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## The Contemporary Assault on Ethnic Studies, 47 J. Marshall L. Rev. 1189 (2014)

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# THE CONTEMPORARY ASSAULT ON ETHNIC STUDIES

RONALD L. MIZE<sup>1</sup>

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Ethnic studies once again finds itself in the crosshairs of conservative Republicans hell-bent on preserving white privilege and power by defining “being American” as synonymous with their possessive investment in whiteness.<sup>2</sup> The U.S. culture wars, rearing its ugly head in its fullest form in the late 1980s, never seem to go away but simply resurface every decade or so in a new context. It is much like cultural critic George Lipsitz describes as: “There has always been racism in the United States, but it has not always been the same racism. Political and cultural struggles over power have shaped the contours and dimensions of racism differently in different eras.”<sup>3</sup>

By its organizational design of de-centering and coalition building,<sup>4</sup> LatCrit acknowledged the culture wars in the early 2000s with their “Countering Kulturkampf” theme at LatCrit IX Conference.<sup>5</sup> U.S. culture wars origin stories vary, but one

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<sup>2</sup> See generally GEORGE LIPSITZ, *THE POSSESSIVE INVESTMENT IN WHITENESS* 4-5 (1998) (analyzing what is at stake when we see white privilege defended, under what he deems the white spatial imaginary).

<sup>3</sup> *Id.* In a similar fashion, Lipsitz is fond of riffing Malcolm X’s famous line, “Racism is like a Cadillac, they bring out a new model every year.” *Id.* at 182.

<sup>4</sup> See generally Margaret E. Montoya & Francisco Valdes, “Latinas/os” and *The Politics of Knowledge Production: LatCrit Scholarship and Academic Activism as Social Justice Action*, 83 IND. L.J. 1197 (2008) (explaining the structure, goals, and methodology of groups in the LatCrit movement).

<sup>5</sup> See generally Charles R. Venator Santiago, *Countering Kulturkampf Politics Through Critique And Justice Pedagogy*, 50 VILL. L. REV. 50 (2005) [hereinafter Santiago] (describing the politics of Kulturkampf); Charles R. Venator Santiago, *Countering Kulturkampf Politics Through Critique and Justice Pedagogy, Race, Kulturkampf, and Immigration*, 35 SETON HALL L.

generally agreed-upon starting point stems from the infamous speech by then-presidential candidate Patrick Buchanan in 1992 declaring the culture war: "There is a religious war going on in our country for the soul of America. It is a cultural war, as critical to the kind of nation we will one day be as was the Cold War itself."<sup>6</sup> Buchanan's sentiments were more fully articulated in the writings of Allan Bloom, William J. Bennett, E.D. Hirsch, Dinesh D'Souza, and Dianne Ravitch (before her recent conversion).<sup>7</sup> Conservatives

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REV. 1155 (2005) [hereinafter Santiago, *Race*] (analyzing culture wars and their politics with regard to education, race and immigration); Francisco Valdes, *Culture by Law: Backlash as Jurisprudence*, 50 VILL. L. REV. 1135 (2005) [hereinafter Valdes, *Jurisprudence*] (explaining the consequences of backlash Kulturkampf on law and society); Francisco Valdes, "We Are Now of the View": *Backlash Activism, Cultural Cleansing, and the Kulturkampf to Resurrect the Old Deal*, 35 SETON HALL L. REV. 1407 (2005) [hereinafter Valdes, *Old Deal*] (describing recent culture war cases and their effect); Denise Ferreira da Silva, *Introduction: The Global Matrix and the Predicament of "Postmodernisms": An Introduction to the Critique of Kulturkampf*, 35 SETON HALL L. REV. 1281 (2005) (explaining the criticisms of Kulturkampf); Martha T. McCluskey, *How Equality Became Elitist: The Cultural Politics of Economics from the Court to the "Nanny Wars"*, 35 SETON HALL L. REV. 1291 (2005) (analyzing culture wars from an economic standpoint); Sylvia R. Lazos Vargas, "Kulturkampff[s]" or "fit[s] of spite?: Taking the Academic Culture Wars Seriously", 35 SETON HALL L. REV. 1309 (2005) (explaining the need to take academic culture wars seriously); Guadalupe T. Luna, *Introduction: Kulturkampf Revelations, Racial Identities and Colonizing Structures*, 35 SETON HALL L. REV. 1191 (2005) (focusing on the politics of racial identity). Other scholarly works explore the legal relationship between Native American and Black identities and Kulturkampf. See Carla D. Pratt, *Tribal Kulturkampf: The Role of Race Ideology in Constructing Native American Identity*, 35 Seton Hall L. Rev. 1241, PAGE# (2005) (examining the law's narrative use of white supremacy and black inferiority to shape Native American identities).

<sup>6</sup> JAMES D. HUNTER & ALAN WOLFE, IS THERE A CULTURE WAR? A DIALOGUE ON VALUES AND AMERICAN PUBLIC LIFE 1 (E.J. Dionne, Jr. Michael Cromartie eds., 2006).

<sup>7</sup> See generally ALLAN BLOOM, THE CLOSING OF THE AMERICAN MIND (1988) (explaining how the American higher education student's souls are impoverished due to the higher education system failing democracy); DINESH D'SOUZA, ILLIBERAL EDUCATION; THE POLITICS OF RACE AND SEX ON CAMPUS (1998) [hereinafter D'SOUZA 1998] (discussing how race and gender politics affect scholarship); DINESH D'SOUZA, THE END OF RACISM: PRINCIPLES FOR A MULTICULTURAL SOCIETY (1995) [hereinafter D'SOUZA 1995] (examining whether racial prejudice is an inherent or learned trait); E.D. HIRSCH, CULTURAL LITERACY: WHAT EVERY AMERICAN NEEDS TO KNOW (1988) (arguing that America is failing to teach children the basic knowledge that is required to function in society); DIANNE RAVITCH, NATIONAL STANDARDS IN AMERICAN EDUCATION: A CITIZEN'S GUIDE (1990) [hereinafter RAVITCH 1990] (analyzing the history, purpose, and effects of nationalized education standards); DIANNE RAVITCH, THE REVISIONISTS REVISITED: A CRITIQUE OF THE RADICAL ATTACK ON THE SCHOOLS (1978) [hereinafter RAVITCH 1978] (rebutting critiques that public schools are tools used by the government to oppress individuals). Seemingly following the lead of Ariana Huffington in the recognition of their past errors, Ravitch's most recent two books are rebukes of the exact changes in education she advocated at the height of the culture wars.

waging the culture wars posit natural law and normative universalism via the Western Tradition, most often reduced to individualism, as quintessentially ‘American’ forms that citizens and institutions take. Institutions where the culture wars were waged include the media, religion, public schools, higher education, arts, public sphere, judiciary, family, women’s bodies, and politics. “Cumulatively, these debates concerning the wide range of social institutions amounted to a struggle over the meaning of America.”<sup>8</sup> The response by scholars has been far-reaching and thorough from education, cultural studies, sociology, law, political science, and history.<sup>9</sup>

