PONDERING LANGUAGE RIGHTS: A NOVELLA

A LINGUAGEM DOS DIREITOS: UMA CRÔNICA

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Abstract: This article maintains that a campaign to exterminate a language cannot but aim at annihilating a community itself. The present piece of fiction might enable the reader effectively to re-imagine discriminatory oppression in the United States. How does U.S. law regulate linguistic practices and cultures? Does it operate explicitly, through the constitutional or statutory officialization of English? This approach will help to underscore how discrimination operates radically differently as provincialism, as subordination, and as colonialism. One would then fully visualize why the struggle for liberation must, alternatively and depending on the context, extol the virtues of pluralism, combat social subjugation, and pursue decolonization. *Latin@* characters could vividly show how their community faces and fights against colonial domination. Most groups identify staunchly with and often define who they are through their tongue. The central argument of this article maintains that an onslaught on a particular language ordinarily emasculates the people who speak it.
Keywords: Cultural rights. Language. Discrimination. Community

Resumo: Este artigo sustenta que uma campanha para exterminar uma língua não pode, mas visa aniquilar uma comunidade. O artigo, escrito em estilo de peça de ficção, permite que o leitor forme uma imagem da opressão discriminatória nos Estados Unidos. Uma questão central para o artigo é analisar como a legislação dos EUA regula as práticas lingüísticas e culturas. Será que opera de forma explícita, com a oficialização constitucional ou legal do inglês? Esta abordagem ajudará a destacar como a discriminação opera de forma radicalmente diferente em situações de provincianismo, subordinação e colonialismo. O artigo demonstra porque a luta pela liberdade deve, dependendo do contexto, exaltar as virtudes do pluralismo, da luta contra a subjugação social e da descolonização. O exemplo utilizado no artigo, da *Latin@ characters* mostra, vividamente como uma comunidade encara e luta contra a dominação colonial. A maioria dos grupos se identifica e, muitas vezes define por meio de sua língua. A conclusão principal deste artigo indica que um ataque a uma determinada língua normalmente emascula as pessoas que a falam.
Palavras-chave: Direitos culturais. Língua. Discriminação. Comunidade.

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1 Introduction

"How does U.S. law regulate linguistic practices and cultures? Does it operate explicitly, through the constitutional or statutory officialization of English? Or does it instead simply presume that public and perhaps also private communication will take place in the 'dominant' language? If so, does it impose penalties on people who undermine this presumption? Does it ever outsource its policing functions and, accordingly, empower employers or others to keep in line those who might express themselves in foreign tongues? Where do the ethnic majority's sentiments on immigration and on *Latin@s* fit into this picture? Does U.S. society reflect, with its restrictions, a failure to appreciate the benefits of multiculturalism? Or does it show, more profoundly, the will to subordinate a long marginalized group? Are the policies in question, at a third level, a continuation of the nineteenth-century colonization crusade against *Latin@s*? How will these three perspectives affect not only the understanding, but also the solution of the 'problem'?"

The present piece of fiction might enable me effectively to re-imagine discriminatory oppression in the United States. It might help me underscore how discrimination operates radically differently as provincialism, as subordination, and as colonialism. One would then fully visualize why the struggle for liberation must, alternatively and depending on the context, extol the virtues of pluralism, combat social subjugation, and pursue decolonization. *Latin@* characters could vividly show how their community faces and fights against colonial domination.

Before I go on, let me just show you what I've got. You be the judge. By the way, you'll notice that the tale's tone and the style differ from those of this introduction and of the conclusion. The contrast should come to you as no surprise inasmuch as my circumstances and those of the individual who will be narrating are so radically different. In any case, you probably learned in high school not to equate the narrator with the author.

The moment I remember most vividly came later, when the fight was already over. I'm not thinking of the celebration that took place immediately after the initial victory, but rather of an informal get-together that transpired a few days later. Everybody wanted to prolong the sensation of triumph. We believed that a real bond had developed among us and that we had achieved something that would endure. We were wrong.

José and Héctor hauled a case of beer out of the trunk. María brought a sample of *criolla* cuisine in an aluminum container: rice, beans, grilled chicken, and a few *alcapurrias*. I had made a *flan* and picked up refreshments on the way. Don Sergio arrived later, apologizing for the delay and for showing up empty-handed. His interview with a local newspaper had taken longer than expected and he decided to drive directly to our modest *fiesta*. Of course, no one minded. With a reassuring "*no te apures*" or "don't'sweat it," María offered him a plate of food.

We improvised a picnic on the empty parking lot, with some of us leaning on the cars and others sitting on the blacktop. We shared snippets of our life

stories and became somewhat better acquainted with each other. Every now and then we referred to what we had been through.

José felt that the outcome boded well for the future. He went over various grievances at work and elsewhere. He told himself that he would get his act together and file some complaints. Marta teased him about his bubbly enthusiasm. She knew that his new-found determination, like our nicely cut-up and slightly overripe *papaya*, would not hold up past that night.

After a couple of hours of random conversation, we rolled up and started heading out. I shook hands with the guys and kissed the women good-bye. We thanked each other for the fun time. We promised to stay in touch and in fact did, at least to some extent. Yet we never managed to find another cause, or even a pretext, that would bring us together in quite the same way.

My first encounter with the group occurred a few weeks earlier. I had received a call from my friend Pedro, who ran a public-interest organization. He reported that a *Latino* employee of the Housing Authority had contacted his office. Furious but focused on his purpose, Don Sergio had decided to challenge a recently issued directive that forbade workers to speak Spanish at work. The agency's director, Mark Johnson, had justified the measure by stating that the use of the Spanish language in the workplace, even in informal settings, led to mistrust among those who did not understand. He did not specify, however, what sanctions he would apply against violators.

When the telephone rang, I had just adjourned my civil procedure class and was wading through an article on private international law. Hearing Pedro's voice cheered me up, almost as much as taking a break from my scholarly pursuits. I took copious notes during the conversation and readily agreed to collaborate on the cause. We scheduled the first attorney-client meeting for the next day at five in the afternoon.

About twenty workers, and many more supporters, turned up. I arrived early and therefore had a chance to chat with them ahead of time. Marta introduced herself, as well as several companions who were standing to her side. They were all enraged by what had happened and had not only confronted their boss, but also organized the workforce. They had set up the room for that day's gathering.

In short order, Pedro appeared on site with Sofía, the in-house counsel whom he had designated to handle the case. We had a quick conversation on how to proceed, on the judicial precedents, and on the employees' concerns. Sofía came across as a sharp, hard-nosed, but friendly person. Notwithstanding her rather advanced pregnancy, she moved swiftly and energetically.

Because some of the workers were still finishing up their daily assignments, we began about half an hour late. Almost as a matter of principle, we conducted the discussion in Spanish. Much to our surprise, Marta and some of her cohorts immediately stopped us. They explained that they did not speak the language fluently and would need an interpreter.

