vision posits that all Latinas/os constitute one "foreign nationality," relative to the U.S., and a single mixed race. n191 Hence, Ricky Martin becomes a "hot tamale" and Marc Anthony a "hot jalapeno." n192 Racially, Latinas/os are essentialized, and often essentialize themselves, n193 as una raza (one race), india, espanola y africana (Indian--meaning Native American--Spanish and African). n194

As applied to the Puerto Ricans, the notion of homogeneity imposes on them a collective colonial vision. Puerto Ricans are constructed by the United States as being altogether brownskinned. n195 The Puerto Ricans are also the Latina/o "Other" and, therefore--despite their U.S. [*790] citizenship--"foreign" relative to the United States. n196 As a result of these constructs, the Puerto Ricans become too "Other" to be "real Americans." Consequently, although the United States had the legal right to acquire Puerto Rican soil through conquest, n197 the cultural unassimilability of the Puerto Ricans means that they are unqualified for full legal and political incorporation into the United States. n198

Professor Bender criticizes the homogenization of the Latina/o experience through the attempt to create a (pan)latino identity in the current Latina/o musical moment. Even the changes in names--Ricky Martin's given name is Enrique Martin-Morales, and Marc Anthony's is Marco Antonio Muniz--are cited as examples of the need to appear non-threatening by being sufficiently assimilated, that is, homogenized. n199 Professor Ehrenreich worries about the appropriation of aspects of Latina/o culture by the normative American society. But she is also concerned about the construct of cultures as static and thus essentialized, imposed structures. n200

The work of the three Puerto Rican artists that has become commercially popular in the United States reflects an essentialized vision of a static Latina/o homogeneity. For example, the most successful songs are those performed in English, which is negative in the context of promoting the acceptance of Spanish as an "American" language, but positive if we focus on the acknowledgement of Latina/o bilingualism. However, [*791] the consumption of this homogenized product provides the artists with a limited opportunity for subversion of English normativity.

Marc Anthony, for example, has developed the most linguistically and musically complex repertoire among the three Puerto Rican artists. He includes many songs in Spanish in his albums and has albums that are sung exclusively in Spanish. n201 His HBO special had an outstanding repertoire of music, from Preciosa, the beautiful ballad by Rafael Hernandez, to Anthony's own ballads and salsa tunes. Nevertheless, his albums in Spanish are placed in the back of the music store, whereas his English language product, recorded by the same artist in the same place (the U.S.A.), is put in the front of the musical bus. n202 In other words, despite his best efforts, Marc Anthony is either an English-speaking U.S. Latino artist or a Spanishspeaking "foreigner." n203 He clarifies that he is a bilingual Puerto Rican-American. n204

The current homogenized product for the American mass market has a "Latin" beat and perhaps a "Latin" flavor that packages the aspects of Latina/o culture that Americans find alluring. For example, the Latin beat and hypersexualized dancing in the video of "Livin' la vida loca" uses Spanish merely as a spice rather than as the primary language of communication n205 and Latina/o racialized bodies as quite literal sex/appeal.

Nevertheless, the visibility of these Latina/o artists constitutes a more positive re-telling of the Puerto Rican story in the United States, especially because three of the most famous performers (Martin, Lopez, and Anthony) are Puerto Ricans and they publicly self-map as Puerto Rican. n206 These artists sing in Spanish, even though that is not their most [*792] popular product. They also present a successful picture of Puerto Ricans in America.

V. Conclusion

I will not condemn or dismiss the current Latin Music Craze just because it is not *mi cultura puertorriquena*. Despite its limitations, I find many aspects of the present popularity of Latina/o artists quite empowering. To put it simply, the invisibility of Latinas/os from the cultural mainstream in the United States has, at least for the moment, abated. n207 More interestingly, the previous negative images of Latinas/os are being replaced by a positive albeit homogenized commodity. However, the artists themselves, when given the opportunity, tell their personal narratives of being Puerto Rican Latinas/os in the United States and of being bilingual, multicultural, multi-dimensional persons. n208 Moreover, the current rapid and overwhelming success of Latina/o performers gives to the LatCrit community an opportunity for education and scholarship.

LatCritical scholarship, for example, can properly explain that the Puerto Ricans are a colonized peoples and that it is the paradox of colonial peoples that they are often both the products and the continuing victims of colonialism. Colonized societies are often multicultural; yet, oppression becomes internalized to such an extent that wealth, power, and privilege are reserved for the chosen few, at the expense of other members of the community, in a process that replicates rather than rejects the power structures of the colonizer. Generally speaking, women, persons with darker skin hues, "foreigners," and other outsiders are marginalized in this society, even after the colonial power is gone. Moreover, oppression is so internalized that many victims do not wish to see discrimination and often do not see themselves as the outsiders.

On the other hand, submitting to the homogenization of the American mass media, without subverting it, is likewise to allow ourselves to be culturally colonized. It is also a missed opportunity to replace the dominant essentialized narrative about the Puerto Ricans and replace it with a positive re/telling of our story. LatCrit scholarship is uniquely [*793] positioned to perform and inform this process of resistance of homogenization and re/construction of a multicultural narrative.

The current Latina/o musical moment in American mass media certainly represents progress in the narrative telling of the Latina/o experience in this country by the normative American society. We have gone from the hoods, prostitutes, drug dealers, gang members, and generally inferior people associated with *West Side Story* and other mass media fare to a slick, high-income, homogenized product that encapsulates the image of the "hot Latin Lover." While the essentialized vision that is represented by this homogenization is certainly partly objectionable, it ought not lead us to reject the relative improvements represented by the newly popular artists, or necessarily to blame them for their commodification (although the artists themselves must bear some responsibility for allowing themselves to be packaged in that manner).

The Latin Music Craze requires critical scholars to do two things. First, we must recognize the historical progression in the re/presentation of Latinas/os, with the necessary acknowledgement of progress in the normative Angla/o society's re/telling of our story. Second, we must continue to apply a critical eye to the current narrative to identify its prevailing shortcomings, thus ensuring continued education and progress.

This critical and educational process must be performed at all levels of our cultural borderlands. As United States citizens and scholars, we must ensure that our "American" culture counts within the normative narrative of the United States. In other words, we must refuse to accept a static, normative version of American Anglo/a culture and show instead the richness of American multiculturalism.

As Latinas/os, we also must work to identify and to tear down existing power hegemonies within our individual cultures, as well as within the larger U.S. society. In this struggle, the proper artistic and scholarly deployment of Latina/o popular cultures that survive, and even thrive within the American mass media culture, can serve as a form of political praxis that subverts existing internal and external power hegemonies affecting LatCrit communities. The current Latin Music Craze can thus serve as an important asset for LatCritical praxis.

FOOTNOTE-1:

n1 See Pedro A. Malavet, Literature and Arts as Antisubordination Praxis, *LatCrit Theory and Cultural Production: The Confessions of an Accidental Crit*, [33 U.C. Davis L. Rev. 1293 \(2000\)](#) [hereinafter Malavet, *Accidental Crit I*].

n2 See Lewis Carroll, *Through the Looking Glass & What Alice Found There* (1946); see also Phyllis Craig-Taylor, *Through a Colored Looking Glass: A View of Judicial Partition, Family Land and Rule Setting*, 78 *Wash. L. Quarterly* 737, 738 n.1 (2000) ("Sometimes the law works very much like Alice's 'looking glass' - making things which are real appear fiction and things that are fiction appear real.").

n3 Noel Estrada, *En Mi Viejo San Juan*. Author's translation: One afternoon I departed towards a strange/foreign nation/ because destiny so wanted,/ but my heart remained in front of the sea/ in my Old San Juan. *Asociacion Puertorriquena de Coleccionistas de Musica Popular (ACOMPO), Cancionero*, 2 *La Cancion Popular* 69 (1987). Having been born and raised in Puerto Rico, speaking and singing in Spanish, I identify with the description of the United States as a foreign nation, despite my statutory U.S. citizenship.

n4 The term "Latin Music Craze" is used here to refer to the current popularity of Latina/o artists in the United States, as exemplified by the success of musicians and performers like Carlos Santana, Ricky Martin, Enrique Iglesias, Christina Aguilera, Marc Anthony, and Jennifer Lopez.

n5 The written product of the theorizing is the result of annual conferences, the proceedings of which are regularly published. See Symposium, *Class in LatCrit: Theory and Praxis in a World of Economic Inequality*, [78 Denv. U.L.Rev. 467 \(2001\)](#); Colloquium, *Representing Latina/o Communities: Critical Race Theory and Practice*, 9 *La Raza L.J.* 1 (1996); Colloquium, *International Law, Human Rights and LatCrit Theory*, [28 U. Miami Inter-Am. L. Rev. 177 \(1997\)](#); Symposium, *LatCrit Theory: Naming and Launching a New Discourse of Critical Legal Scholarship*, [2 Harv. Latino L. Rev. 1 \(1997\)](#); Symposium, *Difference, Solidarity and Law: Building Latina/o Communities Through LatCrit Theory*, [19 Chicano-Latino L. Rev. 1 \(1998\)](#); Symposium, *Comparative Latinas/os: Identity, Law and Policy in LatCrit Theory*, [53 U. Miami L. Rev. 575 \(1999\)](#); Symposium, *Rotating Centers, Expanding Frontiers: LatCrit Theory and Marginal Intersections*, [33 U.C. Davis L. Rev. 751 \(2000\)](#); see also Symposium, *LatCrit: Latinas/os and the Law*, [85 Cal. L. Rev. 1087 \(1997\)](#), [10 La Raza L.J. 1 \(1998\)](#).

n6 In general, as used here, "Other" and being "othered" mean to be socially constructed as "not normative." See, e.g., Cathy J. Cohen, *Straight Gay Politics: The Limits of an Ethnic Model of*

Inclusion, in *Ethnicity And Group Rights* 580 (Will Kymlicka & Ian Shapiro eds., 1997) ("Much of the material exclusion experienced by marginal groups is based on, or justified by, ideological processes that define these groups as 'other.' Thus, marginalization occurs, in part, when some observable characteristic or distinguishing behavior shared by a group of individuals is systematically used within the larger society to signal the inferior and subordinate status of the group."). However, I will also use the term "Other" as a relative term. See *infra* note 14 and accompanying text.

n7 See Fourth Annual LatCrit Conference, Substantive Program Outline, Plenary Panel Three: Literature and Arts as Antisubordination Praxis LatCrit Theory and Cultural Production, available at <http://nersp.nerdc.ufl.edu/malavet/latcrit/lcivdocs/lcivsubs.htm> (last visited Aug. 23, 2000). The one exception was video verite pornography, discussed by Filmmaker Celine Salazar Parrenas. See generally Malavet, *Accidental Crit I*, *supra* note 1.

n8 See Fifth Annual LatCrit Conference, Substantive Program Outline, Plenary Panel Three: Multi/Cultural Artistic Re/presentation in Mass Media: Capitalism, Power, Privilege and Cultural Production, available at <http://nersp.nerdc.ufl.edu/malavet/latcrit/lcivdocs/substantiveprogram.htm> (last visited Aug. 23, 2000) [hereinafter *LatCrit V Substantive Program Outline*]. The panel had four presenters, one commentator and one moderator. The presenters were Ruby Andrew, J.S.D. candidate at Stanford Law School and an analyst for the Congressional Research Service, Steven W. Bender, Associate Professor of Law at the University of Oregon School of Law, Juan Velasco, Postdoctoral Fellow at the Chicano Studies Research Center at UCLA, and Dennis Greene, Associate Professor of Law at the University of Oregon School of Law. The commentator was Nancy Ehrenreich, Associate Professor of Law at Denver University College of Law. The author moderated.

n9 LatCritical means the LatCrit approach to legal theory. Francisco Valdes has written about Praxis in the LatCrit enterprise:

Following from the recognition that all legal scholarship is political is that LatCrit scholars must conceive of ourselves as activists both within and outside our institutions and professions. Time and again, the authors urge that praxis must be integral to LatCrit projects because it ensures both the grounding and potency of the theory. Praxis provides a framework for organizing our professional time, energy and activities in holistic ways. Praxis, in short, can help cohere our roles as teachers, scholars and activists. The proactive embrace of praxis as organic in all areas of our professional lives thus emerges as elemental to the initial conception of LatCrit theory. Praxis therefore serves as the second LatCrit guidepost.