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See DIANNE RAVITCH, *THE DEATH AND LIFE OF THE GREAT AMERICAN SCHOOL SYSTEM: HOW TESTING AND CHOICE ARE UNDERMINING EDUCATION* (2010) [hereinafter RAVITCH 2010] (arguing that schools should not be run on a corporate model and that educators, not politicians, should make decisions about schools); DIANNE RAVITCH, *REIGN OF ERROR: THE HOAX OF THE PRIVATIZATION MOVEMENT AND THE DANGER TO AMERICA'S PUBLIC SCHOOLS* (2013) [hereinafter RAVITCH 2013] (proposing education reforms such as creating early childhood education programs, taking measures to directly combat child poverty, and having schools provide). William J. Bennett has sustained the longest mileage fighting the culture wars. See WILLIAM J. BENNETT, *BOOK OF VIRTUES: A TREASURY OF GREAT MORAL STORIES* (1993) (using short stories to aid children in developing what he considers to be the essential character traits of a good person); BENNETT, *MORAL COMPASS: STORIES FOR A LIFE'S JOURNEY* (1995) (providing more stories to teach children to act in the manner that he considers morally correct). William J. Bennett followed his early works with his Children’s Book series that sought to instill in children the moral code that he believed to be virtuous. See generally BENNETT, *THE BOOK OF VIRTUES FOR YOUNG PEOPLE* (1997) (illustrating virtuous character traits through examining inspiration stories that appeal to young adults); WILLIAM J. BENNETT, *THE CHILDREN'S BOOK OF VIRTUES* (1995) (providing selected stories that appeal to children to introduce children to morally virtuous traits such as honesty and loyalty); BENNETT, *THE CHILDREN'S BOOK OF AMERICA* (1998) (teaching children the history and virtues of America by combining history and art to tell the stories of American heroes); BENNETT, *THE CHILDREN'S BOOK OF FAITH* (2000) (presenting prayers and bible passages with art to teach children about faith); BENNETT, *THE CHILDREN'S BOOK OF HEROES* (1997) (emphasizing traits such as courage and compassion through the use of heroic real and fictional stories); BENNETT, *THE CHILDREN'S BOOK OF HOME AND FAMILY* (2002) (using fables and prayers to teach children moral lessons about the home and family, such as valuing familial relationships and loyalty); BENNETT, *THE CHILDREN'S TREASURY OF VIRTUES* (2000) (aiding children to develop a sound moral compass by explaining the virtuous character traits apparent in fables). Most recently, Bennett served as a commentator on Fox News and a morning radio program.

<sup>8</sup> HUNTER & WOLFE, *supra* note 6, at 14.

<sup>9</sup> See, e.g., HUNTER & WOLFE, *supra* note 6 (providing a sociological perspective); GARY NASH ET AL., *HISTORY ON TRIAL: CULTURE WARS AND THE TEACHING OF THE PAST* (2000) (examining the purpose behind teaching children history); *THE AMERICAN CULTURE WARS: CURRENT CONTESTS AND FUTURE PROSPECTS* (James L. Nolan ed., 1996) (exploring presently contested cultural issues to forecast which issues will be the basis for future cultural wars); ROBERT A. RHOADS, *FREEDOM'S WEB: STUDENT ACTIVISM IN AN AGE OF CULTURAL DIVERSITY* (1998) (arguing that present-day student activism has a

As Lipsitz identifies, racism changes from generation to generation but it also varies greatly by geography along spatial lines.<sup>10</sup> Under the guise of neoliberalism, Arizona Republicans are operating a clear politics of exclusion. They use their political power to marginalize anyone who questions their self-claimed citizenship rights to historical amnesia and adhere to a white-washed history told by those in power. Today, neoliberal nativism<sup>11</sup> plays out in Arizona's 2010 culture wars led by Republican elected officials Russell Pearce, Tom Horne, Sheriff Joe Arpaio, John Huppenthal, Jan Brewer, and Lori Klein. The legislation that Tom Horne and Russell Pearce have introduced – including “Homeland Security Bill” (SB1108), “Support Our Law Enforcement and Safe Neighborhoods Act” (SB1070), and the ethnic studies ban (SB2281) -- constitutes part of the context of racist, anti-immigrant rhetoric in Arizona state law.

Within LatCrit, Kevin Johnson, Leticia Suacedo and Richard Delgado identify what is at stake for the constituencies that critical race theory and LatCrit represent.<sup>12</sup> Racial profiling in the enforcement of immigration law (SB1070) and the banning of ethnic studies, specifically targeting the Mexican American studies program at Tucson Unified School District (HB2281), provide the legal context for fomenting anti-Mexican, anti-immigrant sentiments and actions.

Embedded in the anti-ethnic studies discourse of Arizona

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significant connection to the activism of previous generations); DAVID YAMANE, *STUDENT MOVEMENTS FOR MULTICULTURALISM: CHALLENGING THE CURRICULAR COLOR LINE IN HIGHER EDUCATION* (2002) (describing how mandatory multicultural general education requirements at colleges affect racism on campus).

<sup>10</sup> Lipsitz elaborates on this thread in his follow up work. See generally, GEORGE LIPSITZ, *HOW RACISM TAKES PLACE* (2011) (exploring how *de facto* segregation perpetuates racism by denying specific races access to education and employment opportunities that other areas enjoy).

<sup>11</sup> See Ronald L. Mize & Grace Peña Delgado, *LATINO IMMIGRANTS IN THE UNITED STATES* 124-32 (2012) (exploring neoliberalism nativism and globalization); Ronald L. Mize, *Interrogating, Race, Class, Gender and Capitalism Along the U.S.-Mexico Border: Neoliberal Nativism and Maquila Modes of Production*, 15 *RACE, GENDER, & CLASS*, no. 1/2, 2008, at 134-55 (examining the effect neoliberalism nativism played in militarizing the border and the consequences thereof).

<sup>12</sup> Richard Delgado, *Precious Knowledge: State Bans on Ethnic Studies, Book Traffickers (Librotraficantes), and a New Type of Race Trial*, 91 *N.C. L. REV.* 1513 (2013); Francis J. Mootz and Leticia M. Saucedo, *The “Ethical” Surplus of the War on Illegal Immigration*, 15 *J. Gender Race & Just.* 257 (2012), available at <http://ssrn.com/abstract=2042688>; see also Kevin R. Johnson, *A Case Study of Color-Blindness: The Racially Disparate Impacts of Arizona's SB 1070 And The Failure of Comprehensive Immigration Reform*, 2 *UC Irvine L. Rev.* 313 (2010), available at <http://ssrn.com/abstract=1695236> (parenthetical); Lupe S Salinas, *Arizona's Desire to Eliminate Ethnic Studies Programs: A Time to Take the Pill and to Engage Latino Students in Critical Education about Their History*, 14 *HARV. LATINO L. REV.* 301 (2011) (giving examples where a state has sought to ban the study of a cultural heritage).

are the threads that connect Kulturkampf, perceived threats to white privilege, fundamental truth claims about cultural and historical awareness, and the castigation of ethnic studies and racialized communities/scholars as always somehow “lesser.” Starting with the recent contribution in the *Presumed Incompetent* collection,<sup>13</sup> I build on those insights to demonstrate how ethnic studies becomes defined as “lesser” based on master frames of incompetence deployed by a racialized, institutionalized logic of higher education.

Why is ethnic studies knowledge deemed dangerous? I end by explaining recent developments and contours in ethnic studies scholarship and provide an example from an allegorical deportation case that connects past and present, theory and practice, academia and community, and unjust law and movements for social justice (all quintessentially ethnic studies activities).