It then dawned on me that the policy that so incensed these *compañeros* and *compañeras* would have no practical impact on them. They did not speak much

Spanish and would therefore not have to alter their behavior in any significant way. They nonetheless understood, better than anybody else, that the rule in question was not about language, but rather about identity. It aimed not at what they did, but at who they were.

We finally decided to switch to English. This solution created problems of its own, as some of our interlocutors informed us that they did not fully understand "*el difícil*," or "the difficult one," as *Latin@s* sometimes refer to the English language. In fact, a few of the workers—mostly maintenance personnel and auto mechanics—spoke only Spanish. Undoubtedly, the new measure would completely isolate them. They would no longer be able to communicate with their supervisors and coworkers about their job or about anything else.

During our first gathering with the employees, however, we did not have much time to meditate on linguistic identity, exclusion, and intolerance. We had to focus concretely on language logistics. After some further, brief deliberation, we stuck to our decision to use English, but made arrangements for simultaneous translation. A few of the bilingual workers did most of the interpreting. I helped out with the more technical, legal terms.

Ironically, the agency had hired many of the employees that mastered the two languages precisely to take care of its large Spanish-speaking clientele. It now informed them that, as receptionists, they could continue to answer the phone in Spanish, but that, otherwise, they had to stick to the official language. Not surprisingly, they perceived that their employer was jerking them around and disrespecting them. To add insult to injury, the directive required non-English speakers seeking service to bring their own translator to the office from now on.

In order to keep everyone on board, we proceeded rather slowly. We paused to allow for translation and repeatedly fielded questions. Our team sat at one end of the table, while the workers spread themselves out all over the area, amid relatives, friends, and supporters.

Pedro started out by introducing himself, then Sofía and me. He expressed his organization's interest in serving the community and in hearing about these kinds of grievances. He specifically thanked Don Sergio for having reached out and welcomed everybody to the session. With palpable sincerity, he encouraged those present to contact him directly if they had any queries about this case or about any other matter.

Subsequently, Sofía and I averred that the practice constituted illegal discrimination and that we would help the employees fight it, upon their request. We explained that the law protected their right to be who they were and to preserve their culture. While telling them that we knew how they felt, we insisted that they had to react intelligently. In our opinion, they should avoid confrontation on the job, to the extent possible. We asked them to keep track and, ideally, to write down everything relevant that happened from that point on.

Nonetheless, we underscored that they were entitled to speak up against their employer on this matter. We remarked out that the agency would be acting

illegally if it retaliated against them for exercising their entitlements. We invited them to get in touch with us if they encountered any problems on this front.

Sofía then made clear that we would not be charging for our services. She noted that those who wanted us to represent them would have to sign the form to retain us as attorneys. Thereupon, she urged them to peruse the document with utmost care, either in the original English version or in the Spanish translation. She offered to go through each provision with those who could not read or understand the text. She advised all of them to act voluntarily and freely to say so, if they did not wish to have us as counsel.

Afterwards, we entertained numerous questions. Some people wanted to know more about the law. A few brought up related incidents, which had occurred recently. Others voiced concern about the consequences of joining the action. We answered the queries as clearly and openly as we could.

Cristina pointed out that the agency had openly singled out and discriminated against *Latin@s*. Indeed, Executive Director Johnson had candidly and imprudently prefaced his rule with the acknowledgement that Spanish speakers had forced him to act. He wrote that he was seeking to stop those individuals from aggravating others. Hence, he essentially conceded that he was targeting *Latin@s* and their language. Sofía granted that this fact was particularly problematic and confirmed that we would firmly rely on it in our challenge.

When we concluded our presentation, a large group approached us and its members decisively declared that they wanted to participate. More hesitantly, other employees said that they were inclined to join in, but preferred to consult with their spouses or family members first. A small contingent simply remained at the back of the room and expressed no position, one way or the other.

The meeting broke up and an informal gathering ensued. We got to know each other a little bit and soon began addressing each other on a first-name basis. Almost naturally, we drifted from the respectful "*usted*" to a familiar "*tú*". The workers unambiguously conveyed to us their gratitude for our assistance and their satisfaction at having a *Latin@* legal team. Nonetheless, they kept some distance, most certainly because they perceived us lawyers as aliens from a remote social and economic context.

Sofía and I agreed to file a complaint with the state's Civil Rights Commission, so as to "exhaust administrative remedies." I promised to put together a rough draft soon and to send it to her for comments. On the spot, I made a mental note to myself: focus on the document and class preparation; postpone the article for later, *viz.*, standard operating procedure.

The following day a community demonstration took place. Once again, Marta and company played the role of organizers, or at least ringleaders. Many workers, civil rights leaders, and concerned citizens converged upon the asphalt quad in front of the Housing Authority to protest against the language policy. Holding posters, flags, and balloons, they chanted and strode in a circle, keeping rhythm with their palms, with *maracas* made out of empty soda cans holding a few

pebbles, and with plastic garbage containers serving as drums. They seemed to be engaging in a *rumba*, rather than in a march.

Pedro and Ricardo Vélez, who headed the Latino Affairs Commission, took the stand and so did a *Latino* state official. All three urged the agency to retract the directive. A couple of reporters positioned themselves behind the scene and occasionally scribbled on their notepads. A sizeable, multicultural assortment of gawkers, myself among them, watched and cheered on. Of course, the crowd included some dissenters too.

Upon crafting the first version of our initial pleading and memorandum, I had an encounter and several telephone conversations with Sofía. We brainstormed, pondered, disagreed, ruminated, conferred, hesitated, yielded, and concurred—not necessarily in that order. We worked smoothly together, perhaps because we felt a strong affinity for one another and, yet, did not know each other well enough to quarrel.

We based our assertion that the municipality had violated the workers' rights on two arguments. First, the contested practice disparately (actually lopsidedly) impacted a particular racial group, *i.e.*, *Latin@s*. Plaintiffs, accordingly, had a solid *prima facie* case. The agency, for its part, did not have a sufficient business justification to rebut. It could at best support its decision by invoking the need to keep harmony in the workplace. Nevertheless, it had adopted a measure that had increased tension and poisoned labor relations. Consequently, it could not proffer a sensible rationale, only a rationalized pretext. At any rate, it could undoubtedly achieve the end of bringing its employees together, more effectively and less discriminatorily, through other means.

Second, the agency's actions amounted to discriminatory treatment. From this perspective, the contested rule was not a facially neutral device that had an adverse effect on the complainants. Instead, it directly discriminated against them. It imposed special burdens on Spanish speakers, a category that overlapped extensively with that of the ethnic group to which our clients belonged. Well over 90% of the *Latin@* workforce had some fluency in Spanish and probably none of the Anglos did. More significantly, the policy expressed animosity to a language that is an essential part of the identity of all *Latin@s*, including those who do not speak a word of Spanish. It thus created a hostile work environment for this national-origin community.