Francisco Valdes, *Poised at the Cusp: LatCrit Theory, Outsider Jurisprudence and Latina/o Self-Empowerment*, [2 *Harv. Latino L. Rev.* 1 \(1997\)](#).

n10 The internalization of oppression occurs when a group that is oppressed by the normative society replicates some forms of oppression to marginalize members of its own community along lines of discrimination that parallel those of the normative group. For example, women might be subordinated by the men within the group, and among African Americans, lighter skin hues are considered more desirable. Oliva Espin explains the paradox of a group that is the object of discrimination marginalizing members of its own community:

The prejudices and racism of the dominant society make the retrenchment into tradition appear justifiable. Conversely, the rigidities of tradition appear to justify the racist or prejudicial treatment of the dominant society. These "two mountains" reinforce and encourage each other. Moreover, the effects of racism and sexism are not only felt as pressure from the outside; like all forms of oppression, they become internalized. . . .

Oliva W. Espin, *Women Crossing Boundaries: A Psychology of Immigration and Transformation of Sexuality* 8 (1999).

n11 See generally Pedro A. Malavet, *Puerto Rico: Cultural Nation, American Colony*, 6 *Mich. J. Race & Law* 1 (2001) [hereinafter Malavet, *Cultural Nation*]. This article describes the legal status of Puerto Rico as a United States colony, and of Puerto Ricans as statutory United States citizens. It also discusses the reality of a cultural nationhood on the territory of Puerto Rico which clashes with the Puerto Ricans' lack of sovereignty and with dominant narrative constructed by the U.S., thus making the Puerto Ricans a colonized peoples.

n12 Carla Freccero explains that the

term "cultural studies" covers a range of theoretical and political positions that use a variety of methodologies, drawing on ethnography, anthropology, sociology, literature, feminism, Marxism, history, film criticism, psychoanalysis, and semiotics. Cultural studies is anthropological, but unlike anthropology, it begins with the study of postindustrial rather than preindustrial societies. It is like humanism, but unlike traditional humanism it rejects the distinction between so-called low culture and high culture and argues that all forms of culture need to be studied in relation to a given social formation. It is thus interdisciplinary in its approaches. Cultural studies "has grown out of efforts to understand what has shaped post World War II societies and cultures: industrialization, modernization, urbanization, mass communication, commodification, imperialism, a global economy."

Carla Freccero, *Popular Culture: An Introduction* 14 (1999).

n13 See, e.g., Malavet, *Cultural Nation*, supra note 11 (explaining that the Puerto Ricans are culturally distinct from the normative U.S. society).

n14 Hence, "Othering" can be used as a subversive force that empowers marginalized colonial peoples. See Adeno Addis, *On Human Diversity And The Limits Of Toleration*, in *Ethnicity And Group Rights* 127 (Will Kymlicka & Ian Shapiro eds., 1997) ("By 'shared identity' I mean to refer to an identity that bonds together, partially and contingently, minorities and majorities, such that different cultural and ethnic groups are seen, and see themselves, as networks of communication where each group comes to understand its distinctiveness as well as the fact that distinctiveness is to a large degree defined in terms of its relationship with the Other.").

n15 In speaking of the dangers of nationalism, Ronald Beiner ponders: "Either fascism is a uniquely evil expression of an otherwise benign human need for belonging; or there is a kind of latent fascism implicit in any impulse towards group belonging." Ronald Beiner, *Introduction*, in *Theorizing Citizenship* 19 (Ronald Beiner ed., 1995) [hereinafter *Theorizing Citizenship*].

n16 Freccero explains that

imperialism can occur on different levels and usually involves territorial annexation, economic and political annexation, juridical (legal) annexation, and ultimately ideological and cultural annexation; these latter are often referred to as cultural imperialism . . . cultural or mental decolonization is a "literature/criticism that is participatory in the historical processes of hegemony and resistance to domination rather than (only) formal and analytic." Collective and concerted resistance to programmatic cultural imperialism thus comes to be called 'cultural' or "mental" decolonization.

Freccero, supra note 12, at 68 (citations omitted).

n17 Normative means the dominant societal paradigm, that is, what is considered "normal" in a given sociological context. See Berta Esperanza Hernandez-Truyol, *Borders (En)gendered*:

Normativities, Latinas and a LatCrit Paradigm, [72 N.Y.U. L. Rev. 882, 891 \(1997\)](#) ("knowledge is socially constructed;" therefore, the "normative paradigm's dominance" defines "normal").

n18 "High Culture" maintains that "culture is the gift of educated taste that marks off a lady or a gentleman from the upstart. For those in the Marxist tradition, culture has its place in the larger class war. High culture cloaks the extortions of the rich. Ersatz mass culture confounds the poor. Only popular cultural traditions can counter the corruption of the mass media." Adam Kuper, *Culture: The Anthropologists' Account* 4-5 (1999).

n19 For example, two other contributors to this symposium provide different perspective on the current Latin Music Craze. See Steven W. Bender, *Will the Wolf Survive?: Latino/a Pop Music in the Cultural Mainstream*, [78 Denv. U. L. Rev. 719 \(2001\)](#) (a Chicano perspective); Nancy Ehrenreich, *Confessions of a White Salsa Dancer: Issues of Appropriation, Appreciation, and Identity in the "Latin Music Craze"*, [78 Denv. U. L. Rev. 795 \(2001\)](#) (a White Angla perspective); see also Sharon Elizabeth Rush, *Loving Across the Color Line: A White Adoptive Mother Learns About Race* (2000) (a poignant personal narrative about witnessing racism),

n20 Essentialism, as used herein, means

the concept of essentialism suggests that there is one legitimate, genuine universal voice that speaks for all members of a group, thus assuming a monolithic experience for all within the particular group - be it women, blacks, Latinas/os, Asians, etc. Feminists of color have been at the forefront of rejecting essentialist approaches because they effect erasures of the multidimensional nature of identities and also collapse multiple differences into a singular homogenized experience.

Berta Esperanza Hernandez Truyol, *Latindia II - Latinas/Os, Natives, And Mestizajes - Latcrit Navigation Of Nuevos Mundos, Nuevas Fronteras And Nuevas Teorias*, [33 U.C. Davis L. Rev. 851, 862 n.26 \(2000\)](#) (citations omitted).

n21 Hernandez-Truyol explains the irony of using the term "American" to refer to citizens of the United States of America:

I will use the designation U.S. for the United States of America. Many, if not most or all of the other authors use the terms U.S. and America interchangeably. I decided not to alter the authors' choice of language in that regard. I do find it necessary to comment thereon, however, mostly because I find it ironic that in a book on imperialism the imperialistic practice of denominating the U.S. as "America" remains normative. Indeed, America is much larger than the U.S. alone; there is also Canada [and Mexico] in North America, and all of Latin America and the Caribbean, some locations commonly referred to as Central America, some as South America.

Berta Esperanza Hernandez-Truyol, *Introduction*, in *Moral Imperialism: A Critical Anthology* n.1 (Berta Esperanza Hernandez-Truyol ed., 2001).

n22 "Colony" is used in this article to refer to a polity with a definable territory that lacks legal/political sovereignty because that authority is being exercised by peoples that are distinguishable from the inhabitants of the colony. See generally Malavet, *Cultural Nation*, supra note 11.

n23 The phrase "obvious change" is used here because Puerto Rican statutory U.S. citizenship does in fact undergo a legal change whenever a Puerto Rican moves from the Island to one of the fifty states. See generally Malavet, *Cultural Nation*, supra note 11, at Part III.B.3, Part III.C

(explaining legal construction of second-class citizenship for Puerto Ricans who choose to remain on the island territory); see also *infra* note 49 and accompanying text.

n24 [De La Rosa v. United States, 842 F. Supp. 607, 609 \(D.C.P.R. 1994\)](#) ("granting U.S. citizens residing in Puerto Rico the right to vote in presidential elections would require either that Puerto Rico become a state, or [the adoption of] a constitutional amendment"); cf. *Gregorio Igartua de la Rosa v. United States*, Civil No. 00-1421(JP), July 19, 2000, 1 (D.C.P.R.) (The Court stated: "The present political status of Puerto Rico has enslaved the United States citizens residing in Puerto Rico by preventing them from voting in Presidential and Congressional elections and therefore is abhorrent to the most sacred of the basic safeguards contained in the Bill of Rights of the Constitution of the United States - freedom." Accordingly, in denying the government's Motion to Dismiss, the court ruled that U.S. citizens residing in Puerto Rico either by birth or by relocation from the U.S. mainland, have a constitutional right to vote in Presidential elections.).

n25 The "Graduate Fellowship Program for Future Law Professors" is designed "to attract candidates who can bring under-represented perspectives to the development of legal scholarship and increase the diversity of the law teaching profession." <http://www.law.georgetown.edu/graduate/fellowships.html#3> (last visited August 31, 2000).

n26 Each fellow works with at least one faculty mentor to develop a scholarly agenda and to co-teach in their courses. Professor James V. Feinerman and Professor John R. Schmertz were my mentors.

n27 There were many, but Professor and Associate Dean Elizabeth Patterson and Professor Emma Coleman Jordan were especially invested in this program. Professors Susan Low Bloch, Michael Gottesman, William Vukovich, Charles Abernathy, and Charles Gustafson were also encouraging. Additionally, my immediate predecessor in the program, Nancy Ota, now a professor at Albany, was especially helpful.

n28 At last count, I was one of nineteen Puerto Ricans, and 142 Latinas/os in the U.S. legal academy. Michael A. Olivas, comp. *Latino/a Law Professors, 2000-01*, personal correspondence via E-Mail from Michael Olivas, Sept. 2, 2000 (on file with the author). This represents an increase in the overall number of Latina/o law professors, as well as an increase of two in the number of Puerto Ricans in the past six years. See also Michael A. Olivas, *The Education of Latino Lawyers: An Essay on Crop Cultivation*, 14 *Chicano-Latino L. Rev.* 117, 129 (1994) (when this article was published, there were seventeen Puerto Rican and 140 Latina/o law professors in the U.S.). Naturally, these numbers do not include those teaching in the four law schools in Puerto Rico.

n29 See Malavet, *Accidental Crit I*, *supra* note 1, at 1327. ("What I had not learned until recently, is that when a white American looks at me, he or she sees a *persona de color* [colored person] - and it sure is not a statement in favor of making the diaspora normative."). In this discussion, I explained that my dad had *pelo malo* (bad hair) - a reference to curly or kinky hair, which reflects an essentialist preference for white features. However, after reading that draft, my father has hastened to point out that he has medium-bad hair, which is better than *pelo malo*, but worse than *pelo lacio* (straight hair).

n30 Luke 15:11-32 (King James) ("It was meet that we should make merry, and be glad: for this thy brother was dead, and is alive again; and was lost and is found.").

n31 On December 31, 1986, ninety-six persons died as a result of an intentionally-set fire at the San Juan Dupont Plaza Hotel. The first of hundreds of suits was filed just a few days into the New Year of 1987. I watched the fire on television from my father's home in Ponce where I

was staying during the Winter break from Georgetown Law School. I was again home in Ponce, getting ready to take the Puerto Rico Bar exam during the Summer of 1987, when I heard that the Honorable Raymond L. Acosta was looking for a law clerk to fill an emergency position that had opened up to assist him in his work on the DuPont litigation, which by then had been assigned the number MDL-721 by the Multidistrict litigation panel. For some background on the Dupont Litigation, see generally [In Re Recticel Foam Corporation, 859 F.2d 1000 \(1st Cir. 1988\)](#); [In Re San Juan Dupont Plaza Hotel Fire Litigation, 859 F.2d 1007 \(1st Cir. 1988\)](#); In Re: [Two Appeals Arising Out Of The San Juan Dupont Plaza Hotel Fire Litigation, 994 F.2d 956 \(1st Cir. 1993\)](#); In Re: [Thirteen Appeals Arising Out Of The San Juan Dupont Plaza Hotel Fire Litigation, 56 F.3d 295 \(1st Cir. 1995\)](#).

n32 The United States District Court for the District of Puerto Rico was created by § 34 of the Organic Act of 1900. This court was "the successor to the United States Provisional Court established by General Order, Numbered Eighty-Eight, promulgated by Brigadier-General Davis, United States Volunteers" Id.