### I. 1980S CULTURE WARS: A PRECURSOR

The first shots fired in the culture wars were part of what Valdes identifies as backlash politics<sup>14</sup> challenging the gains fought for during protest movements seeking women’s rights, minority civil rights, anti-war foreign policy, decolonizing human rights, LGBT rights, and New Left politics. Though Buchanan’s presidential candidate speech is a key marker, a book released four years previously set the tone for white male privilege angst. *The Closing of the American Mind*, charted a wide range of positions that would embody social conservatism well into the next century. The belief in American exceptionalism, the superiority of Western rationality, natural law, and rights adhering only to individuals continue to shape the culture wars debate today. Bloom states, “For the Founders, minorities are in general bad things, namely identical to factions, selfish groups who have no concern as such for the common good.”<sup>15</sup> For Bloom, the common good could only be understood as the reinstallation of natural law *qua* rights of the individual. His vehemently anti-minority stance is not totalizing, but countering what he sees as the excesses of relativism, which is reflected in his call to protect the majority from those “bad minorities” seeking group rights. He identifies the United States as the city on the hill, attendant with the perfectability thesis of American exceptionalism, and staunch

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<sup>13</sup> PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA 1 (Gabriella Guterrez y Muhs et al. eds., 2012).

<sup>14</sup> Valdes, *Old Deal*, *supra* note 5, at 1411. Though his purpose is to critically interrogate backlash jurisprudence, his nod to general forms of backlash and retrenchment politics is a helpful analytical approach to understand the *fin de siècle* U.S. culture wars.

<sup>15</sup> Bloom, *supra* note 7, at 12.

defender of the Constitution and Founding Fathers as protectors of individual rights. According to Bloom, the greatest threat was in higher education so Bloom saw himself as the defender of Great Books.<sup>16</sup> It is important to note the context that Bloom's understated battle is against the Black power movement he so opposed at Cornell, eventually resigning his position in protest of university administration's acceding to the demands of students for an autonomous African American Studies department.<sup>17</sup>

The cottage industry of conservative culture war books meant the 1990s saw a spate of material from Dinesh D'Souza, E.D. Hirsch, Dianne Ravitch, and William J. Bennett. All sought to venerate American individualism as the successor of the Western tradition. In higher education, D'Souza claimed that "most American universities have diluted or displaced their 'core curriculum' in the great works of Western Civilization to make room for new course requirements stressing non-Western cultures, Afro-American Studies, and Women's Studies."<sup>18</sup> Whereas Bloom

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<sup>16</sup> Bloom's use of capitalization should suffice to demonstrate his preference. Bloom capitalizes ideas and institutions that conform with his vision of American culture but he does not capitalize 'blacks, whites, yellows' but does capitalize religious denominations and all things "American" and "Western" like the Founders and Southerners. *Id.* at 13. Great Books signals the University of Chicago approach to teaching the Western canon. Hirsch and Ravitch also defend the Western canon. *See generally* HIRSCH, *supra* note 7 (laying out western-centric facts that he would describe as being required for cultural literacy); RAVITCH 1990, *supra* note 7 (advocating for national education standards that focus almost exclusively on western nations).

<sup>17</sup> Along the same lines, Bloom went to great lengths to protect Black conservatives at Cornell who spoke out against the Willard Straight Hall Takeover and attendant demands for an autonomous African-American Studies department. Bloom was responsible for assisting a young student, Alan Keyes, to secure admittance to another university and assisted his relocation financially. Bloom also defended a new economics professor, Thomas Sowell, whose curricular content was profoundly questioned and protested by Black and New Left students matriculating at Cornell. Sowell's response to events is based on his stated belief that African-American students were neither intellectually qualified nor sufficiently cultured for the Ivy League. Sowell castigates Cornell administrators for "admitting students who would not meet the existing academic standards at Cornell. The emphasis was on getting militant ghetto kids, some of whom turned out to be hoodlums who terrorized other black students, in addition to provoking a racial backlash among whites." Thomas Sowell, *The Day Cornell Died*, WEEKLY DIGEST (May 3, 1999), available at <http://www.weeklystandard.com/Content/Protected/Articles/000/000/010/395fuzdx.asp>. Lest one think this battle is over, there are still faculty, alumni donors, and administrators at Cornell fighting this battle as evidenced by the recent 2010 realignment of the Africana Studies and Research Center to reduce its autonomy and limitations (including several failed joint appointments) restricting the other ethnic studies programs under administrator auspices that "there will never be another Africana" and longstanding opposition of several white faculty to ethnic studies as a legitimate field of inquiry.

<sup>18</sup> D'SOUZA 1998, *supra* note 7, at 5.

preferred a natural law basis, his successors preferred Judeo-Christian belief systems as the moral basis of U.S. higher education, law, and government. Restoring the culture wars back to their religious basis, social conservatism in the 1990s took on a much stronger evangelical orthodox approach.

The majority of responses to the culture wars have come from academic scholars and often the response has been in the form of analysis. A major finding is the culture wars were predominately elite driven, not primarily of concern to general public; ergo, a larger question often investigated, is there actually a culture war?

The scholar most responsible for analyzing the contours of the culture wars as very much real is University of Virginia sociologist James Davison Hunter. Hunter sees the battle lines drawn between two camps: traditionalist or orthodox adherents and progressives. This distinction transcends religious, even political, lines but divides squarely along cultural lines. "These antagonisms were playing out not just on the surface of social life (that is, in its cultural politics) but at the deepest and most profound levels, and not just at the level of ideology but in its public symbols, its myths, its discourse, and through the institutional structures that generate and sustain public culture."<sup>19</sup> These constitute a major distinction in the war of position,<sup>20</sup> according to Hunter.

Scholarly responses to Hunter have a major source of concern in whether there is really a cultural war in the United States or an elite-driven and fabricated form of symbolic politics. It is the Oz metaphor of wizards behind the curtains manipulating symbols and lines of division to either further their social conservative agenda or obscure the widening class inequalities installed during the Reagan era. Alan Wolfe is key to this criticism. "The culture war has always existed more in the minds of journalists and political activists than in the lives of ordinary Americans."<sup>21</sup> What Wolfe and his supporters did not envision was the rise of Fox News, Tea Party fascism, Sarah Palin's popularity, social media campaigns, and rise of evangelical mega-churches stoking orthodoxy. Naysayers also severely underestimated the backlash politics against the election of Barack Obama that enlivened the social conservatism of Tea Party politics.<sup>22</sup>

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<sup>19</sup> HUNTER & WOLFE, *supra* note 6, at 13.

<sup>20</sup> ANTONIO GRAMSCI, *The Transition from the War of Manoeuvre to the War of Position*, in SELECTIONS FROM THE PRISON NOTEBOOKS PAGE# (1971). The distinction between revolutionary, large-scale social transformation was increasingly displaced by wars of position that were fought on a smaller scale over hearts and minds, and more often indicative of party politics and labor struggles in Western Europe.

<sup>21</sup> HUNTER & WOLFE, *supra* note 6, at 42.

<sup>22</sup> As Ravitch writes to atone for past sins, Bennett and D'Souza in particular have engineered the backlash against Obama in writings, radio, television, social media, and film. All of D'Souza's anti-Obama rants are accessible on his website. Dinesh D'Souza, *Front Page Portal* (June 29, 2014),



It is within this wider context of backlash and retrenchment that ethnic studies has had to secure its place in higher education and much to the chagrin of social conservatives, mostly succeeded in terms of university cultural diversity requirements. Levine and Cureton estimate that by 1991, 48 percent of four-year institutions had a multicultural requirement for all undergraduates.<sup>23</sup> Case studies of how these requirements operate in practice demonstrate a myriad of struggles for inclusion and cultural diversity requirements at University of California Berkeley, University of California Los Angeles, University of Wisconsin, Mills College, Columbia University, San Francisco State University, Michigan State University, Rutgers University, and Pennsylvania State University.<sup>24</sup>

This sea change has been less at the hands of displacing the Western canon as the number of ethnic studies majors and departments has not risen concomitant with these requirements (and as Yamane shows, many of the courses designed to meet cultural diversity requirements at Berkeley and Wisconsin are taught in traditional disciplines). But this does not deter the canon defenders from placing the blame squarely and exclusively on ethnic and women's studies. Yamane identifies the vocationalization of higher education as most responsible for the precipitous fall of Western Civilization and its relatively brief presence in higher education.<sup>25</sup> Recent assessments by the ultraconservative National Association of Scholars identify that in 2010 none of the 50 prestigious universities they originally studied in 1964 require Western Civilization.<sup>26</sup> The NAS bemoans the

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9:00 AM), <http://www.dineshsouza.com>.