We grounded both claims in Title VII and the second one additionally in the Fourteenth Amendment and the Civil Rights Act of 1866.[1] In *Griggs v. Duke Power Co*., the U.S. Supreme Court had authorized disparate impact and discriminatory treatment suits under Title VII.[2] In *Washington v. Davis*, the tribunal had established that the Equal Protection Clause allowed only the latter kind of action

[1] 42 U.S.C. § 2000e-2 (2000); U.S. Const. amend. XIV; 42 U.S.C. § 1981 (1866).
[2] Griggs v. Duke Power Co., 401 U.S. 424, 431 (1971) ("The Act proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation.").

and, accordingly required a showing of intentional bias.[3] Of course, we also relied on the relevant state constitutional and statutory provisions.

We both preferred the second allegation because it spared us from having to deal with the authorities' attempts to portray their directive as a reasonable business device. Furthermore, we believed that it captured directly what the rule was all about—*viz.*, disempowering and humiliating *Latin@* workers. The agency had unabashedly sided with its Anglo employees, who apparently viewed their Spanish-speaking coworkers as a threat or a nuisance.

The first charge almost entailed a concession of the directive's facial neutrality; yet the measure directly excluded non-English speakers or, more precisely, Spanish speakers. It frontally attacked and harassed the *Latin@* workforce. We would be engaging in a charade by assessing the policy objectively and examining its "effect" on *Latin@s*.

Nonetheless, we felt that the first approach had a somewhat better chance of carrying the day. After all, we would ultimately have to convince Anglo decision makers. They would have a hard time viewing the agency's procedures as an onslaught on the *Latin@* community. In fact, the ethnic majority generally benefits from a system in which its culture and its language dominate. It tends to treat practices designed to preserve and perpetuate its cultural hegemony as inherently legitimate. Accordingly, while administrative and judicial reviewers would surely not have much sympathy for a challenge to the collateral damages of a purportedly neutral rule, they would in all likelihood have no patience at all for an exception to the norm itself.

We also threw in, alternatively, the contention that the city had encroached upon the employees' freedom of expression. Our complaint maintained that the First Amendment did not allow the state to ban the speech of an identifiable racial group, to impose such excessive restrictions of manner and form, or to zero in on discourse that had a specific implicit content, *i.e.*, that implied a declaration of *Latin@* pride. On this front, we certainly did not have high hopes. We feared that the adjudicators might not appreciate the burden on the expressive liberties of bilingual *Latin@s*, the excessiveness of the proscription, or the link between language and a particular message.

Sofía insisted that we meet briefly, one-on-one, prior to our second appointment with the clients. I showed up a little early at the agreed-upon location: an unpretentious cafeteria not too far from the Housing Authority. When Sofía finally pushed through the glass door and rushed towards me. I stood up to greet her and clumsily put my papers away. After parking her briefcase and her umbrella against the wall, she informed me that several additional employees had signed the retainer: "We have a big group now." I told her that I thought that the

[3] Washington v. Davis, 426 U.S. 229, 239 (1976) (We "have not held that a law, neutral on its face and serving ends otherwise within the power of government to pursue, is invalid under the Equal Protection Clause simply because it may affect a greater proportion of one race than of another. Disproportionate impact is not irrelevant, but it is not the sole touchstone of an invidious racial discrimination forbidden by the Constitution."). *See also* Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 265 (1977) ("Proof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause.").

increase in numbers was wonderful and that we could easily add the newcomers to our suit through a separate instrument.

Sofía told me that she would be driving by the Human Rights Commission the next day and offered to do the filing. Thereupon, she gulped down the last sip of milk and stood up. Once she had all of her belongings in hand, she suggested that we take off.

We hurried to the administrative building. Héctor was waiting for us and led us to the small room that he had "reserved" for us. Don Sergio had already plumped down in his chair, close to María and several other employees. Marta showed up shortly thereafter with her gang of "troublemakers."

In very general terms, I explained our legal strategy and the steps we would have to take. Sofía filled in the gaps and clarified some of the heavier stuff. This time, I played the role of interpreter, for her and for myself.

Our audience listened attentively and posed questions only after we finished. Marta appeared to be the person most interested in figuring out exactly what was going on. A few of the others also intervened. Most of them, however, did not say a word.

Sofía then informed the group that we would be holding a press conference at four in the afternoon that coming Monday, which was less than a week away. "We want to make our case before the Housing Authority's board convenes to discuss the matter at six. If you can, please come to both events." She assured them that Pedro, as well as Ricardo, would join us. The session came to an end shortly thereafter.

While in bed the next morning, I vaguely heard the phone ringing, sluggishly reached over, and picked up. María was on the line. She told me that Johnson had issued a statement. Had he recanted? She vacillated: "I don't think so. Though significantly apologetic, the document doesn't really change anything." She promised to fax a copy to my office as soon as feasible. After she hung up, I promptly showered, dressed, grabbed a bite, and shot over to the university. Upon my arrival, the memorandum was already on my desk.

In his declaration, Johnson indeed apologized to anyone whom his previous ruling might have offended. Quite predictably, he declared that he had not intended to hurt anyone's feelings. He committed to establishing a "sensitivity program" and clarified that the agency would continue to serve, in Spanish, those people who did not speak English.

While I was reviewing the text, a journalist called. Naturally, he was seeking a reaction. I restrained myself: "This statement is an extremely modest step in the right direction." He wanted to know whether we would desist from the litigation. "The document has a regretful tone; yet it does not rescind the policy. Consequently, the main issue remains." The reporter finally requested a comment on the proposed sensitivity training. "The idea sounds interesting, though I am not sure of exactly what it would entail. We're both going to have to find out from Mr. Johnson himself."

I immediately touched base with Pedro, but was unable to reach Sofía. Her secretary notified me that she had already left and that she would probably not come in at all the following day, which was Friday. Just in case, I left a message, which she did not return until after the weekend.

That next Monday, I awoke at five. I got up, extemporized breakfast, and marched off to work. Preparing for and performing in class that day consumed all of my energy and concentration. Afterwards, I was completely exhausted and spent two hours staring at the papers that I had meant to study in anticipation of the late-afternoon sessions with the media and the housing board.

As agreed, we all arrived early. Ricardo had accompanied Pedro. Sofia seemed a tad out of sorts. I worried about: "Are you all right?" She was stoic and reassuring: "I'm just a little bit tired. I'll be okay." The microphones and the cameras were set up. According to the plan, Pedro and Ricardo would lead, elucidating the case in broad strokes and articulating their respective organization's positions. Then the attorneys would take over.