n33 Judge Acosta, a person with a broad-based life experience, had jumped into the waters of Normandy on D-Day plus one, on June 7, 1944. He is a former FBI Agent, who was appointed U.S. Attorney for the District of Puerto Rico by President Carter, and U.S. District Court Judge by President Reagan. I very much enjoyed working for Judge Acosta, but working for the most important agency of the U.S. governance of Puerto Rico was paradoxical. On the effect of the court on Puerto Rico law, see generally Jose Trias Monge, *El Choque de Dos Culturas Juridicas en Puerto Rico* (1991).

n34 [28 U.S.C. § 119](#) (1999) ("Puerto Rico constitutes one judicial district. Court shall be held at Mayaguez, Ponce, and San Juan.").

n35 [28 U.S.C. § 41](#) (1999) (The First Circuit includes "Maine, Massachusetts, New Hampshire, Puerto Rico, Rhode Island.").

n36 [28 U.S.C. § 41](#).

n37 Persons were deemed to be "subversivos" (subversives) because they favored the independence of Puerto Rico. See [Noriega-Rodriguez v. Hernandez-Colon, 122 P.R. Dec. 650 \(1988\)](#) (the practice of opening police files for people because of political activity violates the Puerto Rico Constitution); see also *Noriega-Rodriguez v. Hernandez-Colon*, 92 JTS 85 (1992) (the files could not be edited to remove or delete the names of undercover agents or other informants before being returned to their subjects). Compare the Puerto Rico cases with the following U.S. Supreme Court decisions: [Communist Party v. Subversive Activities Control Board, 351 U.S. 115 \(1956\)](#) (Smith Act activities against the communist party not held unconstitutional); [Laird v. Tatum, 408 U.S. 1 \(1972\)](#) (existence of "data gathering system" in which the Pentagon created files on persons it deemed dangerous, did not unduly chill the files' objects first amendment rights). See generally Ivonne Acosta, *La Mordaza: Puerto Rico, 1948-1957* 124-125 (1987) (an excellent scholarly analysis of the effects of the Puerto Rican version of the Smith Act); Manuel Suarez, *Requiem on Cerro Maravilla: The Police Murders in Puerto Rico and the U.S. Government Coverup* (1987) (a detailed account of the murder of two pro-independence supporters by Puerto Rico police, and their coverup); *Las Carpetas: Persecucion Politica y Derechos Civiles en Puerto Rico* (Ramon Bosque Perez & Jose Javier Colon Morera eds., 1997) [hereinafter *Las Carpetas*] (an excellent collection of the legal documents related to the landmark "subversive" files decision by the Puerto Rico Supreme Court).

n38 I always thought he wanted a Puerto Rican passport. However, he tells me today, in reaction to an earlier draft of this narrative, that he would be happy with an Associated

Republic and an American Passport. But the police thought otherwise. My father's carpeta de subversivo (subversive file) was file number 31336, it had 60 pages. According to a special form titled "Oficina de Inteligencia," Office of Intelligence, the officer put an "x" to indicate that my father was active in a proindependence movement, but that "no" he was not dangerous. Carpeta No. 31336, at 55 (copy on file with the author).

n39 This is also in keeping with family tradition, because in addition to his work as a law teacher, my father has written extensively about the law. See, e.g., Pedro MalavetVega, *Evolucion del Derecho Constitucional en Puerto Rico* (1998) [Malavet-Vega, *Evolucion*]; Pedro MalavetVega, *Manual de Derecho Notarial Puertorriqueno* (1988); Pedro Malavet-Vega, *Manual de Derecho Penal Puertorriqueno* (1997).

n40 See generally Malavet, *Accidental Crit I*, supra note 1, Part IV.

n41 This is probably the best example of a form of discrimination that is in fact worn as a badge of honor by many men, as is further explored below at note 181 and accompanying text.

n42 This is paradoxical given the strong link between the two cultures, a two-way cultural bridge that is well over 100 years old. This is discussed further in Part IV infra.

n43 La Perla del Sur, the Pearl of the South, is a reference to Ponce, which is on the Southern coast of Puerto Rico.

n44 In commenting on the current huge commercial success of Latina/o artists, we should not ignore that Latinas and Latinos have been in the American cultural scene for a long time. Tango, for example, became hugely popular in the United States starting sometime around 1913. John Storm Roberts, *The Latin Tinge: The Impact of Latin American Music on the United States* 44 (1999). However, in terms of commercial success and mass media exposure, the new crop of artists who are clearly identified as being Latinas and Latinos is something new. Bender, supra note 19 (discussing other artists of Latina/o heritage who have been popular in the U.S. market, but who have not generally been viewed as Latinas/os, for example, Linda Ronstadt and Mariah Carey; Prof. Bender also carefully documents the commercial success of the current group).

n45 Not to be confused with the famous Mexican balladist Marco Antonio Muniz. Marc Anthony won the Grammy for Best Tropical Latin Performance at the Forty-First Annual Grammy Awards.

n46 Aguilera won the Grammy for Best New Artist at the Forty-Second Annual Grammy Awards. <http://grammy.com/awards/newwinners.html> (visited August 28, 2000).

n47 Santana's album *Supernatural* dominated the Forty-Second Annual Grammy Awards, winning in the following categories: Record of the Year (for Smooth), Album of the Year, Song of the Year (again for Smooth), Best Pop Performance by a Duo or Group with a Vocal (for Maria Maria), Best Pop Collaboration with Vocals, Best Pop Instrumental Performance, Best Rock Performance by a Duo or Group with a Vocal, Best Rock Instrumental Performance, and Best Rock Album. <http://grammy.com/awards/newwinners.html> (visited August 28, 2000).

n48 See generally Bender, supra note 19, at 729.

n49 See [Balzac v. Porto Rico, 258 U.S. 298 \(1922\)](#). The Supreme Court expressly indicates that as long as they choose to remain on the Island, Puerto Ricans, who are United States citizens, will not enjoy the full rights of American citizenship. It thus distinguishes between Puerto Ricans as individual United States citizens, and as collective inhabitants of Puerto Rico. As individuals, they are free "to enjoy all political and other rights" granted U.S. citizens, if they

"move into the United States proper." [Id. at 311](#). But as long as they remain on the Island, they cannot fully enjoy the rights of United States citizenship.

n50 Kuper, *supra* note 18, at 58 (citations omitted).

n51 The communitarian concept of citizenship views the "citizen as a member of a community." Herman Van Gunsteren, *Four Conceptions of Citizenship*, in *The Condition of Citizenship* 41 (Bart van Steenberg ed., 1994). "This conception strongly emphasizes that being a citizen means belonging to a historically developed community. Individuality is derived from it and determined in terms of it." *Id.* Moreover, "identity and stability of character cannot be realized without the support of a community of friends and like-minded kindred." *Id.*

n52 Freccero, *supra* note 12, at 13.

n53 *Id.* at 9. In the LatCrit context, the description of the Media Panel put it this way:

[1] How does law participate in the process of reducing into arts into an "entertainment industry"; [2] How does the structure of that industry restrict the production and dissemination of authentically transformative cultural forms and events? Conversely, how does it promote the production of homogenized MacCulture or of hegemonic cultural stereotypes?; [and 3] How should LatCrit theory engage these issues?

LatCrit V Substantive Program Outline, *supra* note 8.

n54 "Popular culture is a currency, however, that circulates between the academy and public culture, and as such it can at least constitute a common terrain of contestation." Freccero, *supra* note 12, at 9.

n55 *Id.* at 9.

n56 *Id.* at 135 n.1.

n57 "However, no LatCrit analysis of the transformative power of the arts would be complete without attention to the impact of economic power, profit incentives, and market structures on the production of artistic representations." LatCrit V Substantive Program Outline, *supra* note 8.

n58 Freccero explains that: "Graeme Turner attributes to Stuart Hall and Paddy Whannel the 'influential distinction between popular art (which derives from folk cultures) and mass art (which does not): 'The typical 'art' of the mass media today is not a continuity from, but a corruption of, popular art,' they say." Freccero, *supra* note 12, at 135 n.1 (citations omitted).

n59 As counterhegemony, "popular culture becomes the currency of political polemic and debate." Freccero, *supra* note 12, at 8. It is deployed against the hegemonic "dominant culture." *Id.* This is a process that is essential for legal scholars, as explained again in the Media Panel description:

Whether in culture or politics, the language of law is a crucial field for mediating questions of either symbolic or literal representation. Responding to critics of post modern theory, who complain that cultural politics has replaced real politics with "the representation of politics," we shall explore the "politics of representation" and reveal the various ways in which mass-media constitute a form of exclusionary and patriarchal political activation through the mis/use of power. Analysis of mass-media narratives allows us to engage in an interdisciplinary, scholarly and critical study of certain cultural representations that is consistent with the previously articulated commitments of LatCrit theory to the construction of community and the transformation of material realities.

LatCrit V Substantive Program Outline, *supra* note 8.

n60 To the extent that this article is based on the concept of Puerto Rican cultural nationhood, it is certainly at least partially using ethnicity as a marker for a particular form of citizenship. In the context of the citizenship debates in political and legal philosophy, this is an attempt to define what Ronald Beiner calls the "elusive synthesis of liberal cosmopolitanism and illiberal particularism, to the extent that it is attainable, is what I want to call 'citizenship.'" Beiner, *supra* note 15, at 12-13. In trying to come up with this definition, he struggles with what he describes as the "universalism/particularism conundrum," which he defines as: "To opt wholeheartedly for universalism implies deracination--rootlessness. To opt wholeheartedly for particularism implies parochialism, exclusivity, and narrowminded closure of horizons." *Id.*

n61 Adeno Addis, in arguing against secession, identifies the need for co-existence: "Whether the multiplicity is the 'unintended' consequence of colonialism or the organizing principle, the defining feature, of the particular nation-state, the uncontroverted fact is that most nations are indeed multiethnic and multicultural." Addis, *supra* note 14, at 113.

n62 The popular culture of Puerto Ricans living in the islands of Puerto Rico.

n63 The popular culture of Puerto Ricans in the "United States proper" as that term is defined in [Balzac v. Porto Rico, 258 U.S. 298 \(1922\)](#). Essentially, although Puerto Rico is United States territory and Puerto Ricans are United States citizens, the United States proper is used here to refer to the 50 states of the Union.

n64 This is not to suggest an acceptance of a single American homogenized culture, since that would be the result of an essentialist process that imposes a homogenized normativity. However, there is at least an attempt at a normative Angla/o American culture that does not include the Latinas/os within the U.S. borderlands.

n65 Unless otherwise expressly indicated, references to the isla or island should be read as synonymous with all the Puerto Rican islands. Puerto Rico is composed of several islands. However, it is generally referred to as the "Isla del Encanto" (The Enchanted Island or the Isle of Enchantment), or simply as the "island." The Islands of Puerto Rico are the main island known as Puerto Rico and a series of smaller islands, including, but not limited to, Vieques, Culebra, Mona, and Monito. See [48 U.S.C. § 731](#) (1999) ("The provisions of this Act shall apply to the island of Puerto Rico and to the adjacent islands belonging to the United States, and waters of those islands; and the name Puerto Rico as used in this Act shall be held to include not only the island of that name but all the adjacent islands as aforesaid.").

n66 Puerto Rico was ceded to the U.S. by the treaty that ended the Spanish American War. The official title is the "Treaty of Peace Between the United States of America and the Kingdom of Spain." See P.R. Laws Ann. Vol. 1, Historical Documents, at 16 (1999). Article II of the Treaty reads: "Spain cedes to the United States the island of Porto Rico sic and other islands now under Spanish sovereignty in the West Indies, and the island of Guam in the Marianas or Ladrones" Race and Races: Cases and Resources for a Diverse America 327 (Juan Perea et al. eds., 2000) (hereinafter Race and Races) (citing 11 Treaties and Other International Agreements of the United States of America 1776-1949 615-19 (Charles I. Bevans ed., 1974)). The editors of the Puerto Rico collection changed the references to "Porto Rico" included in the original English to "Puerto Rico." See P.R. Laws Ann. Vol. 1, Historical Documents, at 17 (1999).