<sup>23</sup> Arthur Levine and Jeanette Cureton, *The Quiet Revolution: Eleven Facts about Multiculturalism and the Curriculum*, 24 CHANGE: THE MAG. OF HIGHER LEARNING, no. 1, (1992) at 25-29.

<sup>24</sup> See YAMANE, *supra* note 9, at PAGE# (evaluating the effect mandatory multicultural programs had on college campuses); RHOADS, *supra* note 9, at PAGE# (demonstrating the potential consequences that occur when a large portion of the student body feels alienated or unwelcome).

<sup>25</sup> Yamane states: "the political roots of the Western Civilization course are seldom acknowledged, in particular its origins in the propaganda needs of World War I and its aftermath." YAMANE, *supra* note 9, at 132. Starting at Columbia University and spreading to Dartmouth and Stanford, the Western Civilization requirement spread when it met wartime and Cold War ends but simply lost relevance in the post Cold-War era.

<sup>26</sup> Their estimate is clearly politicized as when those requirements do exist, they are challenged for having non-Western components, but the decline is palpable. Glen Ricketts, et al., *The Vanishing West: 1964-2010, The Disappearance of Western Civilization from the American Undergraduate Curriculum*, NATIONAL ASSOCIATION OF SCHOLARS (May 2011), available at <http://files.eric.ed.gov/fulltext/ED540339.pdf>; see also Kevin Kiley *Decline of 'Western Civ'?*, INSIDE HIGHERED (May 19, 2011) [http://www.insidehighered.com/news/2011/05/19/national\\_association\\_of\\_scholars\\_report\\_finds\\_no\\_mandatory\\_western\\_civilization\\_courses\\_at\\_top\\_universities.including\\_context\\_of\\_NAS](http://www.insidehighered.com/news/2011/05/19/national_association_of_scholars_report_finds_no_mandatory_western_civilization_courses_at_top_universities.including_context_of_NAS)).

increasing irrelevance but really it points to the end of a curricular phenomenon whose time has come to pass on the baton to more pressing questions and approaches to understanding world history and the US role within it. World history and ethnic studies are two sides of the same coin, as both displace Eurocentrism and question American exceptionalism as social facts. Not simply challenges to Western rationality, they constitute a deep and fundamental questioning of what history means, how it unfolds to shape present conditions, and how the battle is really a future struggle over the normative basis of society as either one of assimilation, hegemony, and inequality or cosmopolitanism, multiculturalism, and social justice.

## II. 21ST CENTURY KULTURKAMPF, ARIZONA-STYLE

As Lipsitz analogizes, if Mississippi defined the 1960s, and California defined the 1990s', it seems that in 2010, Arizona is today's Mississippi – the testing ground for racialized politics.<sup>27</sup> In his prescient analysis of California's Proposition 187, the so-called "Save our State" initiative, anthropologist Leo Chavez discusses the attempt of California voters, approved in 1994, to deny access to public benefits for undocumented immigrants residing in the state. It began a groundswell of anti-immigrant rhetoric in the mid-1990s that I contend has taken on a renewed momentum in the 21<sup>st</sup> century. Chavez's chapter notes "the current wave of immigration reform proposals reflect a nationalist response to this transnational challenge."<sup>28</sup> It was written before Proposition 187 was dismissed by state courts and subsequently superseded by two federal acts in 1996 (the Welfare Reform act or officially the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the Illegal Immigrant Reform and Immigrant Responsibility Act – IIRIRA). Starting with Proposition 187, anti-immigrant forces were clearly defining their battle along racial lines and as a result they took their sites on a range of proposals to overturn the federal Bilingual Education Act of 1974 (Proposition 227-1998), end affirmative action (Proposition 209-1996), make English the official language (Proposition 63-1986), require Latinos to carry identification cards to verify legal residence (connected to the 2010 racial profiling SB1070 in Arizona), amend the US Constitution to end automatic citizenship for those born on US soil (re-introduced by Nathan Deal (R-GA) as the Birthright Citizenship Act of 2009, H.R.1868), trump up fears of a reconquest or multicultural invasion characterized as threats to

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<sup>27</sup> Lipsitz, *supra* note 2, at 211-233.

<sup>28</sup> Leo Chavez, *Immigration Reform and Nativism: The Nationalist Response to the Transnationalist Challenge* IMMIGRANTS OUT! THE NEW NATIVISM AND THE ANTI-IMMIGRANT IMPULSE IN THE UNITED STATES, 73 (Juan Perea ed. 1997).

national security (a concern only heightened in a post-9/11 US Patriot Act era), and define the contours of the battle over who is or who should be an “American”. What Chavez first identified in 1997 is clearly the blueprint for anti-immigrant legislation circa 2010.

Arizona has become the epicenter for anti-immigrant sentiments and ensuing legislation. Events in 1997 certainly prefigured the current morass. Decisions made at the national level have created fewer viable border crossings. Today, Arizona is the main siphon for undocumented immigrants entering the United States.

With the passage of IIRIRA in 1996, Provision 287g allowed the INS to deputize local police forces as federal immigration officers. Romero and Serag investigated the joint operation between the Border Patrol and Chandler Police Department to target working-class, Chicano neighborhoods in the Phoenix metropolitan area. In what has come to be known as the Chandler Round-Up, the detainment and inspection of papers of those who looked like “illegals,” or were of Mexican ancestry, certainly represents racial profiling. It also deployed class profiling, by targeting neighborhoods slated for redevelopment and by stopping pedestrians in public shopping areas, residential streets, unannounced house-to-house visits, and bus stops.<sup>29</sup>

Things have only worsened since the 1997 Chandler Round-Up. The tactics of stopping anybody who looks illegal, particularly with no probable cause, has become standard police practice under Maricopa County Sheriff Joe Arpaio. McDowell and Wonders interviewed Mexican migrant women and immigrant service providers in Phoenix and Tucson to ascertain the impact of surveillance and racial profiling. “Maricopa County Sheriff Joe Arpaio emerged as one of the most powerful representations of the complex interplay between surveillance and enforcement rituals as a disciplinary force in the lives of migrants. [. . .] [H]e is the “mobile, elastic border”, the “gaze of surveillance”, and the myriad enforcement rituals that (re)inforce migrants “illegality” and vulnerability as a disposable source of labor.”<sup>30</sup>

State Bill 1070 “Support our Law Enforcement and Safe Neighborhoods” continues the longstanding practice of racial profiling in an increasingly police state.<sup>31</sup> This bill extends recent

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<sup>29</sup> Mary Romero and Marwah Serag, *Violation Of Latino Civil Rights Resulting From INS And Local Police's Use Of Race, Culture And Class Profiling: The Case Of The Chandler Roundup In Arizona*, 52 CLEV. ST. L. REV. 75, 83-86 (2005).

<sup>30</sup> Meghan G. McDowell and Nancy A. Wonders, *Keeping Migrants in Place: Technologies of Control and Racialized Public Space in Arizona*, 36 SOCIAL JUSTICE 54, 62 (2009).