Typically, the presentation for the press and public commenced late. Nonetheless, Pedro and Ricardo performed brilliantly, individually and as a duo. They had obviously appeared together on air many times. With considerable *panache*, they proclaimed discrimination in the workplace "plain unacceptable" and guaranteed that their institutions would stand up and resist.

Following that act, the lawyers stepped in. We were not as photogenic or polished as our predecessors. Nonetheless, we did our best. Sofía deftly, succinctly, and accessibly exposed the illegality of the challenged policy. She handled the questions from the journalists beautifully. I, in turn, hammered at how the ruling humiliated *Latin@* workers. The agency had, to my eyes, posted a sign that read "You are not welcome."

I insisted that this offensive practice was part of a widespread trend to force *Latin@s* to submit and assimilate. The overall effect was not only to take away one of their key sources of comfort and unity in a foreign environment, but also and ultimately to annihilate them as a coherent community. The state was trying to tell people who they should be. The law offered clear protection against this kind of threat to civil liberties.

One of the reporters noted that, according to the Authority's executive director, some Anglo employees suspected that their *Latin@* colleagues were covertly bad-mouthing them in Spanish and had complained about ostracism. Did I care to comment? I lowered my guard and conceded that common decency requires that we not exclude others and that we generally speak their language in their presence. I expressed skepticism, however, about this conceptualization of the problem or, rather, about this *ex post facto* rationalization. The government could not and should not impose politeness through force.

I speculated that the racial tension in the workplace possibly anteceded this incident. People usually did not feel hostile or threatened when they heard a foreign language. In a neutral environment, when I overheard someone speak

Japanese, which I did not understand at all, my natural reaction was one of awe, not resentment.

Sensing that my response was excessively long, I concluded my exposition hastily and somewhat abruptly. Fortunately, Sofía fielded the final two questions, which focused on particularities of the legal action, and did so in a clever and concise manner. She then pointed out that many of the complainants were in the room and encouraged them to speak their minds if they so wished. No one took advantage of this opportunity, though. Thereafter, Pedro went on stage, thanked the audience, and made himself available for any subsequent inquiries.

The gathering broke up immediately. We all mingled momentarily around a table with non-alcoholic drinks and *hors d'œuvres* that Ricardo had arranged for. Pedro eventually called us all to order and suggested that we head over to the Housing Commission's session.

We took less than ten minutes to reach our destination by foot. A sizeable crowd had gathered in front of the building in which the board was to assemble. Many workers had invited friends and relatives. In addition, community organizations had spread the word quite effectively.

The hearing room was completely packed. Pedro and Ricardo strode in first. Sofía and I tagged along and barely managed to squeeze in. We all stood at the back with many other people. We did not have an open view of the center of action, but could see well enough to follow the proceeding closely.

The chairman, Fred Bremer, first noted that the agenda included several items. Next, he stated that he was fully aware that that day's unprecedented turnout was most certainly due to the contentious "English-Only Directive." Accordingly, he proposed moving up the discussion on that issue and, facing no objection from his associates, easily had his way on this procedural point.

At the outset, three of the five commissioners enunciated their positions. With a slight French accent, Mary Cloutier affirmed that she strongly supported Johnson's actions.

> We're in America here; we should speak English. Sometimes the employees communicate in Spanish and you don't know whether they're talking about you. Whenever I have a meeting with the public, I express myself in English.

Thomas Hansen declared, for his part, that the regulation at stake infringed upon the rights of the employees and that the agency had an obligation to overturn it. Finally, Jennifer Milano explained that she sympathized with the *Latin@* workers. She underscored that she cherished her own culture too; yet she insisted on the importance of joining the mainstream. "When I was growing up, if we wanted to speak Italian, we would go back home and lock the door."

When the public had its chance to take the stand, many volunteers lined up. Local activist Silvia Cruz reacted to Milano's comment. "I am not going to lock myself up in a closet to speak Spanish and to be who I am." Milano snapped back. "I did not say that you had to hide in a closet. I was just explaining that

if you want to get ahead in life, you have to try to work with everybody else, instead of going off on your own." Cruz held her ground. "We can collaborate successfully only on the basis of mutual respect. In fact, I can best contribute to the community when I do my thing, rather than that of others. Assimilation is self-defeating."

At this juncture, the chairman attempted to mediate. "We need not settle this dispute right now. Let's try to move on, since many others want to have their say too." Cruz finished up and was followed by an entire sequence of individuals who criticized the policy. Most represented city or state organizations, but a few simply voiced their own "personal opinion." Three employees also testified. During this round, only an Anglo member of the supervisory staff defended the agency's conduct.

David Santos of the *Latin@* Coalition made the last statement. With considerable eloquence, he observed that this neighborhood controversy was part of a roiling national debate on cultural and linguistic difference. He called on people to open up their minds and to make a commitment to tolerance. Opposing ethnic minorities on this issue, he cautioned, entailed endorsing oppression. "To speak against language rights is to speak the language of slavery."

Almost three hours had passed when the chair was finally able to call for a vote on the motion to eliminate the new rule. Hansen, who had moved for the repeal, immediately raised his hands and Rodolfo Sánchez, who had seconded, followed. Somewhat confused, Cloutier quickly glanced around the room and hesitantly put up her finger. Bremer clarified that the issue under consideration was whether to back the proposal at hand and therefore revoke the policy. Cloutier responded: "Oh well, uh, then I'll vote 'yes'." Afterwards, the remaining two commissioners, including the chairman, registered their dissent.

Upon the official announcement that the resolution had carried with three in favor and two against, the crowd roared. People applauded, cheered, whistled, and hugged. The chair then tried to regain control of the situation. "Our session must proceed. Several items remain on the agenda. You are all welcome to stay with us, but we will pause for a couple of minutes, in case some of you prefer to exit at this moment." Seizing this opportunity, most of audience promptly headed out. Only the members of the Board and three or four other individuals stayed behind.

Outside the premises and under a pristine and starry night, the spectators regrouped. Pedro improvised another press conference. He conveyed his relief and happiness in both English and Spanish. "The nightmare is over. We rejoice at this key victory. Hopefully the message that linguistic and ethnic discrimination is wrong, as well as illegal, will travel far. Our organization will certainly remain vigilant and alert." He summoned Ricardo, Silvia Cruz, David Santos, and a couple of the workers, all of whom made bilingual declarations.

A journalist asked whether the organization was planning to withdraw the complaint. Surprisingly, Pedro called on the lawyers to field the question. Sofía yielded to me and I basically reiterated the conclusion that we had previously arrived at.

> No. The case is not moot. The Authority might reinstate the policy at some point in the future or some other agency might be tempted to go down the same path. We want a decision on the merits. We will petition the Human Rights Commission and the courts, if necessary, to hold that employers, especially the government, may not violate the language rights of their workforce through this kind of practice.

After some further discussion on this matter, Pedro took over again. He graciously thanked everyone who had supported the effort and closed the event. "It's been a long day for many of you and now it's time to go home."