On Puerto Rico's continued territorial status, see generally Malavet, Cultural Nation, *supra* note 11. See also Ediberto Roman, Empire Forgotten: The United States's Colonization Of Puerto Rico, [42 Vill. L. Rev. 1119, 1151 & n.146 \(1997\)](#).

n67 See Treaty of Paris, Dec. 10, 1898, U.S.-Spain, art. IX, T.S. No. 343, in *Race and Races*, supra note 66, at 327 (citing 11 *Treaties and Other International Agreements of the United States of America 1776-1949* 615-19 (Charles I. Bevans ed. 1974) ("The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress.")); see also Jones Act of 1917, ch. 145, 39 Stat. 951, 953 (1917) (conferring U.S. citizenship on all "citizens of Porto Rico sic;" it adopted the definition of Puerto Rican citizenship included in the Foraker Act); Foraker Act, ch. 191, 31 Stat. 79 (1900) ("That all inhabitants continuing to reside therein who were Spanish subjects on the eleventh day of April, eighteen hundred and ninety-nine, and then resided in Puerto Rico, and their children born subsequent thereto, shall be deemed and held to be citizens of Puerto Rico, and as such entitled to the protection of the United States, except such as shall have elected to preserve their allegiance to the Crown of Spain . . ."). See generally Malavet, *Cultural Nation*, supra note 11.

n68 Puerto Rico has almost four million residents, and there are over 2.7 million Puerto Ricans in the United States mainland. Francisco R. Rivera Batiz & Carlos E. Santiago, *Island Paradox: Puerto Rico in the 1990s* 23, 127 (1996) (the 1990 census recorded 3.5 million residents of Puerto Rico, and 2.7 million Puerto Ricans in the mainland). On the cultural links between mainland and island Puerto Rican communities, see generally Ruth Glasser, *My Music is My Flag: Puerto Rican Musicians and their New York Communities 1917-1940* (1995); Angel G. Quintero Rivera, *Salsa Sabor y Control: Sociologia de la Musica Tropical* (1998).

n69 Hence, Puerto Rico remains an organized but unincorporated territory of the United States. See generally Malavet, *Cultural Nation*, supra note 11. The essentialized homogeneity reflected in each of these labels is discussed and deconstructed in Part IV below.

n70 An article in the *New York Times* reflects this latter attitude. On Sunday, September 13, 1999, the paper ran an article headlined "Hundreds Gather to Welcome Pardoned Militants in Puerto Rico." *Hundreds Gather to Welcome Pardoned Militants in Puerto Rico*, *New York Times*, Sept. 13, 1999, at A1. The last paragraph of that story read as follows: "As residents of a United States commonwealth, Puerto Ricans do not pay Federal taxes but receive \$ 11 billion annually in Federal aid. They are United States citizens but cannot vote for President." *Id.*

Initially, the statement, as drafted, is factually incorrect. Puerto Ricans do not pay Federal income taxes, but they do have to pay Social Security and FICA taxes on income earned in Puerto Rico. See Malavet, *Cultural Nation*, supra note 11. But more importantly, the article implies that those who believe in Puerto Rican Independence are being ungrateful to the United States for its "generosity" in providing "Federal Aid." This characterization is carefully calculated to create a false impression of all Puerto Ricans as living off the "generosity" of the United States. Puerto Rico is a United States Territory, and Puerto Ricans are United States citizens. Therefore, the United States is simply fulfilling its obligations to citizens of the United States, not providing "aid" out of the goodness of its heart. In fact, the United States citizens residing in Puerto Rico receive federal benefits at a lower rate than citizens residing in the Continental United States. See Malavet, *Cultural Nation*, supra note 11.

n71 See, e.g., *The Pentagon and Vieques*, *Wash. Post*, Oct. 22, 1999, at A32 ("Chairing a Vieques hearing Tuesday, Sen. John Warner said that, doing their patriotic duty, his own constituents in Quantico sit closer to an active live-fire range than do residents of Vieques.").

n72 For example, Teddy Roosevelt, Jr., who had been appointed governor of the island by President Herbert Hoover, called the Puerto Ricans "shameless by birth" and added that he did not "know anything more comic and irritating than Puerto Rico." *Puerto Rico: A Political and Cultural History* 212, 220 (Arturo Morales Carrion ed., 1983). Another appointed governor,

Rexford G. Tugwell, later President of the University of Chicago, referred to Puerto Ricans as "mulatto, Indian, Spanish people" who therefore made "poor material for social organization." *Id.* at 232.

n73 Since the outset of United States colonization, it was evident that the United States interest in conquering land did not extend equally to the colonized peoples. The Treaty of Paris, through which Spain ceded Puerto Rico to the United States, unlike the Treaty of Guadalupe Hidalgo, which ceded conquered Mexican territory, did not guarantee United States citizenship for the inhabitants of Puerto Rico. In fact, the Spaniards on the Island could choose to retain their citizenship, but everyone else on it was left in a legal limbo. This is not to say that they were not interested at all in the people. The United States wanted consumers, not citizens. See Roman, *supra* note 66. Later, citizenship is given to make Puerto Ricans eligible to die for "our" country. See Rexford Guy Tugwell, *The Stricken Land: The Story of Puerto Rico* 70 (1946). But they are certainly not to receive all the "blessings of liberty" that are supposed to accompany that citizenship. See Malavet, *Cultural Nation*, *supra* note 11 (discussing *Califano v. Torres* and *Harris v. Rosario*).

n74 In contrasting "Americans" and Puerto Rican United States citizens, the U.S. Supreme Court stated:

Alaska was a very different case from that of Porto Rico. It was an enormous territory, very sparsely settled and offering opportunity for immigration and settlement by American citizens. It was on the American Continent and within easy reach of the then United States. It involved none of the difficulties which incorporation of the Philippines and Porto Rico presents. . . .

[Balzac v. Porto Rico, 258 U.S. at 309](#) (emphasis added). See generally Malavet, *Cultural Nation*, *supra* note 11. The statement is enlightening since this case was an examination of the United States citizenship that had been granted to the Puerto Ricans in 1917; thus, the Supreme Court characterizes the U.S. citizens in Puerto Rico as not being "American."

n75 As is reflected in the Puerto Rican cultural identity discussed in Part III. See also Malavet, *Cultural Nation*, *supra* note 11.

n76 Nevertheless, the faultlines and intersectionalities of these two Puerto Rican cultures are discussed in the footnotes in Part III.

n77 U.S. troops wore green jackets during the Mexican campaigns. *Military Uniforms in America*, vol. 2: *Years of Growth* (John Robert Elting et al. eds., 1974). The U.S. troops that landed in Puerto Rico were actually wearing Civil-War era blue. Carl Sandburg, *Always the Young Strangers* (1953), in *The Puerto Ricans: A Documentary History* 97 (Kal Wagenheim & Olga Jimenez de Wagenheim eds., 1996) ("We still wore the heavy blue-wool pants of the Army of the Potomac in '65 and thick canvas leggings laced from ankles to knees.").

n78 This derivation has been widely rejected by etymologists. See Jorge Mejia Prieto, *Asi habla el Mexicano* 83 (1984) (no basis for "Green grow the grass" derivation); *The Random House Dictionary of the English Language* 841 (1987) (taking the same position as Mejia Prieto).

n79 Prieto, *supra* note 78, at 83 (a dictionary published in 1765 explained that "gringo" was a term used in Malaga, Spain, to refer to foreigners unable to speak Spanish easily, and was probably a bastardization of "greek," which was generally used to mean "incomprehensible language").

n80 As in the phrase, "chemical formulas are greek to me." *Webster's New Collegiate Dictionary* 537 (9th ed. 1984) (*italics original*). The medieval Latin phrase "*Graecum est; non*

potest legi: It is Greek; it cannot be read" is the origin of the term's use in English to mean "something unintelligible." Id.

n81 E.g., *Americanismos* 287 (gringo is an adjective meaning foreigner or North American from the United States); *Diccionario de La Lengua Espanola*, vol. 1, 1059 (gringo is an adjective meaning foreign, white Europeans, North American from the U.S.).

n82 1 *Diccionario de La Lengua Espanola* 1059.

n83 6 *The Oxford English Dictionary* 849 (J.A. Simpson, et al, ed., 1989) ("contemptuous"); *Webster's Ninth New Collegiate Dictionary* 537 ("used disparagingly"); *The Random House Dictionary of the English Language* 841 (1987) ("usually disparaging").

n84 The others arguably being The United Arab Emirates and perhaps the Commonwealth of Independent States. The term is also preferable to allowing United States citizens, who after all occupy just one of the many countries of the Americas to make "American" their property. See also [Hernandez-Truyol, supra](#) note 21.

n85 Whether many Americans feel that the term is an epithet or not is open to question, as illustrated by two personal anecdotes. My sister's godfather, a white U.S. citizen who has lived in Puerto Rico for over thirty years, likes to be called a gringo, as a descriptive name, and often describes himself as such. One of my white anglo teachers at Georgetown Law School, who was then an Undersecretary of the Treasury, used the term regularly in his class and clearly found it appropriate and not offensive. However, one of my students at the University of Florida compared it to the word "nigger" when she questioned my having used it in class (in a discussion of [28 U.S.C. § 1332\(a\)\(2\)](#) (alienage jurisdiction)).

n86 With some minor exceptions, this section repeats the analysis of Puerto Rican culture that I presented in Malavet, *Cultural Nation*, *supra* note 11.

n87 See <http://www.endi.com/> (visited August 22, 2000) (copy on file with author).

n88 See Carmen Aboy Valdejuli, *Cocina Criolla* 226 -227(1992) (a classic Puerto Rican cookbook that is also available in English); Marta Coll Camalez de Velazquez, Elizabeth Sanchez Flores, Esther Seijo de Zayas, *Siluetas que Pueden Cambiar: Calorias en Platos y Alimentos de Uso Frecuente en Puerto Rico y en Otros Paises de America y el Caribe* 74 (1991) (a 60-gram alcapurria has 230 calories, 16.1 grams of cholesterol, 4.0 grams of protein, and 16.6 grams of fat).

n89 The process of waiting for the hurricane in Puerto Rico has been masterfully and humorously described by the Cuban comic Alvarez-Guedes.

n90 As reflected in thriving popular cultural narratives, this identity is true and strong, in spite of the strong efforts to "Americanize" the country during the early part of the United States colony. See generally Aida Negron-De Montilla, *La Americanizacion en Puerto Rico y el Sistema de Instruccion Publica 1900/1930* (1977); Malavet, *Cultural Nation*, *supra* note 11.

n91 See generally Malavet-Vega, *Evolucion*, *supra* note 39, Monge, *supra* note 33.

n92 Principally Family Law, Contract, Property and Torts. See generally Pedro A. Malavet, *Counsel for the Situation: The Latin Notary, a Historical and Comparative Model*, 19 *Hastings Int'l. & Comp. L. Rev.* 389-488 (1996) [hereinafter *Counsel for the Situation*]; Pedro A. Malavet, *The NonAdversarial, Extra-Judicial Search For Legality And Truth: Foreign Notarial Transactions As An Inexpensive And Reliable Model For A Market-Driven System Of Informed Contracting And Fact-Determination*, 16 *Wis. Int'l L.J.* 1 (1997) [hereinafter *Extra-*

Judicial]; and Pedro A. Malavet, *The Foreign Notarial Legal Services Monopoly: Why Should We Care?*, 31 *John Marshall L. Rev.* 945 (1998) [hereinafter *Notarial Monopoly*].

n93 The Puerto Rico Civil Code, now title 31 of the Laws of Puerto Rico annotated, is still substantially the Spanish Civil Code for Puerto Rico and Cuba of 1898. M. Rodriguez Ramos, *Brief History of the Codes of Puerto Rico*, 23 *Tul. L. Rev.* 1, 345 (1949).

n94 One area where the clash has produced particularly unhappy results is tort law. See Guaroa Velazquez, *Las Obligaciones Segun el Derecho Puertorriqueno* xxiv (1964). See generally Carmelo Delgado Cintron, *La Tansculturacion del Pensamiento Juridico en Puerto Rico*, 45 *Revista Jur. UPR* 305 (1976); Carmelo Delgado Cintron, *Derecho y Colonilismo* (1988).

n95 See generally Malavet, *Counsel for the Situation*, supra note 92; Malavet, *Extra-Judicial*, supra note 92; Malavet, *Notarial Monopoly*, supra note 92.

