

Mexican Americans and Whiteness

George A. Martinez

During slavery, the racial divide between black and white became a line of protection from the threat of commodification: whiteness protected one against being an object of property. Even after slavery ended, it continued to be a valuable asset, carrying with it a set of assumptions, privileges, and benefits. Given this, it is hardly surprising that minorities have often sought to "pass" as white—i.e., present themselves as white persons. They did so because they thought that becoming white insured greater economic, political, and social security. Becoming white, they thought, meant gaining access to a panoply of public and private privileges, while insuring that one would avoid being the object of others' domination.

In light of the privileged status of whiteness, it is instructive to examine how legal actors—courts and others—constructed the race of Mexican Americans. In *Inland Steel Co. v. Barcelona*,¹ an Indiana appellate court addressed the question of whether Mexicans were white. The court noted that the *Encyclopedia Britannica* stated that approximately one-fifth of the inhabitants of Mexico are whites, approximately two-fifths Indians and the balance made up of mixed bloods, blacks, Japanese, and Chinese. Given this, the court held that a "Mexican" should not necessarily be found to be a white person.²

The Texas courts also considered the same question. In *In re Rodriguez*,³ a Texas federal court addressed whether Mexicans were white for purposes of immigration. At that time, the federal naturalization laws required that an alien be white in order to become a citizen of the United States. The court stated that Mexicans would probably be considered non-white from an anthropological perspective,⁴ but went on to note that the United States had entered into certain treaties with Mexico. Those treaties expressly allowed Mexicans to become citizens of the United States. Thus, the court held that Congress must have intended that Mexicans were white within the meaning of the naturalization laws. *In re Rodriguez* reveals how racial categories can be constructed through the political process. Through the give and take of treaty making, Mexicans became "white."

¹ From "THE LEGAL CONSTRUCTION OF RACE: MEXICAN AMERICANS AND WHITENESS." Copyright © 1997 by George A. Martinez. Used by permission of the author. Publication forthcoming in the *Harvard Latino Law Review*.

Other cases show how politics operated to turn persons of mixed blood into whites or the opposite. In immigration cases, mixed race applicants often failed to establish their whiteness. For example, in *In re Camille*,⁵ the court held that the son of a white Canadian father and an Indian mother was non-white, and therefore not eligible to naturalize. Similarly, in *In re Young*,⁶ the son of a German father and a Japanese mother was not a white person within the meaning of the immigration laws.⁷ If these cases stand for the proposition that mixed race persons were not white, Mexicans—a mixture of Spanish and Indian—should not have counted as white. The treaties nevertheless operated to turn them into whites.

The issue of the race of Mexican Americans also arose in connection with school segregation. In *Independent School District v. Salvatierra*,⁸ plaintiffs sought to enjoin segregation of Mexican Americans in the city of Del Rio, Texas. There, the court treated Mexican Americans as white, holding that Mexican Americans could not be segregated from children of "other white races, merely or solely because they are Mexicans."⁹ Significantly, the court did permit segregation of Mexican Americans on the basis of linguistic difficulties and migrant farming patterns.

Mexican-American jury participation and exclusion also show how the race of Mexican Americans is constructed. For example, in *Hernandez v. State*, a Mexican American had been convicted of murder. He sought to reverse his conviction on the ground that Mexican Americans had been excluded from the grand jury and the petit jury, relying on cases holding that exclusion of blacks from jury service violated due process and equal protection. The court recognized only two classes as falling within the guarantee of the Fourteenth Amendment: the white race and the black race. It went on to hold that Mexican Americans are white for purposes of the Fourteenth Amendment. The court reasoned that to hold that the members of the various groups comprising the white race must be represented on grand and petit juries would destroy the jury system.¹⁰ Since the juries that indicted and convicted the defendant were composed of members of his race—white persons—he had not been denied the equal protection of the laws.¹¹

On review, the United States Supreme Court also imposed a group definition on Mexican Americans. The court held in *Hernandez v. Texas*¹² that "persons of Mexican descent" are a cognizable group for equal protection purposes in areas where they were subject to local discrimination—but not otherwise.¹³ Defining Mexican Americans in terms of the existence of local discrimination hinders Mexican Americans in asserting their rights because not every plaintiff can afford the expense of obtaining expert testimony to prove the local prejudice.

Similarly, in *Lopez Tijerina v. Henry*,¹⁴ the court refused to allow Mexican Americans to define themselves as a group. Plaintiffs sought to bring a class action on behalf of a class of "Mexican Americans" in order to secure equal educational opportunity in local schools. The court rejected the claim for class representation, holding that the term "Mexican American" was too vague and failed adequately to define a class within the meaning of Rule 23 of the Federal Rules of Civil Procedure, governing class actions. Since the class was not adequately defined, the court dismissed the class action complaint.