Nonetheless, we all hung out for a while in order to celebrate. The festivity lasted, full blast, for about an hour. Then the multitude gradually began to disperse.

The next morning, I picked up the newspaper on my way to work. One of the articles fully reported on what had happened the night before. It suggested that Cloutier had cast the deciding vote inadvertently. After the hearing, she apparently told the press that she had voted in error and that she had intended to support the no-Spanish rule. Bremer, in turn, acknowledged the misunderstanding and expressed regret.

When I reached my office, I immediately phoned Sofía. She had already read about the most recent developments and thought through the consequences. "The Board might revisit the issue. The chairman knows that he has enough votes to reactivate the policy." We were both relieved that we had maintained the suit. We agreed to proceed as if the session of the previous day had never happened.

The following day, the paper brought us baffling, but encouraging, news. It announced that Cloutier had assured that she would not change her vote. She had reportedly stated that she had actually intended to vote against the regulation and that she had made no mistake.

Hansen's plea, underscoring the illegality of the policy, had allegedly swayed her. According to the press, she had claimed that the testimony of civil rights leaders and public officials had also moved her. Finally, Cloutier had asserted that she had listened to everybody and that she was impressed by how respectfully the entire discussion had unfolded. She supposedly still supported the agency's director, as well as the polemical measure, but believed that he should have consulted the Board in advance.

Not surprisingly, the Housing Authority moved to dismiss our complaint a week later. It argued that its revocation of the directive had mooted the case. The answer pointed not only to the board's resolution, but also to assurances by the chair that the commissioners would not revisit the issue.

A day later, Sofía met me at my university headquarters so we could figure out how to respond. I invited her in, cleared some books off the more respectable of my two wooden chairs, and offered her a seat. She sat down slowly, but with grace. We quickly agreed to press on with the claim. I opined that we should assert, first, that, Bremer's general pledge notwithstanding, the executive director or the Board itself could reinstate the rule and, second, that other employers might adopt similar

measures. Furthermore: "The Human Rights Commission should take a position on this controversial matter in order to clarify what the state of the law is."

Sofía endorsed my suggestion and added that we should insist that a violation and an injury had already occurred. "Even if the agency and everybody else could guarantee that they will never sin again, the employees have already suffered discrimination." All of these arguments, when combined, sounded persuasive to us. Nevertheless, we both realized that the adjudicators would feel uncomfortable exercising jurisdiction in the absence of an effective regulation and that our request was a long shot. We therefore just hoped for a miracle. "*Amén*."

Upon reviewing all the main points one last time, we conversed briefly about how our lives were otherwise coming along. When I brought up the topic of her pregnancy, Sofía informed me that she was due in a couple of months and that she was doing "fine." She then offered to write up the memorandum, as well as to file it. Without even trying to object, I thanked her, helped her up, and walked her down to the entrance of the building. Before climbing into her car, she glimpsed back, waved, and threw a parting kiss.

Unfortunately, the Human Rights Commission eventually embraced the Authority's position, rejected our rationale, and dismissed the suit. We appealed to state court, but did not do any better there. After four months, the litigation finally came to an end with a notification slip sent by the tribunal's clerk.

While conversing with Sofía on the telephone about the outcome, I remembered the makeshift picnic with the employees and realized that I had not seen any of them since. Sofía insisted on the importance of the effort. Sofía signed off with a revolutionary "*hasta siempre*," or "until always" (*verbatim*), and then hung up. I instantly knew that I would never hear from her again. And what troubled me the most was that I had entirely forgotten to ask whether everything had gone well with her new baby.

As I noted earlier, I have no intention to interpret the narration. My readership should take the piece on face value and resist any temptation to find underlying symbols, implicit theories, or subliminal messages. I offer the following reflections not as clues to decode the story, but rather as my own personal, spontaneous, and perhaps confusingly illuminating, reactions. Hopefully, actually certainly, the reader will have impressions of her own.

Upon reconsideration, the narrator strikes me as someone who suffers from alienation within an alienated community. While he doesn't even perceive his own estrangement, he understands that of his ethnic group all too well. He constantly brings up the issue, often at the expense of legal and political effectiveness. The narrative invites the reader to reflect upon, above all, the tribulations of this linguistic collectivity.

Despite constituting the largest minority in the United States, *Latin@s* remain invisible. The Anglo majority, even at its most progressive, often overlooks them or fails to consider their presence. When it reluctantly talks about discrimination and makes the obligatory gestures of contrition, it focuses on African

Americans, occasionally also on Native Americans. It seldom gives a thought to *Latin@s*, partly because they do not fit into the traditional racial categories.

In a racially dualist universe, those who are neither white nor black simply do not exist. Of course, racial dualism, as the other face of dualist racism, undermines those whom it does incorporate, but condemns to the wrong side of the divide. These individuals must also live invisibly, in their own way.

In the chronicle, invisibility affects, most dramatically, the workers who speak no English; yet it impinges upon the other *Latin@s* too. Notwithstanding their fluency in the official tongue, Marta and *compañía* cannot really communicate with, let alone secure the respectful consideration of, their Anglo "superiors" or coworkers. They viscerally remonstrate against the incapacity of the latter, in general, to appreciate their perspective and, specifically, to understand how the contested policy offends them. In a manner of speaking, they stand the closest to the cultural frontier and, hence, bear the brunt of the act of disrespect. With the exception of Hansen and the *Latino* Sánchez, the board basically demonstrates equal indifference and ends up quashing the directive only by mistake. Legislatures and courts have not shown much more empathy on this front.

English-only initiatives, whether as statutes, constitutional provisions, or workplace policies, certainly fail to appreciate the value of diversity as evoked by Justice Lewis F. Powell's plurality opinion for the U.S. Supreme Court in University of *California Regents v. Allan Bakke*, 438 U.S. 265 (1978).[4] They thwart the flourishing of multifarious cultural communities, as well as the integration of ethnically diverse immigrant groups. Nonetheless, one should transcend this multiculturalist objection in order to formulate an anti-subordination critique. The norms in question reflect not simply the failure to cherish diversity, but also the will to subordinate specific subgroups.

When an employer in the United States bids the Swedes in his workforce not to speak Swedish, for example, he may be underestimating the merits of multiculturalism. Perhaps he does not fully grasp that the accommodation of the foreigners might be feasible, as well as beneficial to his enterprise and to society. In contrast, when he orders his *Latin@* workers to stick to English, he may very well be communicating a more generalized refusal to recognize and attempting to keep down this particular collectivity. He may not change his basic position even if he ever developed a more multiculturalist attitude, all in all. In this sense, his mindset may not differ much from that of his peers or that of the political establishment.