<sup>31</sup> Johnson, *supra* note 12, at 331-33. Recalled state senator Russell Pearce introduced “Homeland Security Bill” SB1108 and SB1070 though he is often not credited with its authorship. Leading the anti-immigrant charge is Kris

legislation in Arizona that followed the lead of California by legislating emboldened racist agendas to make English the official language of Arizona (Proposition 106 in 2006), English immersion for limited English proficiency public school students in 2000 (English for the Children - Proposition 203), Arizona's nearly unilateral rejection of the federal recognition for the Dr. Martin Luther King, Jr. national holiday,<sup>32</sup> rogue racial profiling and intimidation practices by Sheriff Joe Arpaio that harken back to the days of the Arizona Rangers, and most recently SB1070 that emboldens law enforcement to verify the citizenship documents of anybody detained who with "reasonable suspicion" may be in the state without proper documents. The clear mandate for racial profiling of those deemed "illegal aliens" is in determining reasonable suspicion as it constitutes an explicit penalty for driving while brown or speaking to an officer with an accent.

Neoliberal nativism stands at the crossroads where free trade ideology meets up against the criminalization and racialization of Latino immigrants as "illegals" or "illegal aliens." It is a lesson in how the free flow of commodities is eased in the era of NAFTA and DR-CAFTA while the flow of people is increasingly restricted. The current era of late capitalism increasingly relies upon national and supra-national agreements to facilitate capital accumulation by driving down wages, displacing non-capitalist social relations with market and wage labor relations, eviscerating the nation-state in terms of public infrastructure and social services, and creating tariff-free zones to maximize transnational corporate profits. Seemingly, nation-states become more irrelevant as global capital writes the rules of the game in terms of labor relations and environmental safeguards. Yet, as neoliberalism signals the end of nation-state borders, the resurgence in nativist sentiment has created a new Washington Consensus on the issue of border

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Kobach, Kansas Secretary of State, who has provided counsel to immigration restriction groups FAIR and ALEC. An NPR story identifies Kobach as author and identify Pearce's sponsorship in the legislature was criticized for its benefiting private prison companies. The language of what would eventually become SB1070 was presented at a December 2009 meeting of the American Legislative Exchange Council (ALEC), where Pearce and Corrections Corporation of America (CCA) jointly attended.

32 Frances Romero, *A Brief History of Martin Luther King Day* Time Magazine (Jan. 18, 2010)

<http://www.time.com/time/nation/article/0,8599,1872501,00.html#ixzz0qluNByN3>.

[A]ll three Arizona House Republicans including current Senator and former presidential candidate John McCain, voted against the bill in '83. The state did not vote in favor of recognizing the holiday until 1992, not only rejecting pleas from Reagan and then Arizona governor Evan Mecham but also losing the NFL's support when the league moved Super Bowl XXVII from Sun Devil Stadium, in Tempe, to California in protest. Arizona was not the only state openly contemptuous of federal law. Id.

security and the supposed need for further fortification and militarization, in a very thinly veiled adherence to nativism. It is the vigilantes and their media backers that make the violence inherent in militarization manifest in both its logic and practice.

“Neoliberalism is in the first instance a theory of political economic practices that proposes that human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free markets, and free trade.”<sup>33</sup> The neoliberal rhetoric of “freedom” is both a perversion of the term in political theory and an inaccurate representation of the central roles nation-states retain in managing trade and markets. The biggest farce of neoliberalism is that of the laissez-faire state, when in reality the state becomes the preferred labor contractor in the service of global capital.

Yet, the anti-immigrant rhetoric in Arizona plays out to obscure the historical formation of the border state as once the lands of Mexico (from 1821-1846, and 1853 for Southern Arizona in the Gadsden Purchase) and thus the rising anti-Mexican sentiment. To secure Anglo superiority in the contested region, the Arizona Rangers dispatched vigilante justice on the Mexicano population and over time Anglo power holders installed Jim Crow segregation practices in the large cities of Tucson and Phoenix. Often not discussed in the passage of ethnic studies ban HB2281 is the original impetus for the creation of ethnic studies programs in Tucson was in direct response to federal desegregation orders.

The LatCrit 2013 workshop, where I presented a quite different version of this paper, highlighted the legal case currently challenging implementation of HB2281. I will leave it to others to discuss the current status of the case and the various amicus briefs filed by LatCrit, authors of banned books, and teachers.<sup>34</sup>

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<sup>33</sup> David Harvey, *A BRIEF HISTORY OF NEOLIBERALISM* 2 (2005).

<sup>34</sup> Seattle University's Korematsu Center is a great resource for the Arizona ethnic studies case. See *Fighting Arizona's Attack on Ethnic Studies - Maya Arce, et al. v. John Huppenthal, et. al* SEATTLE UNIVERSITY SCHOOL OF LAW <http://www.law.seattleu.edu/centers-and-institutes/korematsu-center/arizona-ethnic-studies-case> (last visited June 27, 2014) (parenthetical needed). The court filings on HB 2281 are also located at *Maya Arce vs John Huppenthal: Read Ninth Circuit Filing Against HB2281 Here!*, THREE SONORANS NEWS & ANALYSIS (Nov. 19, 2013), <http://threesonorans.com/2013/11/19/maya-arce-vs-john-huppenthal-read-ninth-circuit-filing-hb2281/>. Brief for Latina and Latino Critical Legal Theory, Inc., as Amici Curiae Supporting Plaintiffs, *Maya Arce, et al., v. John Huppenthal, et al.*, Nos. 13-15657, 13-15760 (9th Cir. filed Nov. 25, 2013), available at <http://www.law.seattleu.edu/Documents/korematsu/AZ%20ethnic%20studies%20case/23%20amicus%20-%20LatCrit.pdf>. Brief for 48 Public School Teachers as Amici Curiae Supporting Appellants, *Maya Arce, et al., v. John Huppenthal, et al.*, Nos. 13-15657, 13-15760 (9th Cir. filed Nov. 25, 2013), available at <http://threesonorans.com/2013/11/27/banned-books-tusd-read-48->

Two documentaries are indispensable for highlighting the rhetoric of Arizona's kulturkampf and the resistance to HB2281 mounted by students, teachers, community members and alumni of the Mexican American Studies program at Tucson Unified School District.<sup>35</sup> As Delgado notes, "The statute prohibits the teaching of classes designed primarily for students from a particular ethnic group, designed to increase racial solidarity rather than treatment of persons on an individual basis, or aimed at the overthrow of the American government or inculcation of racial resentment."<sup>36</sup>

The linkages between anti-immigrant sentiments and banning ethnic studies should not be readily apparent to anyone knowledgeable with Chicano Studies. The linkage, according to Mootz and Saucedo, is best evidenced by Tom Horne, who is making his political career stoking anti-Mexican, Chicano, and immigrant fears as one. "Horne continues to link ethnic studies programs with support for illegal immigration as he makes his case for restrictive state legislation to protect the country from a Mexican invasion."<sup>37</sup> On the other side, what Horne, Pearce, and Huppenthal see as being under threat is exactly what the 1980s Kulturkampf fighters feared: loss of American exceptionalism, challenges to Western rational superiority, and an end to natural

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teachers-file-amicus-brief-hb2281/. Brief for Authors et al. as Amici Curiae Supporting Appellants, Maya Arce, et al., v. John Huppenthal, et al., Nos. 13-15657, 13-15760 (9th Cir. filed Nov. 25, 2013), available at <http://www.law.seattleu.edu/Documents/korematsu/AZ%20ethnic%20studies%20case/22%20amicus%20-%20Authors.pdf>.