(
inte
a si
sma
exal
to r
S
Rul
renc
cans
ope
righ
F
gove
the
used
of "
defir
Mex
1931
were
sente
Offic
racia
lectic
laws
W
Since
pecte
legal
ican
illeg
ence
the t
beca
"Me
signif
exclu
Angl
mitte
prete
parec
cial t
white
icans

Class actions permit a lawsuit to be brought by large numbers of persons whose interests are sufficiently related so that it is more efficient to adjudicate their rights in a single action. As such, it may represent the only viable procedure for people with small claims to vindicate their rights. The *Lopez Tijerina* case, then, seems to be an example of a court refusing to allow Mexican Americans to define themselves so as to resist oppression.

Subsequently, other courts permitted Mexican Americans to sue as a class under Rule 23 by distinguishing *Tijerina* under the *Hernandez* rationale that local prejudice rendered the class sufficiently identifiable. Thus, the courts defined Mexican Americans in terms of local prejudice, a definition which, for the reasons discussed above, operated to the disadvantage of Mexican Americans in their efforts to assert their rights under Rule 23.

Federal agencies also constructed the race of Mexican Americans. The federal government has long compiled census data on persons of Mexican descent. In 1930, the Census Bureau made the first effort to identify Mexican Americans. The Bureau used the term "Mexican" to classify Mexican Americans, placing it under the rubric of "other races," which also included Indians, Blacks, and Asians. According to this definition, Mexican Americans were not considered "whites." Interestingly, the Mexican government and the United States Department of State both objected to the 1930 census definition of Mexican. Thus, in the 1950 census Mexican Americans were classified as whites. The Census Bureau experience is significant in that it presents another example of how politics have influenced the construction of race. The Office of Management and Budget (OMB) has set forth the current federal law of racial classification. In particular, Statistical Directive No. 15, which governs the collection of federal statistics regarding the implementation of a number of civil rights laws,¹⁵ classifies Mexican Americans as white.

White identity traditionally has served as a source of privilege and protection. Since the law usually recognized Mexican Americans as white, one might have expected that social action would have reflected the Mexican American's privileged legal status as white. That, however, was not the case. Legal recognition of the Mexican American as white had only a slight impact on conduct. Far from having a privileged status, Mexican Americans faced discrimination very similar to that experienced by African Americans. Excluded from public facilities and neighborhoods and the targets of racial slurs, Mexican Americans typically lived in one section of town because they were not permitted to rent or own property anywhere except in the "Mexican Colony."¹⁶ Segregated in public schools, Mexican Americans also faced significant discrimination in employment. Mexican Americans were earmarked for exclusive employment in the lowest brackets of employment and paid less than Anglo Americans for the same jobs.¹⁷ Moreover, law enforcement officials have committed widespread discrimination against Mexican Americans, arresting them on pretexts and meting out harassment and penalties disproportionately severe compared to those imposed on Anglos for the same acts.¹⁸ In all these respects, actual social behavior failed to reflect the legal norms that defined Mexican Americans as white. Although white as a matter of law, that law failed to provide Mexican Americans with a privileged status.

At one point, discrimination against Mexican Americans in Texas became so flagrant that the Mexican Ministry of Labor declared that Mexican citizens would not be allowed to go there. In 1943, Mexican Foreign Minister Ezequiel Padilla informed Texas that Mexican citizens would be allowed to go to Texas only after the wave of racial prejudice had subsided. In response, the Texas legislature, on May 6, 1943, passed a resolution that established as a matter of Texas public policy that all Caucasians were entitled to equal accommodations. Subsequently, Mexican Americans attempted to rely on the resolution and sought to claim one of the traditional benefits of whiteness—freedom from exclusion from public places. In *Terrell Wells Swimming Pool v. Rodriguez*,¹⁹ Jacob Rodriguez sought an injunction requiring a swimming pool operator to offer equal accommodations to Mexican Americans. Plaintiff argued that he could not be excluded from the pool on the basis of his Mexican ancestry because that would violate the public policy expressed in the resolution condemning discriminatory practices against all persons of the white race. The court refused to enforce the public policy on the ground that the resolution did not have the effect of a statute. Thus, Mexican Americans could not claim one of the most significant benefits of whiteness—freedom from exclusion from public places.