n96 Since Spanish was used as a matter of course, the Foraker Act and the Jones Act needed to expressly stipulate that proceedings in the United States District Court, and appeals from the Supreme Court of Puerto Rico to the Circuit, had to be conducted in English. Foraker Act § 34 ("All pleadings and proceedings in [U.S. District Court for Puerto Rico] shall be conducted in the English language."); Jones Act § 42 ("All pleadings and proceedings in the District Court of the United States for Puerto Rico shall be conducted in the English language."). In *People v. Superior Court*, 92 P.R.R. 580, the Puerto Rico Supreme Court denied a litigant's request to proceed in English rather than in Spanish in local court, even though both English and Spanish were the official languages. 582 P.R.R. 585, 589-590 ("the means of expression of our people is Spanish, and that is a reality that cannot be changed by any law"); See also P.R. Civil Code Art. 13 ("In case of discrepancy between the English and Spanish texts of a statute passed by the Legislative Assembly of Puerto Rico, the text in which the same originated in either house, shall prevail in the construction of said statute, except in the following cases: (a) If the statute is a translation or adaptation of a statute of the United States or of any State or Territory thereof, the English text shall be given preference over the Spanish. (b) If the statute is of Spanish origin, the Spanish text shall be preferred to the English. (c) If the matter of preference cannot be decided under the foregoing rules, the Spanish text shall prevail.").

n97 While this is true for the isla, it is not for Puerto Ricans outside Puerto Rico for whom bilingualism, and sometimes English mono-lingualism are the norm. See Celia Alvarez, *Code Switching in Narrative Performance: Social, Structural, and Pragmatic Function in the Puerto Rican Speech Community in East Harlem*, in *Sociolinguistics of the Spanish Speaking-World: Iberia, Latin America, United States* 271-298 (Carol Klee & Luis A. Ramos Garcia eds., 1991).

n98 See Amilcar A. Barreto, *Language, Elites, and the State: Nationalism in Puerto Rico and Quebec* 118 (1998) (the language of instruction in Puerto Rico public schools is Spanish). The Puerto Rico schools are divided into elementary schools (K-6th grade), intermediate schools (7, 8, 9 grades) and High Schools (10, 11, 12th grades). P.R. Regulations § 31-91. The language of instruction for Junior High Schools is Spanish. *Id.* at (5). "Every subject in the elementary schools, except English, shall be taught in the Spanish language." P.R. Regulations § 31-93.

n99 To the extent that the art form uses languages, as is the case, for example, in literature and music.

n100 Language is generally considered an essential part of ethnicity or ethnic identity. See generally Joshua A. Fishman, *Language, Ethnicity and Racism*, in *Sociolinguistics: A reader and Coursebook* 329-340 (Nikolas Coupland & Adam Jaworski eds., 1997).

n101 Religious diversity in the Latina/o communities is not rare. For a comedic take on being "jewyoricán," see <http://www.latinolink.com/article> (visited Aug. 28, 2000) (reviewing the work of Jewish-Puerto Rican comedian Richie Bulldog (Richie Abramowitz)). For an artistic exploration and Re/construction of a Latina's identity that includes Palestinian Orthodox Christian, Polish Jewish, while growing up Salvadoran Catholic, see the artist Muriel Hasboun's exhibit *Todos los Santos* (All the Saints). <http://www.zonezero.com/exposiciones/fotografos/muriel2/> (visited Aug. 14, 2000).

n102 On the Puerto Rican diet generally, see Carmen Aboy Valldejuli, *Cocina Criolla* (1992) (a classic Puerto Rican cookbook that is also available in English); Marta Coll Camalez de Velazquez, Elizabeth Sanchez Flores, Esther Seijo de Zayas, *Siluetas que Pueden Cambiar: Calorias en Platos y Alimentos de Uso Frecuente en Puerto Rico y en Otros Paises de America y el Caribe* (1991) (a dietary and caloric guide based on the traditional Puerto Rican diet, with bilingual index).

n103 The traditional Christmas meal will include Roast Pork, rice with gandules (pigeon peas) and pasteles. See Pedro Malavet-Vega, *Navidad Que Vuelve* 28-29 (1987) [hereinafter Malavet-Vega, *Navidad*].

n104 The Taino inhabitants of Puerto Rico used shellfish as a major part of diet, especially conch, leaving huge mounds of the discarded shells for archeologists to find. On the taino diet generally, see Irving Rouse, *The Tainos: Rise & Decline of the People Who Greeted Columbus* 13, 57 (1992).

n105 Tostones are pieces of green plantain that are fried once to get the plantain soft; the plantain is then pressed and fried again until crunchy on the outside. Mofongo is plantain that is fried only until soft, and is then mixed with garlic, pork rinds and olive oil, and formed into a ball. Aboy-Valldejuli, *Cocina Criolla*, supra note 102, at 188, 228. The mofongo may sometimes be fried again or baked after being made into a ball. Both tostones and mofongo are often served stuffed with seafood prepared in a light tomato sauce, or with asopao, a heavy ricebased soup that is traditionally made with either chicken or seafood. *Id.* at 317.

n106 Hence, the sale of bread is closely regulated by the government. See, e.g., P.R. Laws Ann., tit. 23 § 919 (1996) (regulating the labeling and weight tolerances of bread); P.R. Laws Ann., tit. 24 § 851 (1996) (defining enriched flower bread).

n107 Rum has been produced in Puerto Rico for centuries, both legally and illegally. The illegal kind is called pitorro or the more colorful appellation lagrimas de mangle (tears from the salt-water swamp). Malavet-Vega, *Navidad*, supra note 103, at 37-40. Don Q (short for Don Quijote) is made in Ponce. But there are many other brands, including Bacardi, which came to Puerto Rico upon leaving Havana. Home grown brands include Palo Viejo, Ron del Barrilito (the three-star variety is an excellent dark rum aged in barrels).

n108 See, e.g., [15 P.R. Laws Ann. § 80](#) (allowing for "picas" - kiosks for gambling - only during patron saint celebrations); [21 P.R. Laws Ann. § 4359\(8\)](#) ("patron saint feast days" celebrations excluded from limitation on election-year spending by municipalities); [21 P.R. Laws Ann. § 4309](#) (municipal governments may adjust their budgets with revenues from patron saint feast days). The Attorney General of Puerto Rico issued an opinion indicating that there is no constitutional prohibition against participation of the Church in programming certain activities which are traditionally performed at municipal fiestas. Op. Sec. Just. No. 14 (1983) (author's translation from spanish original).

n109 Though many Puerto Ricans are surprised to find that the turkey is native to the Americas.

n110 If the music is bad, the door remains closed (unless they are really good friends!). The trullas are part of an open, outdoor celebration of Christmas that is part of the tropical tradition. Malavet-Vega, *Navidad*, supra note 103, at 40-42. The concept of a designated driver becomes important on these occasions.

n111 Malavet-Vega, *Navidad*, supra note 103, at 28-29.

n112 Coquito is made with raw egg yolks, sweetened condensed milk, condensed milk, and coconut milk (made by blending coconut shavings with water), flavored with a spice broth of water in which cloves, cinnamon and nutmeg are boiled. Rum is optional. It is served chilled. Pedro Malavet-Vega, *Las Pascuas de Don Pedro* (1994); see also Malavet-Vega, *Navidad*, supra note 103, at 28-29.

n113 The smell of arroz con dulce is unmistakable. The spices are boiled and their smells permeate the entire house with cinnamon, cloves and annis. For a good recipe and a narrative description of the process of making arroz con dulce, see Malavet-Vega, *Las Pascuas de Don Pedro*, supra note 112. Pegao literally means "stuck" and is a reference to the rice that sticks to the bottom of the pot. For many Puerto Ricans, this hard, crunchy byproduct of the rice cooking process is a real delicacy. The pegao from arroz con dulce, still warm, is a real Christmas treat.

n114 The Catholic celebration of the Epiphany is also the occasion for the Promesas de Reyes (Promises to the Wisemen). Usually, when faced with a difficult situation, a family will make a religious vow to hold a large celebration in honor of the Three Wise Men if their prayers are answered. The fulfillment of the promesa requires the building of an altar to the Wisemen. The altar becomes the location for rosaries to be recited, and often sung, usually by women. The rosaries start on the night of January 5, and last into the morning of January 6. On January 6, the celebration, which always includes music, is held. Neighbors, family and friends are invited. Malavet-Vega, *Navidad*, supra note 103, at 28-29. A friend who is a physician is credited with saving the life of a young boy. He is usually the guest of honor at the family's promesa, which has been held for over ten years. The family lives in modest home, but they have slowly built a large parking area and a cement building (almost as large as their home) to host the promesa.

n115 There has been some incursion of the American tradition of Santa Claus, which has meant that gifts are given to children on December 25. This is often also justified in practical terms, since kids have more time to play with their toys before having to go back to school. Nevertheless, toy sales are strongest between December 26 and January 5.

n116 The octavas are the eight days after the Epiphany. As a religious observance, the Catholic Church maintains a solemn liturgy. As part of the popular Christmas holiday, they are an extension of the Holiday Season. Octavitas is another eight day extension of the celebration or observance, which, depending on the person, could last indefinitely. Malavet-Vega, *Navidad*, supra note 103, at 30-31.

n117 See, e.g., Antonio S. Pedreira, *Insularismo* 154-155 (1971) ("Danza is a faithful reflection of who and what [the Puerto Ricans are]."); Amaury Veray, *La Mision Social de la Danza Puertorriquena* de Juan Morel Campos, in *5 Revista del Instituto de Cultura Puertorriquena* 38-46 (1959) (though he recognizes that it is upper class music, he argues that Danza is our most refined music, which has become the best musical reflection of Puerto Ricans); Hector Campos Parsi, *La Musica en Puerto Rico*, in *La Gran Enclopedia de Puerto Rico* (1977) (Danza was a national popular musical form developed by "educated musicians, of refined taste").

n118 The adoption of Danza is definitely favored as a racist and classist construct when one focuses on the audience that listened and danced to it, which is clearly the social construct built

around the cult of the Danza. But the association of Danza with whiteness and privilege is more difficult to understand when one looks "behind the music" at the most famous composers of Danzas many of whom were black, classically trained musicians, who were not members of the upper class. Pedro MalavetVega, *Historia de la Cancion Popular en Puerto Rico* 243-48, 315-318 (1493-1898) (1992) [hereinafter MalavetVega, *Historia*]. This is part of a long social construction of Puerto Rican art as being white, because it was made for whites. But it ignores the fact that those making the art were often blacks, whose contribution is often devalued by stating that the composers, musicians or other artists were slaves who were given instruments or otherwise trained by their masters. These statements do not stand up to critical scrutiny. The contribution of persons of color to Puerto Rican culture is undeniable. *Id.* at 469478 (analyzing the black and African influence in Puerto Rican popular music). Additionally, Puerto Rico's most famous painter was Jose Campeche, a free man, the mulatto son of a slave who bought his own freedom. Thus, the social construction of class and race conflicts with the reality. I hope to explore this problem and trace it to its origin in the development of criolla/o culture in a future article.

n119 Gonzalez specifically criticizes the "jibarism" of the plantation owners who yearn to return to the "good old days" of Spanish classism and racism. See Jose Luis Gonzalez, *El Pais de Cuatro Pisos* (1980) [hereinafter *El Pais de Cuatro Pisos*]; see also Jose Luis Gonzalez, *Nueva Visita al Cuarto Piso* (1987); Jose Luis Gonzalez, *Puerto Rico: The Four Storeyed Country* (Gerald Guinness trans., 1993) (the English version of the original polemic).