<sup>35</sup> The two documentaries are both essential viewing as they allow all actors involved to speak for themselves and force them to defend their positions. The Nonprofit Network, *Outlawing Shakespeare: The Battle for the Tucson Mind*, YOUTUBE (Oct. 30, 2012), [http://www.youtube.com/watch?v=anChx\\_9TF-Q](http://www.youtube.com/watch?v=anChx_9TF-Q); PRECIOUS KNOWLEDGE (Dos Vatos Productions 2012). Contours of the law and its working through the appeals process can be found in Nicholas B. Lundholm, Note, *Cutting Class: Why Arizona's Ethnic Studies Ban Won't Ban Ethnic Studies*, 53 ARIZ. L. REV. 1041, 1060-63 (2011). Lundholm acknowledges that his analysis of the ban's unworkability would not be its undoing, as an administrative judge's 2012 decision upheld Horne's rationale to ban the program. Id. Nicholas Lundholm, Administrative Law Judge Finds TUSD's Mexican American Studies Program Illegal Under Arizona's Ethnic Studies Law, Questions Remain About How Broadly the Law Should Be Interpreted, Arizona Law Review <http://www.arizonalawreview.org/2012/syllabus/administrative-law-judge-finds-tusds-mexican-american> (last visited June 27, 2014).

<sup>36</sup> Delgado, *supra* note 12, at 1521-22 (footnotes omitted).

<sup>37</sup> Mootz, *supra* note 12, at 21. Deploying an Aristotelian logic of ethos to describe the ethical dimensions of law making, the concept of ethical surplus is deployed to show how linkages and bleeding into unconnected spheres can occur. "The ethical surplus of the war rhetoric that encompasses self-defense, security, and military protection against an invading Mexican force almost naturally encompasses an anti-ethnic studies attitude. It has led proponents to conclude that teaching high school history that acknowledges the border as a historically contested boundary necessarily subverts efforts to defend the border against intrusion by illegal immigrants." *Id.*

law and rights of individuals. Yet, this group goes one step further and claims that the United States itself is under threat.

As LatCrit scholars, teachers, librarians, and legal aid clinics rush in defense of students and teachers in the Mexican American Studies program, it is still not clearly articulated what is at stake. Delgado offers a timid defense that: "Ethnic studies certainly may enable students to develop a more nuanced view of the country in which they live than the one they might have received had they taken only mainstream courses of literature and history emphasizing European-American heroes, myths, and tales."<sup>38</sup> The remainder of this essay is a full defense of what is at stake when ethnic studies are under attack.

### III. FORBIDDEN KNOWLEDGE: THREATENING WHITE PRIVILEGE'S HISTORICAL AMNESIA<sup>39</sup>

*Presumed Incompetent* is not the first to discuss the trials and tribulations of negotiating identity and power in academia,<sup>40</sup> but what make this latest collection unique is the contribution to critical race feminism and the longstanding Third World Women movement.<sup>41</sup> The thread that ties the collection together for

<sup>38</sup> Delgado, *supra* note 12, at 1540-41.

<sup>39</sup> This notion of revoking US citizenship rights to historical amnesia was first articulated by Michael Eric Dyson in his 1988 C-Span aired debate on affirmative action with Ward Connerly. WHAT IS THIS CITATION? (on file with author).

<sup>40</sup> PRESUMED INCOMPETENT, *supra* note 13. This is not the first compendium to document the difficulties of outsiders in the academy. PRESUMED INCOMPETENT takes its place among a string of personal lamentations: first from a male working class perspective (though not very reflexive about its male bias). JAKE RYAN & CHARLES SACKREY, STRANGERS IN PARADISE: ACADEMICS FROM THE WORKING CLASS (1995). Working class white women are more prominently featured in two other works. THIS FINE PLACE SO FAR FROM HOME: VOICES OF ACADEMICS FROM THE WORKING CLASS, (C.L. Barney Dews and Carolyn Leste Law eds., 1995); WORKING-CLASS WOMEN IN THE ACADEMY: LABORERS IN THE KNOWLEDGE FACTORY, Michelle M. Tokarczyk and Elizabeth Fay eds., 1993). REFLECTIONS FROM THE WRONG SIDE OF THE TRACKS: CLASS, IDENTITY, AND THE WORKING CLASS EXPERIENCE IN ACADEME returned to centering whiteness (C. Vincent Samarco and Stephen Muzzatti eds., 2005). The closest to be inclusive of race, gender, sexuality and class is MOTHERS IN ACADEMIA (Mari Castaneda and Kirsten Isgro eds., 2013).

<sup>41</sup> PRESUMED INNOCENT can always be read in the literary lineage of various works. See generally, THIS BRIDGE CALLED MY BACK: WRITINGS BY RADICAL WOMEN OF COLOR (Cherrie Moraga and Gloria Anzaldua eds., 1984); MAKING FACE, MAKING SOUL/HACIENDO CARAS: CREATIVE AND CRITICAL PERSPECTIVES BY FEMINISTS OF COLOR (Gloria Anzaldua ed., 1990); THIS BRIDGE WE CALL HOME: RADICAL VISIONS FOR TRANSFORMATION (Gloria Anzaldua and AnaLouise Keating eds., 2002); THE LATINA FEMINIST GROUP, TELLING TO LIVE: LATINA FEMINIST TESTIMONIOS (2001); COLONIZE THIS!: YOUNG WOMEN OF COLOR ON TODAY'S FEMINISM (Daisy Hernandez and S. Bushra Rehman eds., 2002).

present purposes is the insight that: “What is insidiously troubling about Western intellectual culture is its espousal of “value-free science” to mask the ways that the idea of pure and interest-free truth has been and continues to be used to perpetuate unjust social hierarchies.”<sup>42</sup> What the contributors to the collection identify is “the dissonance between the intersecting identities of women of color (including gender, race, ethnicity, nationality, and class) and academia’s white, male, middle and upper-class, heterosexual norms.”<sup>43</sup> The extreme disconnect between orthodox fears of a minority group takeover of higher education and the ever frequent marginalization felt by women of color and other minorities places ethnic studies at the center of the malaise.

Why then is Ethnic Studies a threat? Without overstating the legal proceedings surrounding HB2281, ethnic studies and in the case of the book banning Critical Race Theory and LatCrit are on trial. Banning ethnic studies in Arizona has a ripple effect, particularly if implementation of the law is allowed to fully go forward. From my perspective, the threat that ethnic studies pose can be boiled down to five central features of the scholarly discipline:

1. No Preconceptions | No Boundaries
2. Community Advocacy
3. Liberatory Knowledge
4. Anti-Elitism
5. Goal of Bridging

No preconceptions and no boundaries signal that interdisciplinary, comparative, multidisciplinary, even transdisciplinary studies are at home in ethnic studies. Though some fields tend to predominate (say history and literature in Chicano/a Studies), at the end of the day it is the subject matter and focus on community that creates the space for inquiry not beholden to a single theoretical tradition, methodological approach, or anticipated finding.

Community is not an abstract concept to ethnic studies, it is the very basis for its existence. What it means is that the research process is often the exact opposite of the scientific method where researcher goes into a situation with a pre-formed set of hypotheses to test. Communities are not variables and test subjects to ethnic studies, often because ethnic studies scholars come from the communities they engage. Advocating for one’s community means that community most often sets the research agenda, they know their collective wants and needs, and ethnic studies scholars are expected to invert the research process so they

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<sup>42</sup> PRESUMED INCOMPETENT, *supra* note 13, at 5.

<sup>43</sup> *Id.* at 8.



provide useful information, skills, tactics, and knowledge that allows marginalized communities to advocate on their own behalf.