Why on earth, one may ask, does the national majority in the United States disregard and despise *Latin@s* and their culture in this manner? In part, it shows *Latin@s* the contempt that it displays to all poor migrant groups. It reacts more extremely against *Latin@s*, first, because it sees their numbers growing exponentially and therefore feels swamped by them. More significantly, however, the enmity stems from the perception of *Latin@s* as a conquered nation and from the consequent urge to assert hegemony or control over them.

[4] University of California Regents v. Allan Bakke, 438 U.S. 265 (1978) ("The diversity that furthers a compelling state interest encompasses a far broader array of qualifications and characteristics of which racial or ethnic origin is but a single though important element.").

The United States militarily expanded its borders into Latin America and thus absorbed the first and largest *Latin@* communities. In the nineteenth century, the U.S. armed forces wrested two-thirds of Mexico's territorial expanse and colonized the *Chicano* population, which has grown exponentially in the last five decades mostly through immigration from the mother ship. Many of the employees in the case at hand were Puerto Rican, part of a group that first "arrived" in the United States when U.S. troops invaded their land and declared it U.S. territory in 1898. Most likely, these workers either belonged to or descended from a contingent of men and women that the local tobacco industry recruited on the island and brought to the mainland as cheap labor in 1960s and 1970s.

Hence, *Latin@* peoples did not just come to the United States; the United States came to them, in a dramatically real sense. It orchestrated wide-ranging campaigns to destroy their culture. Subsequent Spanish-speaking communities certainly did not undergo annexation and colonization, but they emerged from nations that suffered neo-colonialism and often even direct or indirect armed involvement by the United States, such as Cuba, the Dominican Republic, Guatemala, Nicaragua, and Panama. Once "inside," *Latin@s* became an underclass, systematically regarded and treated as *conquistad@s*.

When confronting oppression against *Latin@s* in particular, one should therefore shift beyond a general anti-subordination stance into a decolonization standpoint. One can thus better make sense of and respond to the repression in question. The majority's acts frequently seek not to subdue *Latin@s* along the same lines as their fellow disenfranchised minorities, but rather to colonize or maintain their imperial grip over them in a quite specific manner. Not surprisingly, the same policy may take a completely dissimilar signification as the underlying context varies. Accordingly, language coercion against *Latin@s* resembles, but also differs significantly from that against, say, Indonesians. It specifically represents the continuation of the nineteenth-century colonial project to conquer Spanish-speaking territories and peoples.

As a result, public and private initiatives against *Latin@s* usually ride on pre-existing prejudices and find pre-established precedents or patterns. They thus tend to take form more rapidly and more intensely than measures adopted against other downtrodden immigrants. For instance, the reaction to the presence of Spanish in the workplace is often immediate and vehement, whereas that against Indonesian might be rather delayed and diffuse.

Furthermore, attacks against *Latin@* culture generally do not remain isolated instances, but rather lead to further incidents and perhaps even broader societal action. When cast in territorial or colonial terms, cultural discrimination ordinarily entrenches itself. The prospect of integrating *Latin@s* along with other ethnic groups, such as the Irish or Italians, and attaining peace is, therefore, relatively remote.

I previously maintained that the progression towards a decolonization paradigm will help not only to comprehend, but also to combat the linguistic suppression of *Latin@s*. From the outset, the move will teach *Latin@s* what strategies

they should avoid in their struggle. As a first lesson, they will learn to see assimilation as capitulation, rather than as a solution. If they were to assimilate and renounce their tongue, they would be merely culminating the colonization process and collectively committing cultural suicide. Secondly, *Latin@s* must wake up to the fact that they have to take the initiative themselves in order to find a way out of their bind. They may work with the existing public and private establishment; yet they should not expect it spontaneously to bring about their salvation.

Other strategies would prove wrongheaded in this context. For instance, an augmentation in the appreciation of the benefits of cultural diversity would not do. For the ethnic elite displays metropolitan hostility towards *Latin@s*, not simply an unawareness of their potential contributions.

An open-ended anti-subordination approach would similarly miss the mark. Even if *Latin@s* overcame their poverty, as well as their marginality, and attained the level of economic integration of the groups that migrated from Europe starting at the end of the nineteenth century, they would not necessarily escape their colonial predicament. The situation of Catalans and Basques in Franco's Spain demonstrates that a relatively wealthy people may also suffer colonialist exploitation at the hands of the national majority. In a most extreme and improbable scenario, in which the United States significantly reduced the marginalization of its minorities generally by radically altering the way in which it distributed and produced wealth and privileges, the imperial animosity towards *Latin@s* might survive.

Therefore, the *Latin@* quest for recognition should differ from that of other economically disadvantaged immigrants. It should aim mostly at the respect of difference, rather than at equality rights, and focus on collective over individual aspirations. *Latin@s* should seek self-determination as a distinct, historical, and linguistic collectivity, not as an assortment of ethnically divergent individuals. They should perceive and present themselves as ethical community, sharing a concrete *ethos*, rather than as an exuberant ethnic group.

The proposed paradigmatic shift will encourage *Latin@s* to pressure U.S. society to decolonize their community. Inasmuch as *Latin@s* are not concentrated in a particular territory of the United States, but mostly spread out and mixed in throughout the country, they can hardly aspire to end colonization by becoming a nation-state, which international law espouses as the standard decolonization option. Hence, they should strive, to the extent feasible, to evolve into a self-standing and thriving collectivity within the United States. They may thus not only recapture their sense of self-worth and belonging, but also start addressing the immense problems of destitution and exclusion that they face.

In order to build a decolonized collectivity, which autonomously determines its own destiny and which is no longer subject to the dictates of imperial authority, *Latin@s* must first imagine such an entity. They should, by all means, start such an imagination exercise by focusing on their shared history. They should continue by embracing and developing their common culture, which manifests itself most evidently in their language. They may thus participate in and contribute to the broader U.S. society through their ethical community.

Latin@s should visualize in their past not just oppression and despair, but also resistance and survival. They should find inspiration and rejoice over having somehow managed to escape their destruction as a people. They have almost miraculously survived recurrent attempts to assimilate and culturally obliterate them.

In this respect, *Latin@s* have shared the fate of the Native American community, though they have certainly not confronted as much bloodshed and genocidal assault. Against all odds, they have been able to cultivate their Latin American roots and develop a cohesion that has allowed them to resist the aggression. Just as African Americans seek to base their self-understanding on their resurrection from slavery, *Latin@s* should trace their identity back to their rebirth from colonial subjugation.

The Spanish language is indeed a central part of the shared heritage of *Latin@s*. Of course, not all *Latin@s* speak Spanish. As the preceding narrative highlights, many do not. Nonetheless, they usually take pride in and invariably have some connection (even if just historical) to the language. If not their own, Spanish is the language of their family, their parents, their grandparents, or their great-grandparents.