The publication of this and other essays which so openly challenged Puerto Rican racism caused a major uproar within Puerto Rican scholarly circles. Many pointed out that Mr. Gonzalez, who self-identifies as the son of Puerto Rican father and Dominican mother, was born in the Dominican Republic and has lived mostly in exile in Mexico, where he is a professor of literature at the National Autonomous University in Mexico City. See *El Pais de Cuatro Pisos*, *supra* note 119, at 105 (essay on the author in exile).

n120 There is no doubt that even though it was made by persons who were not members of the white upper class, the Danza was embraced and adopted by Puerto Rico's white elite. See Eugenio Fernandez Mendez, *Puerto Rico en el Siglo XIX: Siglo de la Lucha por la Democracia y la Autonomia*, 50 *Revista del Instituto de Cultura Puertorriquena* 36 (1971) (Danza was the music favored by the lords of the large sugar plantations). There is also a racist tinge in what Gonzalez rightly identifies as a romanticized version of the jibaro that has been adopted by the upper classes as a counter to the African influence in modern Puerto Rico.

n121 This is contrary to Danza, which most people in and out of the Island would not be able to associate with Puerto Rico, and was popular in the nineteenth century, but not into the twentieth century. See generally Pedro Malavet-Vega, *Cultura y Musica Popular Puertorriquena* (Mar. 25, 1996) (unpublished essay, on file with author).

n122 The tainos had drums, palitos (wooden sticks), guiros (a dried hollow gourd with ridges that were played with a rasp), and maracas, which are still in use in Puerto Rican popular culture. See Malavet-Vega, *Historia*, *supra* note 118, at 9697, 99. But the one instrument that was produced in Puerto Rico, and which has endured the test of time is the cuatro, a small stringed instrument that got its name because initially it had four strings. Later, it developed into four double strings, and eventually a fifth set of strings was added, for the current configuration of ten (but the name is still the cuatro). MalavetVega, *Historia*, *supra* note 118, at 489-90. The instruments are hand made in an almost artisanal way in Puerto Rico, often by persons who are excellent woodworkers, but who lack specific training in the production of musical instruments. Accordingly, they vary greatly in quality, and keeping them in tune,

especially because of their high-tension stringing, is a real challenge. The strings are metal, and playing them requires a pick and strong fingers. The sound of the cuatro is high-pitched, somewhat similar to that of an American banjo. It is an essential instrument for anyone playing seis and almost every one of the traditional Christmas songs.

n123 The seis traces its roots early in the nineteenth century, whereas the plena is a musical form of the twentieth century, with origins in the bombas, originally slave dances using drums called bombas, of the late nineteenth century. MalavetVega, *Historia*, supra note 118, at 129-39.

n124 This listing is by order of arrival. The gender problematics in music and culture generally are also being addressed from feminist perspectives. See, e.g., Frances R. Aparicio, *Listening to Salsa: Gender, Latin Popular Music and Puerto Rican Cultures* (1998).

n125 See Rouse, supra note 104, at 15-17; MalavetVega, *Historia*, supra note 118, at 96-98.

n126 "Criollos" means "native-born Puerto Ricans." Fray Inigo Abbad y Lasierra, *Noticias de la Historia Geografica, Civil y Politica de la Isla de San Juan Bautista de Puerto Rico* (1788), in *The Puerto Ricans: A Documentary History* 33 (Kal Wagenheim & Olga Jimenez de Wagenheim eds., 1996). In this article, the term will be used inclusively to extend to the entire Puerto Rican diaspora. But what persons, or more directly, what races, are included within the term can be a matter of controversy. An early colonial Spanish view was that "criolla/o" referred to "those who are born [in Puerto Rico], no matter from what breed or mixture. . . . The Europeans are called blancos whites, or hombres de la otra banda [men from the other side]." *Id.* at 33. On the other hand, some would limit the term to apply to white native-born persons. Others, more subtly, refer to the "Criollo elites," who were white. See, e.g., Jose Terrero: *Historia de Espana* 437 (Juan Regla ed., 1972) ("clases criollas ilustradas" the "enlightened criollo classes").

n127 Several authors of extensive histories of Puerto Rico during the eighteenth century specifically note the Puerto Rican's love for dancing and dance parties that lasted for days. See, e.g., Abbad y Lasierra, supra note 126, at 35 ("The favorite diversion of these islenos islanders is dancing: They organize a dance for no other reason than to pass the time.").

n128 A letter to the editor of a newspaper in Ponce, Puerto Rico, published on May 13, 1854, urged all "decent" parents not to allow their children to dance Danza. MalavetVega, *Historia*, supra note 118, at 237.

n129 There is some controversy over salsa's place of birth, i.e., whether it was really born in the Caribbean as a variant of the guaracha, or in the barrios of New York, as what my dad calls the "himno nacional del barrio latino de Nueva York" (the national anthem of the Latina/o barrio in New York). See Pedro Malavet-Vega, *Del Bolero a la Nueva Cancion* 83-93 (1988) [hereinafter Malavet-Vega, *Bolero*]. There is some doubt about the origin of the term salsa as applied to the Latina/o musical genre. Commercially, it appears in Venezuela, where it had been popularized in the mid-sixties by a disc-jockey, and a record titled *Llego la Salsa*, issued in 1966. The FANIA movie, "Salsa," filmed during a live performance in New York City in 1971, also made the term popular. The 1970s are also the beginning of the great migration from New York to Puerto Rico of the Fania All Stars. *Id.*

n130 Merengue was a name initially given to what today is known as danza in Puerto Rico. However, its contemporary usage refers to a form of dance music with a definitely afro-Caribbean beat that is most associated with the Dominican Republic. Recently, Juan Luis Guerra, and his group 4:40, have popularized merengues with lyrics displaying social consciousness.

n131 In a study of fifty songs that Felipe Rodriguez included in his repertoire, Malavet-Vega found that most of them discussed male-female relationships. Pedro Malavet-Vega, *La Vellonera Esta Directa: Felipe Rodriguez (La Voz) y los Anos Cincuenta* 395 (1987). But in the text of the songs there are other important themes as well, such as the family, the home, work, children, childhood, Church or religion, history and social or political facts, weddings, illness, God or Jesus, and death. *Id.* at 405.

n132 On this genre generally, see Pablo Marcial Ortiz-Ramos, *A Tres Voces y Guitarras: Los Trios en Puerto Rico* (1991); Malavet-Vega, *Bolero*, *supra* note 129. On the strong relationship between this genre of music and Puerto Rican culture in and outside the Island, see [Malavet-Vega, La Vellonera](#), *supra* note 131.

n133 "Sonora" is a Spanish term for band, and "Poncena" means coming from Ponce, a city in the South of Puerto Rico, hence, the Ponce Band.

n134 "Combo" is a Spanish term for musical group, so this band is named "The Big Band from Puerto Rico."

n135 The big bands of Cuba dominated the dance beat from the 1930s until the 1960s. In Puerto Rico, Rafael Cortijo y su Combo breaks loose in the early 1950s. This was the quintessential Latin Big Band, which transformed the Latin beat into salsa. El Gran Combo de Puerto Rico was founded in 1952. La Sonora Poncena starts in the 1950s as well, but it was really in the 1960s and 1970s that it hit its stride. (And it is still going strong.) But undoubtedly salsa then explodes in popularity in New York City, in the Latina/o community there. Malavet-Vega, *Bolero*, *supra* note 129, at 83-93. The FANIA record label - the salsa version of Motown - was founded in New York in 1964. In the early 1970s, salsa icons like Eddie Palmieri, Willie Colon, Hector Lavoe and Ismael Miranda (Maelo) are making salsa incredibly popular. The songs of Tite Curet Alonso and Ruben Blades, who first became internationally popular when he recorded with Willie Colon, also helped to popularize the genre. *Id.* at 161.

n136 And it has become very popular across cultural boundaries, especially with the success of New York-born Puerto Rican Marco Antonio, better known as Marc Anthony.

n137 Malavet-Vega, *Historia*, *supra* note 118, at 375 (describing Francisco Oller's famous painting "El Velorio" depicting musicians at a baquine).

n138 Malavet-Vega, *Navidad*, *supra* note 103, at 133.

n139 See generally *Id.* at 27.

n140 Rafael Hernandez, *Lamento Borincano*, 2 *La Cancion Popular* 70 (1987).

n141 For example, in 1951, songs were produced to instruct people on how or why to fill out the ballot: Referendum, referendum, referendum quiere decir . . . / la consulta que se le hace al pueblo . . . is a song instructing that the referendum is a consultation of the people by ballot. This song was commissioned by the Popular Democratic Party and used in support of the approval of Puerto Rico's 1952 Constitution by popular ballot. Malavet-Vega, *Historia*, *supra* note 118, at 24. The popular vote for the Puerto Rico Constitution, which became effective in 1952, was held on June 4, 1951. Federico Ribes Tovar, *A Chronological History of Puerto Rico* 516-517 (1973).

n142 During the Spanish colony, for example, the song *El Ciclon*, (the Hurricane) was in fact a reference to Spanish colonial rulers. The author describes how the singing birds in their cages - a reference to the many persons put in jail by the new government imposed by Spain - stop singing when the *Ciclon* is coming. Malavet-Vega, *Historia*, *supra* note 118, at 352-357.

n143 For example, *El Grito de Lares/ se ha de repetir/ y todos sabremos/ vencer o morir* (The Cry of Lares/ shall be repeated/ and we all shall now how/ to win or to die) is part of song remembering the attempted anti-Spanish revolt in Lares, Puerto Rico, on September 23, 1868. Malavet-Vega, *Historia*, supra note 118, at 265, 273.

n144 The opening lyrics of the Rodriguez de Tio version of *La Borinquena* called on Puerto Ricans to fight for independence: *!Despierta boricueno,/ que han dado la senal!/ !Despierta de ese sueno,/ que es hora de luchar!* (Wake up boricueno the signal has been given!/ Wake up from that dream/sleepiness/ that is the time to fight!). Malavet-Vega, *Historia*, supra note 118, at 266. "Boricueno" is also spelled *borinqueno*, this is a reference to the inhabitants of Boriquen or Borinquen, a bastardization of the native term for the Island today called Puerto Rico.

n145 Compare the fiery words of the Rodriguez De Tio version, to the completely submissive text of the current official version, which opens as follows: *La Tierra de Borinquen,/ donde he nacido yo,/ es un jardin florido/ de magico primor . . .* (The land of Borinquen/ where I have been born/ is a flowery garden/ of magical beauty . . .). It is not hard to see why Dona Lola was described by her contemporaries as a *polvora* (explosive black powder). Malavet-Vega, *Historia*, supra note 118, at 266. The version *la Borinquena* by Rodriguez the Tio also states in part: *Nosotros queremos la libertad/ y nuestro machete nos la dara,* We want our liberty / and our machetes will give it to us. Malavet-Vega, *Historia*, supra note 118, at 266-268.

n146 The *musica de protesta*, music of political protest, in Puerto Rico in the late 1960s and 1970s, includes a heavy dose of pro-independence sentiment. See generally Malavet-Vega, *Bolero*, supra note 103, at 115-150.

n147 Of course, protest can have its costs. In Puerto Rico, pro-independence artists like Lucecita Benitez, Roy Brown, Americo Boschetti, Antonio Caban Vale, Sharon Riley, Andres Jimenez, Danny Rivera, and others were targeted for surveillance by the police. Malavet-Vega, *Historia*, supra note 118, at 21. In Argentina, 1.3% of the *desaparecidos* were artists. *Id.* at 22 (citing *Nunca mas, Informe de la Comision Nacional sobre la Desaparicion de Personas*, [en Argentina] 296 (Barcelona 1985)).

n148 However, as discussed, not in equal proportions, and this certainly does not translate into a homogenized racial identity, as discussed in Part IV *infra*.

n149 This is not to suggest that you cannot be Puerto Rican if you consume none of these items or speak no Spanish, however, these are symbols of culture and nation. They will be deployed here to identify and empower.

n150 Beiner, supra note 15, at 9 ("Appeals to universal reason typically serve to silence, stigmatize and marginalize groups and identities that lie beyond the boundaries of a white, male, Eurocentric hegemon. Universalism is merely the cover for an imperialistic particularism.").

n151 Although I find his treatment of postmodernism overly harsh, there are some helpful descriptions in David West, *The Contribution of Continental Philosophy*, in *A Companion to Contemporary Political Philosophy* (Robert E. Goodin & Phillip Pettit eds., 1993).

Postmodernism proposes a last desperate leap from the fateful complex of Western history. Anti-humanism, with its critique of the subject and genealogical history, has shaken the pillars of Western political thought. Heidegger's dismantling of metaphysics and Derrida's deconstruction carry the corrosion of critique to the fundamental conceptual foundations of modernity.