Liberatory knowledge asks the hard questions of whose knowledge is valued and validated. Traditional distinctions of local versus scientific, traditional versus organic, street smart versus book smart, community v. academe are not diametric opposites in ethnic studies but most often mutually informed. The breaking down of barriers comes down to the very core of knowledge formation.

The project of ethnic studies is unabashedly one of radical democracy, and an explicit call to tear down ivory towers. Elitism has only served those in power to reproduce their legacy and breaking in as tokens or charity cases will never challenge those structures of power. Democracy and equality are not lofty ideals and faraway hopes in ethnic studies but the central mechanisms for reaching the goals of the social justice movements that often gave birth to them.

In the end, ethnic studies exists and persists to bridge theory and praxis, campus and community, normative and empirical; and even though bridges are often the first to be burned during times of war, ethnic studies by its very existence must operate to heal wounds and divides and contrary to social conservatives' characterizations, the emancipatory aims of ethnic studies are both universal and transcendental when actualized.

Given the culture wars characterization of ethnic studies as a "lesser" discipline, it's clear that what is at stake is the hegemonic responses to the following questions: whose knowledge is deemed unworthy and why? When successful counter-narratives are legitimated within the confines of academia, what happens to those fields of inquiry? What does outlaw knowledge actually look like, if not outlaw truth? I conclude with a story to provide a counterhegemonic response to said questions. I draw from expert witness testimony I recently prepared but never submitted on behalf of client seeking deportation relief. The Allegory of Don Rafael should explain the rest.

#### IV. ALLEGORY OF DON RAFAEL, CONNECTING PAST AND PRESENT <sup>44</sup>

The longstanding contradiction of Mexican labor migration to

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<sup>44</sup> I was at first hesitant to create a fictional story to convey this information. I very much concur with Mary Romero's assessment that we don't need to create fictional stories as everyday lives negatively impacted by the law illustrate our points with more force, humanity, and sense of egregiousness. See Mary Romero, *Revisiting Outcasts with a Sociological Imagination*, 50 VILL. L. REV. 925, 925-27 (2005). The only reason for rendering an allegorical approach is to protect the innocent, preserve anonymity, and forcefully call out by naming the guilty actors in power implementing our current deportation state of the nation.

the United States is constituted by the heavy recruitment of immigrants in times of labor shortages and mass expulsion at the first hint of economic downturns. The paired events of the Bracero Program (1942-1964) and the dubiously named "Operation Wetback" of 1954 illustrate this contradiction.<sup>45</sup> Connecting these historical events to the contemporary era of mass deportation is the case of Don Rafael. His allegory demonstrates Mexican-American community fears and concerns associated with Operation Wetback and today's "show me your papers" deportation regime that put this lifelong U.S. resident into the immigration detention system. The allegory connects expert witness testimony, contextualizing immigration in its racialized and spatialized contexts, and Latino/a Studies as a form of knowledge formation and praxis.

Don Rafael was referred to a Rural Legal Aid clinic to secure assistance with a fast-moving deportation hearing notice he received. A lifelong farmworker who moved between Arizona and Texas, he hobbled together a below minimum wage annual salary that relegated him to well below poverty line standards. He never sought any public assistance. He lived his life under the assumption he was born in the United States but his parents often traversed the border to visit family in Sonora and Chihuahua. Born in 1947, his baptism certificate wasn't secured until 1954 along with his US birth certificate.

His father pursued the only official employment and residency option for Mexican agricultural workers seeking work in the United States. It was the temporary worker program known as the Bracero Program, in operation from 1942-1964. The program did not invent the established migrant streams from entry points such as Eagle Pass or Douglas to migrant farmworker destinations, but it did state-sanction and codify the labor recruitment process that brought Mexican farmworkers to labor-intensive farms in the United States.

In negotiating the Bracero Program, the Mexican government insisted that workers not be subject to discriminatory treatment. From 1942-1947, *no* Braceros were sent to Texas due to the documented mistreatment of Mexican workers by Texan growers and other citizens. Texan-style Jim Crow segregation was visibly apparent in public establishments with signs declaring "No Dogs, Negroes, Mexicans" and "We Serve White's Only, No Spanish or Mexicans." At that time, braceros complained bitterly of discrimination. They contended that they were denied entrance to public places of entertainment, were not permitted to sit at tables in refreshment parlors or to purchase items there except by using

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<sup>45</sup> Historical details are drawn from Ronald L. Mize and Alicia C. Swords, *CONSUMING MEXICAN LABOR: FROM THE BRACERO PROGRAM TO NAFTA* (2010).

the service entrance, and could not patronize barbershops or other places of service except in areas almost inaccessible to them. It was not until 1948 that the Texas state government issued a series of assurances before growers were allowed to import labor from Mexico.<sup>46</sup>

Texan growers began to formally request contract labor from the Mexican government as early as 1943, although they strenuously objected to U.S. and Mexican government interference. When the blacklisting continued beyond 1943, growers actively encouraged undocumented laborers to migrate to Texas and Don Rafael's father was recruited to cross the border to pick cotton in Central Texas the same year his son was born (1947).

In October of 1948, the Texas-Mexico border was opened by immigration officials to allow several thousand undocumented workers across the border and into the agricultural fields of Texas. In open defiance of bilateral agreements, what came to be known as the "El Paso Incident" created a political morass while appeasing Texan growers by lifting the moratorium on allowing braceros to receive contracts for work in Texas. Most workers were processed and often directly escorted by Border Patrol agents to work in the cotton fields. This event formalized the informal practice of using undocumented Mexican labor to till Texas fields while the blacklist was in place. What made this particular incident problematic was the direct U.S. state involvement in managing and controlling the migrant stream.

Don Rafael's father crossed the border annually and created a very long paper trail in a circuitous route from Mexico, Texas, and Arizona. His papers were secured due to a part-time professional job in Mexico that qualified him for a visitor but never a worker visa. His wife always crossed the border without documentation and it was an unauthorized 1954 border crossing in Arizona and subsequent apprehension that set the wheels in motion. Traveling with her son, Don Rafael, she was stopped at the border checkpoint and questioned as to her immigration status. With her husband already in the United States, she did not want to jeopardize his employment recently secured on the Goodyear Farms, where cotton was harvested for the tire company. She testified under oath that she attempted to enter the United States

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<sup>46</sup> In response to the Good Neighbor policy, the Texas Commission, and the Caucasian Race Resolution, people in Mexico developed their own organization, *Comité Mexicano Contra el Racismo* (Mexican Committee Against Racism) to document racial discrimination practices in the United States in the areas of education, labor and consumer establishments. The Committee's publication, *Fraternidad*, included a column entitled "Texas, ¿Buen Vecino?" ("Texas, Good Neighbor?"), which detailed the incidents of discrimination against Mexicans in nearly 150 Texas communities. The committee influenced both the U.S. and Mexican state officials by pressuring them to deal with the racist practices of Anglo Texas.

without proper documentation and her son was also a Mexican national and they together agreed to return to Mexico with further orders to never fraudulently enter the United States again.

In that same year, 1954, Commissioner Joseph Swing of the Immigration and Naturalization Service mounted a mass repatriation campaign of illegal Mexican workers, dubbed "Operation Wetback," which resulted in an INS estimated return of 1.3 million workers to Mexico. The means of repatriation varied – some migrants were forced to return; some left voluntarily – but the effect was the same. Operation Wetback sent a strong message to the Mexican people about their rights to live and work in the United States. It also sent a strong message to Anglo growers. It stated that growers would not be held responsible for the mass migration that they initiated and perpetuated by actively recruiting and employing undocumented labor. Mass repatriation occurred at a time when the Bracero Program was running at its peak. At the same time, the contradictory message was sent to Mexican immigrants that they were not wanted in the United States, yet their labor would be remunerated and rights protected if they had a Bracero contract.