In this sense, most groups identify staunchly with and often define who they are through their tongue. Therefore, an onslaught on a particular language ordinarily emasculates the people who speak it. Not surprisingly, a metropolitan regime usually represses the language, as the core and symbol of the culture, of its colonized subjects.

In the case of *Latin@s*, language practically constitutes them as a collectivity. They have substantially different national backgrounds—Mexican, Puerto Rican, Cuban, Dominican, Guatemalan, Salvadoran, Nicaraguan, and so on—and share only their generic Latin American origins. The difficult-to-define common culture takes its most tangible form in the Spanish tongue. As the narrator in the story most readily realizes, the campaign to exterminate that language cannot but aim at annihilating the *Latin@* community itself.

Just as the white majority has focused on complexion to "denigrate" African Americans, it has zeroed in on the Spanish tongue to disparage *Latin@s*. It has, to be sure, also attacked *Latin@s* for their skin color—for the brownness some have inherited from their indigenous ancestors and the blackness others derive from their African forbears. Nonetheless, the lightning rod for *anti-Latin@* sentiment in the United States has been language.

Indeed, anti-*Latin@* fervor has coalesced politically in the English-only movement. This political operation portrays *Latin@s* as dangerous because of their language. It denounces the Spanish tongue as a threatening foreign influence that must be eradicated. Make no mistake: The objective is to preserve cultural purity and specifically to force *Latin@s* to renounce their identity and embrace the dominant culture.

Africans Americans have begun to take pride in their blackness as a first step towards becoming aware of a vibrant *ethos* of resistance and solidarity.[5] Similarly, *Latin@s* must learn to celebrate their language if they are to derive strength from their shared identity. The process of rediscovering the Spanish language might take them back to the first involuntary "immigrants" or even farther back to their ancestors south of the border. They might find renewed meaning in their history, in their culture, in their struggle against oppression both in the United States and in Latin America.

On this last point, it is crucial to contemplate how to renew the Spanish language within the *Latin@* community. The children should learn Spanish, not only because in many cases doing so helps their learning in general, but also because they will thus be able to secure a sense of belonging. The adult population should also have the possibility of benefiting from this educational process: in centers of continuing education, in unions, in church organizations, in prisons, in rehabilitation programs. The idea is neither to create a pre-requisite to membership in the collectivity, nor to compel *Latin@s* to learn Spanish. It is rather to open up a path towards a common identity and to offer them a chance to reconnect with their roots. An effective campaign of diffusion of the shared tongue could bring *Latin@s* together.

The goal, of course, should not consist in the construction of a Tower of Babel on North American soil. *Latin@s* should, by no means, be discouraged from studying English. Contrary to the received opinion in the United States, it is possible to learn more than one language. And mastering the English language is obviously crucial for *Latin@s*. It is the passport to social, political, and economic survival.

The exaltation of the *Latin@* linguistic and cultural standpoint does, to be sure, entail some risks. It could lead to chauvinism if espoused in an irresponsible manner. It must, therefore, be adopted in a constructive, instead of destructive, spirit. *Latin@s* should learn from their colonial experience and consciously pursue a position of equality, not superiority, *vis-à-vis* others. They should become knowledgeable and enthusiastic regarding their language and culture, without disparaging those of other groups. If the latter similarly embraced the notion of mutual respect, it would be possible to achieve a higher unity, *i.e.*, a unity that preserves (rather than crushes) difference.

In the best (though hardly likeliest) scenario, the Spanish language might spill over into the non-*Latin@* neighborhoods. This development could be nothing but a boon to the larger U.S. society. The diffusion of the Spanish language throughout the United States would not attenuate but rather enhance the appreciation of the English language,.

In addition, the widespread mastery of a second language, such as Spanish, among U.S. citizens might increase their awareness of the world of diversity outside as well as inside their own borders. They might thus be better positioned to meet the challenges presented by foreign and domestic pluralism. The United

[5] Cornel West calls for the re-discovery of the *ethos* culture that I refer to. *See* Cornel West, Race Matters 15 (1994).

States might even become—both at home and abroad—less hegemonic and oppressive and more tolerant and noble.

The process of imagining a decolonized, self-directed community on the initial basis of a shared history and language requires, as I have already insinuated, not just solitary contemplation, but also protracted and concerted action. It involves, in particular, taking such an imaginary perspective and thereupon resisting English-only campaigns before the legislature, in court, within administrative agencies, and on the streets. First, *Latin@s* must insist on the centrality of language to their collective existence and argue that the challenged measures entail a substantial disparate impact, in addition to constituting discriminatory treatment. Second, they must expose the policies as part of the historical colonization crusade against them.

Regarding the first claim, courts sometimes completely miss the link between language and identity. In *García v. Gloor*, for instance, the Fifth Circuit repeatedly describes the use of Spanish by a bilingual *Latino* employee as a mere preference or choice.[6] The judges refuse to regard the contested English-only rule as, in itself, discriminatory or even as having any significant impact on *Latin@s*. They liken the challenged directive to a smoking ban that happens to affect members of one race more than others.[7] In *García v. Spun Steak*, the Ninth Circuit acknowledges "that an individual's primary language can be an important link to his ethnic culture and identity," but classifies the "choice" of language as a privilege whose denial does not produce a significantly adverse effect.[8] The Panel finds that the disputed policy might not adversely impinge even upon employees who are unable to speak any English at all.[9]

The *Spun Steak* tribunal relies on *Gloor* to hold that the fact "'that the affected employee can readily observe'" the rule implies that there "'is not disparate impact.'"[10] In his dissent from the denial of rehearing on *en banc* in *Spun Steak*, Judge Stephen Reinhardt responds forcefully:

> This analysis demonstrates a remarkable insensitivity to the facts and history of discrimination.... Some of the most objectionable discriminatory rules are the least obtrusive in terms of one's ability to comply: being required to sit in the back of a bus, for example; or being relegated during one's law school career to a portion of the classroom dedicated to one's exclusive use."[11]

Reinhardt underscores the profound relation between language and identity.[12] Reinhardt notes that "the imposition of an English-only rule may mask intentional discrimination on the basis of national origin."[13] He points to "the

[6] *García v. Gloor,* 618 F.2d at 268-271.
[7] *Id.* at 270.
[8] *García v. Spun Steak Co.*, 998 F.2d at 1487.
[9] *Id.*
[10] *Id.* (quoting *García v. Gloor,* 618 F.2d at 270).
[11] *García v. Spun Steak Co.*, 13 F.3d at 298 (Reinhardt, J., dissenting from denial of rehearing *en banc*).
[12] *Id.*
[13] *Id.*

widespread tactic of using language as a surrogate for attacks on ethnic identity" and concludes that "the urge to repress another's language is rarely, if ever, driven by benevolent impulses."[14]