Id. at 64. West adds later in the Essay: "Postmodernists seek to disrupt all forms of discourse, and particularly forms of political discourse, which might encourage the totalitarian suppression of diversity." Id. at 65.

n152 Beiner for example, describes what he calls the "universalism/ particularism conundrum," which he defines as: "To opt wholeheartedly for universalism implies deracination rootlessness. To opt wholeheartedly for particularism implies parochialism, exclusivity, and narrow-minded closure of horizons." Beiner, *supra* note 15, at 12.

n153 Addis explains:

By "shared identity" I mean to refer to an identity that bonds together, partially and contingently, minorities and majorities, such that different cultural and ethnic groups are seen, and see themselves, as networks of communication where each group comes to understand its distinctiveness as well as the fact that that distinctiveness is to a large degree defined in terms of its relationship with the Other. Viewed in this way, the notion of shared identity is not a final state of harmony, as communitarians would claim. It is rather a process that would allow diverse groups to link each other in a continuous dialogue with the possibility that the life of each group will illuminate the conditions of others such that in the process the groups might develop, however provisionally and contingently, "common vocabularies of emancipation," and of justice. I think Seyla Benhabib is right when she observed that "the feelings of friendship and solidarity result . . . through the extension of our moral and political imagination . . . through the actual confrontation in public life with the point of view of those who are otherwise strangers to us but who become known to us through their public presence as voices and perspectives we have to take into account."

Addis, *supra* note 14, at 127 (the notion of shared identity is not a final state of harmony, as communitarians would claim).

n154 See Malavet, *Cultural Nation*, *supra* note 11.

n155 Martha Nussbaum advocates cosmopolitan citizenship thusly:

The accident of where one is born is just that, an accident; any human being might have been born in any nation. Recognizing this, [Diogenes'] Stoic successors held, we should not allow differences of nationality or class or ethnic membership or even gender to erect barriers between us and our fellow human beings. We should recognize humanity wherever it occurs, and give its fundamental ingredients, reason and moral capacity, our first allegiance and respect.

Martha C. Nussbaum, *Patriotism and Cosmopolitanism*, in *For Love of Country: Debating the Limits of Patriotism* 7 (Joshua Cohen ed., 1996).

n156 Professor Ehrenreich warns against this danger in her essay. Ehrenreich, *supra* note 19.

n157 Cf. Nussbaum, *supra* note 155. Nussbaum states that

Once someone has said, I am an Indian first, a citizen of the world second, once he or she has made that morally questionable move of selfdefinition by a morally irrelevant characteristic, then what, indeed, will stop that person from saying, as Tagore's characters so quickly learn to say, I am a Hindu first, and an Indian second, or I am an upper-caste landlord first, and a Hindu second? Only the cosmopolitan stance of the landlord Nikhil - so boringly flat in the eyes of his young wife Bimala and his passionate nationalist friend Sandip - has the promise of transcending these divisions, because only this stance asks us to give our first allegiance to what is morally good - and that which, being good, I can recommend to all human beings.

Id. (referring to Tagore, *The Home and the World*).

n158 Walzer describes this type of nationalism:

The quality of nationalism is also determined within civil society where national groups coexist and overlap with families and religious communities (two social formations largely neglected in modernist answers to the question about the good life) and where nationalism is expressed in schools and movements, organizations for mutual aid, cultural and historical societies. It is because groups like these are entangled with other groups, similar in kind but different in aim, that civil society holds out the hope of a domesticated nationalism. In states dominated by a single nation, the multiplicity of the groups pluralizes nationalist politics and culture; in states with more than one nation, the density of the networks prevents radical polarization.

Michael Walzer, *The Civil Society Argument*, in *Theorizing Citizenship*, supra note 15, at 166.

n159 In other words, nationalism does not have to be inherently fascist. See discussion supra note 15.

n160 "Richard Rorty urges Americans, especially the American left, not to disdain patriotism as a value, and indeed to give central importance to "the emotions of national pride" and "a sense of shared national identity." Rorty argues that we cannot even criticize ourselves well unless we also "rejoice" in our American identity and define ourselves fundamentally in terms of that identity. Rorty seems to hold that the primary alternative to a politics based on patriotism and national identity is what he calls a "politics of difference," one based on internal divisions among America's ethnic, racial, religious, and other subgroups. He nowhere considers the possibility of a more international basis for political emotion and concern." Nussbaum, supra note 155, at 4.

n161 Pocock uses the French Revolution as an example to describe the terrifying results of citizenship becoming dogma which justifies the destruction of your "enemies," i.e., outsiders. The French revolution went from an uprising of citizens against the ancien regime, to the terror of citizenship being deployed to justify the destruction of the enemy. Virtue became terror. See J.G.A. Pocock, *The Ideal of Citizenship Since Classical Times*, in *Theorizing Citizenship*, supra note 15, at 50.

n162 See Jurgen Habermas, *Citizenship and National Identity*, in *Theorizing Citizenship*, supra note 15, at 264.

Examples of multicultural societies like . . . the United States demonstrate that a political culture in the seedbed of which constitutional principles are rooted by no means has to be based on all citizens sharing the same language or the same ethnic and cultural origins. Rather, the political culture must serve as the common denominator for a constitutional patriotism which simultaneously sharpens an awareness of the multiplicity and integrity of the different forms of life which coexist in a multicultural society.

Id.

n163 See Habermas, supra note 162, at 264. Habermas states that

one's own national tradition will . . . have to be appropriated in such a manner that it is related to and relativized by the vantage points of the other national cultures. It must be connected with the overlapping consensus of a common, supranationally shared political culture. . . . Particularist anchoring of this sort would in way impair the universalist meaning of popular sovereignty and human rights.

Id. (emphasis original).

n164 Rouse, *supra* note 104, at 5 ("Columbus encountered Tainos throughout most of the West Indies."). On the "discovery" and conquest of Puerto Rico, see generally Robert H. Fuson, *Juan Ponce de Leon and the Spanish Discovery of Puerto Rico and Florida* 71-75 (2000).

n165 *Ethnicity and U.S. Foreign Policy* (Abdul Aziz Said ed., 1981); *Ethnicity in an International Context* (Abdul Aziz Said & Luiz R. Simmons eds., 1976).

n166 This is not to suggest that there were no other influences. Immigration and smuggling were major parts of the Puerto Rican experience during the Spanish colonial period. See *Inmigración y Clases Sociales en el Puerto Rico del Siglo XIX* (Francisco A. Scarano ed., 1985).

n167 On the development of Puerto Rican culture during the four hundred years of Spanish rule, see generally Malavet-Vega, *Historia*, *supra* note 118. For an interesting collection of historical Puerto Rican folktales, mostly dating to the Spanish period, see Robert L. Muckley & Adela Martinez Santiago, *Stories from Puerto Rico/Historias de Puerto Rico* (1999).

n168 Rafael L. Ramirez, *What It Means To Be a Man: Reflections on Puerto Rican Masculinity* (Rosa E. Casper trans., 1999); see also Frances R. Aparicio, *Listening to Salsa: Gender, Latin Popular Music, and Puerto Rican Cultures* (1998).

n169 For two narratives about Puerto Rico and exile, told from feminist perspectives, see Judith Ortiz-Cofer, *Silent Dancing: A Partial Remembrance of a Puerto Rican Childhood* (1990), and Esmeralda Santiago, *When I was Puerto Rican* (1998); see also Aparicio, *supra* note 168. On the plight of Latina immigrants to the United States more generally, see Oliva M. Espin, *Latina Realities: Essays on Healing, Migration, and Sexuality* (1997), and Espin, *supra* note 10.

n170 For a provocative challenge of the traditional views on Puerto Rican identity, particularly the denial of existing racism and race-based hierarchies, see *El País de Cuatro Pisos*, *supra* note 119; Jay Kinsbruner, *Not of Pure Blood: The Free People of Color and Racial Prejudice in Nineteenth-Century Puerto Rico* (1996).

n171 Ramirez, *supra* note 168.

n172 Eileen J. Suarez Findley, *Imposing Decency: The Politics of Sexuality and Race in Puerto Rico, 1870-1920* (1999) (while the main focus of this book is sexuality and race, class becomes an essential context for its discussion); Aurora Levins Morales, *Medicine Stories: History, Culture and the Politics of Integrity* (1998).

n173 Jorge Benitez-Nazario, *La Intolerancia y la Cultura Puertorriquena*, in *Las Carpetas*, *supra* note 37, at 117-132. Gay men and lesbians were more likely to suffer from discrimination than the second highest group, ex-convicts. Id.

n174 Anti "foreigner" feelings were expressed, the overwhelming object (fifty-seven out of seventy-seven respondents who express anti-foreigner views) were directed at Dominicans. Benitez-Nazario, *supra* note 173, at 126. For an excellent study of the treatment of Dominicans in Puerto Rico, see Milagros Iturrondo, *Voces Quisqueyanas en Puerto Rico* 23 (2000) (discussing racism against Dominicans in Puerto Rico, and use of term "negro" (black) among Dominicans to refer only to Haitians or Africans).

n175 "Other social origin" was identified as the basis of discrimination by the study. Benitez-Nazario, *supra* note 173, at 126, Table I. However, the definition of "social origin" is unclear.

n176 Comision de Derechos Civiles de Puerto Rico, "Somos Racistas?" 23 (1998) (the Puerto Rico Civil Rights Commission discusses racism in Puerto Rican society and specifically identifies anti-Dominican xenophobia as a form of racial discrimination). Findley, *supra* note 172. Jay Kinsbrunner, *Not of Pure Blood: The Free People of Color and Racial Prejudice in Nineteenth Century Puerto Rico* (1996).

n177 Mort Goode, Essay, page 4, *West Side Story*, CD by Columbia Records/CBS, Inc.

n178 This is in keeping with the expressed purpose of the Media Panel:

Therefore, this panel addresses the question of representation of outsiders in the Mass Media. Representation has at least two dimensions (1) the literal, as in "how many persons of a particular group are 'represented' or are present?" and (2) the symbolic, as in "how are members 'represented' or portrayed?" These two types of representation have a complex relationship that overlaps culture, politics and law. In culture, the question of how members of a particular group are portrayed is related to how group members are allowed to be present. In politics, the questions of how many members of a group are present to be counted is related to how that particular group is represented in a legislature or other political body.

LatCrit V Substantive Program Outline, *supra* note 8.

n179 See generally Leti Volpp, *Blaming Culture for Bad Behavior*, 12 *Yale J. L. & Hum.* 89 (2000); Leti Volpp, (Mis)identifying Culture: Asian Women and the "Cultural Defense," [17 *Harv. Women's L. J.* 57 \(1994\)](#); Leti Volpp, Talking "Culture": Gender, Race, Nation, and the Politics of Multiculturalism, [96 *Columbia L. Rev.* 1573 \(1996\)](#). Professor Volpp criticizes the erasure of critical voices within normative minority cultures that is effected by the seeming acceptance of faultlines as cultural traits. However, cultural faultlines are identified here as the objects of needed LatCritical praxis, not to justify discriminatory tropes.

n180 "Commodification," as used in this article, means to define something as a commodity, that is, as property. See Duncan Kennedy, *A Symposium of Critical Legal Study: The Role of Law in Economic Thought: Essays on the Fetishism of Commodities*, [34 *Am. U. L. Rev.* 939, 962-963 \(1985\)](#) ("Property is the legal name for a commodity. . ."). In economic theory, it appears to involve the valuation of almost anything and everything in order to reach the most "efficient" result. *Id.* However, such a conceptual scheme suffers from the limitations of economic theory, particularly its inability or unwillingness to accept idiosyncratic valuation. Professor Kennedy explains it thusly:

The idea of a completely commodified economy runs up against the problem of conflicting uses, or externalities. The idea of the commodification of valued experiences just can't tell us what to do when my valued experience generates anti-values for you. This is the familiar problem of nuisance law, but it goes far beyond the familiar. The idea of commodity embodies two opposite elements, and neither of them can be taken to its logical extreme without annihilating the other. One element is that of security of the commodity owner in the enjoyment of his thing or experience. The other element is that of freedom to use the thing for his own enjoyment regardless of the consequences for others. The property owner thinks of herself as able to do what she wants with her land, but also as able to prevent others from doing things that interfere with her "quiet enjoyment" of her land.