In what might have been possibly the first public relations military-style operation, Swing and his agents strongly controlled media coverage, created press releases to tout successes in terms of deportations, and crafted media relations in a manner conducive to INS interests. The INS created a mobile task force to round-up Mexicans and force them south of the border. Communities were literally encircled by several hundred border patrol agents. Military terms like "sweeps" and "operations" were deployed to contain a population, and force them over the border via bus, boat, train, and air lifts.

No records exist explaining how the family reunited later that year in Texas but the parents of Don Rafael secured his US birth certificate on August 18, 1954 at the exact moment when INS mass deportations known as "Operation Wetback" were deployed in Texas (see Chronology below). Seven years after his birth, the parents were undocumented Mexican citizens but their son born on US soil was a citizen by birth. His parents put their own status in the United States in jeopardy by contacting local government officials to secure their son's US birth certificate. Catholic Church records indicate Don Rafael was baptized at a mission church three days prior to the issuance of his US birth certificate, most likely as the necessary provision of proof of residency.

Don Rafael's mother's border crossing card (identifying she entered with her son 5 months prior to his birth) and internal INS documents that unequivocally dismiss the case against the family are highly representative of the timeframe of mass deportations targeting U.S. residents of Mexican descent – particularly along the border. Conflicting information makes it impossible to

definitively establish Don Rafael's birthplace, but viewing the documents within the context of a Bracero Program that recruited unattached male laborers, contradictory recruitment/deportation practices such as the El Paso Incident and Operation Wetback increased the precarious status of Mexican-origin families.

It seems that immigration violation events documented in 1954 must be viewed within the context of Operation Wetback, but deportation hearings rarely enter historical context into the deliberations. Notwithstanding what seems like an obvious statute of limitations question,<sup>47</sup> it is well documented in the scholarly literature that the massive sweeps of the time did not effectively distinguish between Mexican Americans, legal resident aliens, Bracero contract holders, and undocumented immigrants in the one-year removal of 1.3 million residents of Mexican descent. In the particular case of Don Rafael, it seems from existing evidence that he was completely unaware of his noncitizen status and INS deportation orders. At any time had he known his status was illegal, several options to regularize status could have been done (particularly in 1986 IRCA legislation and SAW programs were options foregone even though he clearly would have met residency and work requirements). Had he known his citizenship status was in question, even in 1965, family reunification provisions likely would have allowed him to pursue US citizenship pathways if INS information was accurate about his grandparents' US citizenship. But Don Rafael has a very common last name and his varied employment has meant his social security number has been submitted by several employers for more than one Rafael. With his name coming up on several e-Verify lists, the day he sought a U.S. passport to visit his grandchildren in Mexico was the day events of early 1954 Arizona and the long shadow of history caught up with him. With testimony under oath establishing his Mexican citizenship, Don Rafael as a life long US resident found himself fighting deportation in 2012.

#### V. CHRONOLOGY OF EVENTS PERTAINING TO DON RAFAEL CASE, 1954

May 11	At a dinner with International labor leaders, Laredo Times publisher William Allen is told that A.G. Brownell suggested "shooting illegals" as a method of deterrence.
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<sup>47</sup> "No person shall be prosecuted, tried, or punished for violation of any provision of Sections 1423 to 1428, inclusive, of Chapter 69 [nationality and citizenship offenses] and Sections 1541 to 1544, inclusive, of Chapter 75 [passport and visa offenses] of Title 18 of the United States Code, or for conspiracy to violate any of such Sections, unless the indictment is found or the information is instituted within 10 years after the commission of the offense." 18 U.S.C. § 3291 (2011).

June 9	California roundup and deportation begins
June 10	Phase One of AZ-CA Operation: Bus-lift First Greyhound Bus leaves El Centro, CA for Nogales, AZ with detainees from the San Francisco regional detention center and roadblock/inspection captures. A total of 28 buses with 1,008 migrants are shipped to Arizona for rail transport to Mexican interior.
June 17	Phase Two of AZ-CA Operation: Sweeps Agricultural regions of AZ and Southern CA targets of sweeps. INS authorities find a great deal of grower willingness to help identify those without papers.
June 20	Sweeps continued in same fashion in Central Valley of California by setting up bases in Fresno and Sacramento.
July 3	First mobile task force deployed in McAllen, TX to set up roadblock inspections, inspect trains, and deter migrants from moving northward.
July 15	First day of full operations in Texas. Focus on Lower Rio Grande Valley.
September 3	First deportation via sea. S.S. Emancipation and Vera Cruz eventually sailed the 2,000 mile trek from Port Isabel, TX to Veracruz, MX 26 times, both ships carrying a total of 800 deportees per trip.

And yet the question is why would this allegory be relevant now? The Obama Administration did not create the “undocumented immigration problem”, but their solution has spawned a whole host of questionable enforcement, detainment, and deportation practices that threaten civil liberties and protections guaranteed to all persons under the US Constitution. Immigration enforcement during the Obama administration has now reached the number (2 million deportations) that surpasses the two forced deportation campaigns: the first during the Depression known as the Great Repatriation and 1954 “Operation Wetback.” The Obama administration’s deportation state of the nation persists in spite of executive authority’s wide-ranging and sweeping powers as we saw when the DHS reported they would no longer deport “low-risk” undocumented people. As Maria Hinojosa’s fantastic PBS expose *Lost in Detention*<sup>48</sup> asked, who is profiting from the administration’s target of 400,000 deportations per year.

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<sup>48</sup> *Lost in Detention* (PBS television broadcast Oct. 18. 2011), available at <http://www.pbs.org/wgbh/pages/frontline/lost-in-detention/>.

Republican solutions to immigration reform include the proposed “self-deportation,” which is the epitome of neoliberal nativism. Self-deportation strategies purport to be a humane way of removing the likely 11 million undocumented immigrants residing in the United States without proper papers and most often without any legitimate pathways to U.S. citizenship. Being neither humane nor workable, self-deportation only makes sense once people choose to stay in the shadows of the law and then the central role the state would play in forcing mass deportations or costly detentions. Self-deportation is the great lie of the political nativist resurgence, this time in its neoliberal guise. Vigilantes enforcing the border or immigrants self-deporting are based on the same lie of neoliberalism that society operates best when government does not intrude in affairs (of course neoliberalism is most often aimed at economic policy, deregulation, and privatization). Whether the statement is true or not, it is clear that neoliberals are most often cloaking their own preferred forms of state intrusion under the guise of *laissez-faire* policy.

Kansas Secretary of State Kris Kobach, architect of Arizona’s SB1070, was the key immigration advisor to the Romney presidential campaign. A “smoke ‘em out” proponent – Kobach as counsel of the Immigration Law Reform Institute, sees state governments as essential in turning up the heat to make undocumented immigrants so miserable that they have no choice but to leave. SB1070, with US Supreme Court approval, allows Arizona law enforcement to racially profile those they suspect of “looking illegal.” Similar laws in Alabama, such as HB56 passed in 2010, seek to supersede federal immigration law have also been crafted and litigated by Kobach.

Immigration dilemmas have not been solved by increased enforcement and criminalization but it is the only tune that seems to play in Washington these days. Until a sane and effective legal immigration system is put into place (something neither party is committed to enacting), undocumented migration will continue to be the likely result. Those who pay the consequences are the Don Rafael’s and their families who get caught up and split up in the deportation state of the nation.