The Equal Employment Opportunity Commission (EEOC), for its part, acknowledges that the "primary language of an individual is often an essential national origin characteristic."[15] It explicitly underscores the heavy impact that permanently effective English-only rules have on non-native speakers. [16] The agency notes that these measures may actually "create an atmosphere of inferiority, isolation and intimidation based on national origin, which could result in a discriminatory working environment."[17] It accordingly presumes a violation of Title VII and commits to scrutinizing these directives.[18] The Commission authorizes employers to "have a rule requiring that employees speak only in English at certain times," only if they can show that the rule is justified by business necessity."[19]

The agency has consistently embraced this approach throughout the years not only in its regulations and compliance manuals, but also as part of its litigation strategy.[20] In *Spun Steak*, however, the Ninth Circuit rejects this "long standing position."[21] Impressed by the analysis in *Gloor*, the Court concludes that the administrative guideline "contravenes" the policy under Title VII "that a plaintiff in a disparate impact case must prove the alleged discriminatory effect before the burden shifts."[22] Judge Robert Boochever dissents from his brethren precisely on this point.[23] Similarly, Judge Reinhardt firmly disagrees with the holding: "In overriding the EEOC's determination that such rules are generally discriminatory, the *Spun Steak* panel subverted one of the basic goals of Title VII of the Civil Rights Act of 1964, the elimination of discrimination on the basis of national origin."[24]

In *Maldonado v. City of Altus*, the Tenth Circuit most recently endorses the Commission's determination and acknowledges the heavy and disparate impact of directives banning the use of foreign languages in the workplace.[25] It specifically relies on "evidence that the English-only policy created a hostile atmosphere for Hispanics in their workplace."[26] Even though the panel follows *Gloor* and *Spun Steak* in referring to Spanish as a merely "preferred language" of *Latin@s*, it goes so far as to accept an inference of hostility.[27] The Court readily rejects the

[14] *Id.* at 298-299. *See also García v. Gloor,* 618 F.2d at 268 ("Language may be used as a covert basis for national origin discrimination").
[15] 29 C.F.R § 1606.7(a).
[16] *Id*.
[17] *Id*.
[18] *Id*.
[19] 29 C.F.R § 1606.7(b).
[20] Cristina M. Rodríguez, *Language Diversity in the Workplace*, 100 Nw. U.L. Rev. 1689, 1732-1738 (2006).
[21] *García v. Spun Steak Co.*, 998 F.2d at 1489 (9th Cir. 1993), *cert. denied,* 512 U.S. 228 (1994).
[22] *Id*. at 1490.
[23] *Id.* at 1490-1491.
[24] *García v. Spun Steak Co.*, 13 F.3d at 296-297 (Reinhardt, J., dissenting from denial of rehearing *en banc*).
[25] *Maldonado v. City of Altus*, at 1304-1306.
[26] *Id.* at 1304.
[27] *Id.* at 1305.

business necessity justification in general and observes that "Defendants conceded that there would be no business reason for applying the rule to 'lunch hours, breaks, and private phone conversations.'"[28]

Maldonado ultimately reckons that the contested directive may support even a claim of intentional discrimination under the Fourteenth Amendment, Title VII, 42 U.S.C. § 1981, and 42 U.S.C. § 1983. "To begin with," the judges explain, "the disparate impact of the English-only rule (creation of a hostile work environment) is in itself evidence of intent."[29] They then face up to the reality that a prohibition against Spanish may not only severely impact, but also directly discriminate against *Latin@s*.[30]

Danny V. Maldonado and his co-workers almost brought the Tenth Circuit to visualize the contested English-only rule in the context of past imperial domination of *Latin@s*. In *Maldonado v. City of Altus*, the judges eventually connect the controversial directive to the backdrop of oppression against *Latin@s* in the town, noting the subsequent "taunting of Hispanic employees," the antecedent "anti-Hispanic discrimination," as well as "evidence that during a news interview the Mayor referred to the Spanish language as 'garbage.'"[31] Unfortunately, the Court fails to link the policy to the history of domination against *Latin@s* in the nation as a whole or specifically to *colonial* subjugation. It thus remains within the anti-subordination paradigm and shies away from taking a decolonization approach. Nonetheless, plaintiffs attained a remarkable victory against all odds. I wish I had lived to see it.

Inevitably, the endeavor to imagine and build a decolonized and self-governing community will demand offensive, as well as defensive, engagement. *Latin@s* will have to develop institutions to address numerous issues that affect their lives, such as education, culture, communication, economics, environment, agriculture, labor, justice, transportation, security, health, and immigration. Organizations in many of these areas already exist, but they operate in a fragmented and uncoordinated manner. *Latin@s* must synchronize, expand, and streamline this institutional framework. This kind of project will evidently take an enormous amount of collective energy and time.

I probably owe it to my readership to discuss my passing and yet have utterly no desire to do so. Believe it or not, I loathe the center of attention. For this reason, I never celebrated my birthday, not even as a child.

My readers shouldn't expect me to say much about my demise. Suffice it to say that I suddenly collapsed in the aftermath of a hairy *habeas corpus* suit, precisely while I was trying to catch up on my long neglected article. I was sitting at my desk in my university office and my upper body fell flat on a pile of texts, papers

[28] *Id.* at 1306-1307.
[29] *Id.* at 1308.
[30] *Id*.
[31] *Id*.

and manuscripts. Afterwards, the physician reported "heart failure," though she should have diagnosed a clear case of *karōshi*: death from overwork.[32]

My next of kin were shocked and devastated, especially my mom, who loves me dearly and melodrama almost as much. In all honesty, I was relieved to break away from my existential, financial, professional, and sentimental worries. On my way out, I heard the voices of the angels. "'*Mira, Ángel. Mira la luna: es el sol de los muertos*.'"[33]

Thereafter, I landed neither in heaven nor in hell, but rather in an eerie state of uncertainty. Perhaps I find myself in purgatory. Anyway, no one has informed me why I am here or for how long: maybe to do what I am doing for as long as it takes?

I sit on a dilapidated lounger in front of an ancient desk, loaded with stationery. The library that surrounds me reminds offers absolutely no technology, though. Not far from my workspace, a hefty *divan*, a modest kitchenette, and a lifeless bathroom keep me company.

Since my arrival, I have been writing nonstop, striving to complete this work so I can send it to my man Pancho with a request to have it published. Who knows whether this joint provides regular mail service? Even if it does, my beloved Pancho is no Max Brod; quite the opposite, actually. He might therefore end up burning my papers against my express will. Of course, I am no Franz Kafka, so the loss would be no real tragedy.

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[32] *See* Takashi Haratani, Karōshi: *Death From Overwork*, Encyclopedia of Occupational Health and Safety, ILO (Jeanne Mager Stellman ed., 4th ed. 1998).
[33] Julio Llamazares, Luna de lobos 136 (1985) ("'Look, Ángel. Look at the moon: it is the sun of the dead.'".)