Id.

n181 For example, the commodification of women results in their as well as their children's subordination in Puerto Rican society. Puerto Rican men wear infidelity as a badge of honor - among other men. "Yo se mucho de [mi profesion o trabajo] y de pegarsela a mi mujer" ("I

know a lot about [my profession or job] and about being unfaithful to my wife") is a commonly-used phrase among men. Serial philandering produces a re/allocation of economic and emotional resources away from the family unit and effects a commodification of women as objects of conquest and control for the men. This is not to say that other cultures do not practice infidelity, that is simply not true. But the public discussion of it, though not unique, is an essential part of our culture.

n182 Ehrenreich, *supra* note 19.

n183 For example, one reference reads: "It's that incredible combination of seductive voice, muy caliente moves, intense acting abilities, and - oh yeah - a whole lotta sex appeal. Can you stand his heat?" Dennis Hensley, *Why Marc Anthony Makes us Sizzle*, *Cosmopolitan*, Feb. 1, 2000, at 204, 204; see also Robert Dominguez, *A Success in Any Language*, *New York Daily News*, Feb. 9, 2000, *New York Now* Section, at 43 (referring to Marc Anthony as "The sexy salsa superstar"); Marc Guarino, *Roadhouse Rock Doesn't get Better Than McMurtry*, *Chicago Daily Herald*, Feb. 11, 2000, *Time Out! Concert Picks* Section, at 4 ("Marc Anthony, who is considered a suave, sexier Ricky Martin."). Compare Dave Tianen, *He's No 'N Sync, but Manilow Still Sets Hearts Aflutter*, *Milwaukee J. Sentinel*, Apr. 28, 2000, at 8B ("[Barry Manilow] has none of the aura of danger that has marked musical sex symbols from Sinatra to Marc Anthony.").

n184 One newspaper report distinguished Martin's sex appeal from Marc Anthony's thusly: "If Ricky Martin stands for sex, Marc Anthony represents love . . ." John Benson, *Marc Anthony*, *Cleveland Scene*, Mar. 30, 2000, *Music* Section.

n185 Bender, *supra* note 19, at 731-32 (noting the ignorance reflected in associating a Puerto Rican with a food item that we do not have).

n186 "He's been shakin' his bon-bons since he was a boy." *Behind the Music*, <http://www.vh1.com/insidevh1/shows/btm/rickymartin.jhtml> (visited August 29, 2000); see also, Bender, *supra* note 19, at 733-34.

n187 The vulgar term is used here advisedly to illustrate the commodification of which Ms. Lopez has become the object.

n188 For example, and probably most notoriously, at the Sixteenth Annual MTV Video Music Awards on September 9, 1999, host Chris Rock stated, referring to Jennifer Lopez, that "she came with two limos: one for her and one for her ass." *People in The News: Rock on Fire During MTV Music Awards*, *Las Vegas Rev.-J.*, Sept. 12, 1999, at 16C.

n189 The ceremony was televised live on Wednesday, February 23, 2000. *Clothes Make the Lopez*, <http://www.vh1/thewire/news/article.jhtml?ID=303> (visited Aug. 30, 2000). This report from the Grammys summed it up as follows:

The sound you heard when Jennifer Lopez came out on the stage of Los Angeles' Staples Center to present the best pop Album with David Duchovny was a thousand male tongues hitting the floor. And me dropping my didgeridoo sic. Casting a jaded eye over the gauzy green Versace robe that barely clung to Lopez's talents, Duchovny said, "This is the first time in five or six years that I'm sure no one is looking at me."

The dress has now come to be known as the "Jennifer Lopez dress." See, e.g., Tom Carter, *Travel with Steves for the Fun of It*, *Wash. Times*, Aug. 19, 2000, E1 ("We passed the Versace boutique with the Jennifer Lopez dress in the window . . .").

n190 Since Ms. Lopez is socially constructed in the United States as "foreign" despite her American citizenship, her racialized commodification can occur even among "people eager to be culturally 'sensitive.'" Espin, *supra* note 10, at 8. Dr. Espin explains: "Under the guise of respect, they may racialize and exoticize immigrant women, particularly those who come from non-European countries. Many well-intentioned people believe that the 'true' immigrant has to be 'different' even if she does not want to be. Tragically, they contribute to the oppression of immigrant women in the name of respecting their culture and preserving their values." *Id.* at 8-9.

n191 Accordingly, Latinas/os are generally constructed as the "Other" within United States borderlands:

The existing, essentialist notion of the "American" has excluded "others" who look or sound foreign to the self-selected norm setters, creating a class of aliens within the borders. This "American" ideal excludes many, particularly Latinas/os, who cannot blend into the "melting pot" because of the colorizing, feminizing, Spanishizing, and latinizing consequences of their membership. This "American" definition of normativity has created an exclusive/elite community with fronteras denying access to "others."

[Hernandez-Truyol, *supra* note 17, at 926 \(footnote omitted\); see also Berta Esperanza Hernandez-Truyol, Sex, Culture, And Rights: A Re/Conceptualization Of Violence For The Twenty-First Century, *60 Alb. L. Rev.* 607 \(1997\); Berta Esperanza Hernandez-Truyol, Women's Rights As Human Rights - Rules, Realities And The Role Of Culture: A Formula For Reform, *21 Brooklyn J. Int'l L.* 605 \(1996\).](#)

n192 Bender, *supra* note 19, at 732. Tamales are not a regular part of the Puerto Rican diet, nor are jalapeno peppers, since Puerto Rican cooking is generally spicy but not spicy-hot. Marc Anthony has stated that he has never eaten a jalapeno and dislikes references to them addressed at him. Bender, *supra* note 19, at 732.

n193 This is the subject of much debate in the LatCrit community. See, e.g., Ian F. Haney Lopez, *White By Law* (1996); Tanya Kateri Hernandez, "Multiracial" Discourse: Racial Classifications in an Era of Color-Blind Jurisprudence, *57 Md. L. Rev.* 97 (1998); Kevin R. Johnson, "Melting Pot" or "Ring of Fire"?: Assimilation and the Mexican-American Experience, *85 CAL. L. REV.* 1259 (1997); Ian F. Haney Lopez, Race and Erasure: The Salience of Race To LatCrit Theory, *85 Cal. L. Rev.* 1143 (1997); Ian F. Haney Lopez, Retaining Race: LatCrit Theory and Mexican American Identity in *Hernandez v. Texas*, *2 Harv. Latino L. Rev.* 279 (1997); Angel Oquendo, Reimagining the Latino/a Race, in *The Latino/a Condition 60* (Richard Delgado & Jean Stefancic eds., 1998); Juan F. Perea, The Black/White Binary Paradigm of Race: The "Normal Science" of American Racial Thought, *85 Cal. L. Rev.* 1213 (1997).

n194 See, e.g., La Sonora Poncena's song *Descendencia* (Being descended of) in the Album "Birthday Party": "Somos latinos, somos la esencia de Puerto Rico, quien me discute ese honor . . . Orgullosa de mi cantar, latina, yo siempre estoy, . . . Mezcla de espanol, africano y taino. Author's translation: "We are Latinos, we are the essence of Puerto Rico, who argues/challenges this honor? . . . Proud of my singing, Latin, I always am, . . . A Mixture of Spaniard, African, and Taino."

n195 During the Congressional debate on the 1917 Organic Act for Puerto Rico, United States Representative Joseph Cannon stated that the "the racial question" made the Puerto Ricans ineligible for statehood and made them suspect as "people competent for self-government." He supported his argument with the following statistical analysis: "Porto Rico is populated by a

mixed race. About 30 per cent pure African. . . . 75 to 80 percent of the population . . . was pure African or had an African strain in their blood." Race and Races, *supra* note 66, at 346.

n196 The paradox of citizenship for Puerto Ricans is rather striking. On the one hand, they are citizens of the United States, but on the other hand, they are socially constructed as being "foreign." Pro-independence Puerto Ricans always have a hard time with this one, since they want to be foreign, relative to the United States, they want to be a citizen of the Republic of Puerto Rico. For a good scholarly discussion of the paradox, see Ediberto Roman, *The Alien-Citizen Paradox And Other Consequences Of U.S. Colonialism*, [26 Fla. St. U. L. Rev. 1 \(1998\)](#). For an American perspective on Puerto Ricans being constructed as foreign, see Tugwell, *supra* note 73, at 70, 481.

n197 See [Johnson v. MacIntosh, 21 U.S. 543 \(1822\)](#) (ruling that the "right of discovery" and the "right of conquest" gave Europeans legal title over the American Continents).

n198 See [Johnson, 21 U.S. 543](#). The court stated that Native Americans could not be assimilated, i.e., they could not "be incorporated with the victorious nation, and become subjects or citizens of the government with which they are connected." *Id.* at 584-585. Incorporation was not "practicable," thus requiring the Europeans to choose between "abandoning the country, and relinquishing their pompous claims to it, or of enforcing those claims by the sword." The Supreme Court justified genocide as follows:

When the conquest is complete, . . . the conquered inhabitants can be blended with the conquerors, or safely governed as a distinct people

But the tribes of Indians inhabiting this country were fierce savages, whose occupation was war, and whose subsistence was drawn chiefly from the forest. To leave them in possession of their country, was to leave the country a wilderness; to govern them as a distinct people, was impossible, because they were as brave and as high spirited as they were fierce, and were ready to repel by arms every attempt on their independence.

On Latina/o assimilation generally, see [Johnson, supra](#) note 193 (a poignant discussion of growing up Latina/o in California); George A. Martinez, *Latinos, Assimilation and the Law: A Philosophical Perspective*, 20 U.C.L.A. Chicano-Latino L. Rev. 1 (1999) (drawing analogies between American demands of assimilation and insect biology and Star Trek's Borg characters).

n199 Bender, *supra* note 19, at 745.

n200 Ehrenreich, *supra* note 19, at 799.

n201 So do Lopez and Martin. Martin, in fact, first became successful with Spanish-language albums. But Marc Anthony presents, in my view, a wider variety of musical genres in his concerts and CDs.

n202 Professor Bender describes this incident in his article. Bender, *supra* note 19, at 735.

n203 Discussing the term "Latin Music Invasion," Professor Bender identifies the irony of referring to the success of these artists as "invaders" given that of the group already identified, only two were born outside United States territory: Carlos Santana, who was born in Mexico, and Enrique Iglesias, who was born in Spain. The others are U.S. citizens born on U.S. territory (Martin was born in Puerto Rico). Bender describes how Marc Anthony captured the paradox when he wondered why his Spanish language CDs were in the "International" section at the back of music stores in Times Square. The CDs had been recorded on Forty-Seventh Street,

literally only a few blocks from the store that classified them as "foreign." Bender, *supra* note 19, at 735, n. 68.

n204 There may be progress here, represented by the Jennifer Lopez and Marc Anthony video duet in Spanish, which is being shown on VH-1. The artists themselves do not hide, and in fact embrace their Spanish language openly. The question is, will the American mass media culture accept it? Professor Bender does cite one troubling example in which Linda Ronstadt was heckled for singing in Spanish in support of her album *Canciones de mi Padre*. Bender, *supra* note 19, at 726-27.

n205 However, the language of success can be constructed in different ways. For example, the success of bilingual Latinas/os might symbolize that Spanish poses no threat to English in the United States, and that bilingualism is not a horrible thing. Prof. Steven Bender develops this theme in his article. Bender, *supra* note 19, at 727.

n206 It was impossible to miss the hundreds of Puerto Rican flags on prominent display in Madison Square Garden for the Marc Anthony's live HBO concert. However, that would require that Americans recognize the flag. Initially, they would have to distinguish it from the equal design of the Cuban flag, which changes the color scheme. The Puerto Rican flag has a blue triangle and red stripes, and the Cuban flag has a red triangle and blue stripes. Additionally the blue stripes of the Cuban flag are often in a much lighter shade of blue than the navy blue of the Puerto Rican flag's triangle. Both flags were designed on the same day in the late 1890s on 25th Street in Manhattan in New York City. Olga Jimenez de Wagenheim, *Puerto Rico: An Interpretative History from PreColumbian Times to 1900*, 198 (1998).

n207 Cf. Juan Perea, *Los Olvidados: On the Making of Invisible People*, [70 N.Y.U. L. Rev. 965-66 \(1995\)](#) ("When I write of Latino invisibility, I mean a relative lack of positive public identity and legitimacy.").

n208 The VH-1 specials dedicated to Jennifer Lopez and Ricky Martin are probably examples of this (although both are also rather exotically packaged). Marc Anthony's HBO Special Live from Madison Square Garden is also an opportunity to see the broad range of this performer.