The legal construction of Mexican Americans as white thus stands as an irony—thoroughly at odds with the colonial discourses that developed in the American Southwest. As happened in other regions of the world the colonizers engaged in epistemic violence—i.e., produced modes of knowing that enabled and rationalized colonial domination from the standpoint of the West.²⁰

In sharp contrast to their legal construction as white, writers and other Anglo opinion-makers plainly constructed Mexican Americans as irreducibly Other. The historian David Weber writes:

Anglo Americans found an additional element to despise in Mexicans: racial mixture. American visitors to the Mexican frontier were nearly unanimous in commenting on the dark skin of the Mexican mestizos, who, it was generally agreed, had inherited the worst qualities of Spaniards and Indians to produce a "race" still more despicable than that of either parent.²¹

Similarly, another commentator described how Anglo Americans drew a racial distinction between themselves and Mexican Americans:

Racial myths about the Mexicans appeared as soon as Mexicans began to meet Anglo American settlers in the early nineteenth century. The differences in attitudes, temperament and behavior were supposed to be genetic. It is hard now to imagine the normal Mexican mixture of Spanish and Indian as constituting a distinct "race," but the Anglo Americans of the Southwest defined it as such.²²

Likewise, the dean of Texas historians, Walter Prescott Webb, wrote:

Without disparagement it may be said that there is a cruel streak in the Mexican nature, or so the history of Texas would lead one to believe. This cruelty may be a heritage from the Spanish of the Inquisition; it may and doubtless should be attributed partly to the Indian blood.²³

mu
Me
wh

of w

5

1

1

conv

right

the e

race

wer

1

1

1

1

Rep

1

1

1

tice

1

2

16-1

158,

2

(Dav

2:

ICA: 1

2:

Through this discourse on the Mexican American, Anglo Americans also reformulated their white selves. Anglo judges, as we have seen, did the same, ruling that Mexicans were co-whites when this suited the dominant group—and non-white when necessary to protect Anglo privilege and supremacy.

NOTES

1. 39 N.E.2d 800 (Ind. 1942).
2. *Id.* at 801.
3. 81 F. 337 (W.D. Tex. 1897).
4. *Id.* at 349.
5. 6 F. 256 (1880).
6. 198 F. 715 (1912).
7. *Id.* at 716–17. The court observed:
In the abstractions of higher mathematics, it may be plausibly said that the half of infinity is equal to the whole of infinity; but in the case of a concrete thing as the person of a human being it cannot be said that one who is half white and half brown or yellow is a white person, as commonly understood.
8. 198 at 717.
9. 33 S.W.2d 790 (Tex. Civ. App. 1930). *Salvatierra* was the first case to decide the issue of whether segregation of Mexican Americans in public school was permissible.
10. *Id.* at 795.
11. 251 S.W.2d 531, 532, 535 (Tex. 1952).
12. *Id.* at 536. In *Sanchez v. State*, 243 S.W.2d 700 (1951), a Mexican American had been convicted of murder. He sought to challenge his conviction on the ground that his due process rights had been violated because the county had discriminated against Mexican Americans in the selection of grand jurors. The Texas court held that Mexican Americans are not a separate race, but are white people of Spanish descent. 243 S.W.2d, at 701. Thus the defendant's rights were not violated because whites were not excluded from the grand juries.
13. 347 U.S. 475 (1954).
14. *Id.* at 477–79.
15. 48 F.R.D. 274 (D.N.M. 1969).
16. Directive No. 15, *Race and Ethnic Standard for Federal Statistics and Administrative Reporting*, 43 Fed. Reg. 19,260, 19,269 (Office of Management and Budget 1978).
17. Pauline R. Kibbe, *LATIN AMERICANS IN TEXAS* 123–24 (1946).
18. Carey McWilliams, *NORTH FROM MEXICO* 167, 215–16 (1948); Kibbe, at 157.
19. U.S. Commission on Civil Rights, *Mexican Americans and the Administration of Justice in the Southwest* (Summary) 2 (1970).
20. 182 S.W.2d 824 (Tex. Civ. App. 1944).
21. Ruth Frankenberg, *WHITE WOMEN, RACE MATTERS: THE SOCIAL CONSTRUCTION OF WHITENESS* 16–17 (1993). See also Robert Young, *WHITE MYTHOLOGIES: WRITING HISTORY AND THE WEST* 127, 158, 173 (1990); Edward W. Said, *ORIENTALISM* 228 (1978).
22. *FOREIGNERS IN THEIR NATIVE LAND: HISTORICAL ROOTS OF THE MEXICAN AMERICANS* 59–60 (David J. Weber ed., 1973).
23. Joan W. Moore, *MEXICAN AMERICANS* 1 (1970). See also Rodolfo Acuña, *OCCUPIED AMERICA: THE CHICANO'S STRUGGLE TOWARD LIBERATION* (1972) at 7.
24. Walter Prescott Webb, *THE TEXAS RANGERS: A CENTURY OF FRONTIER DEFENSE* xv (1965).