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Contesting Whiteness - Inventing “Hispanic”

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Hispanic – the official ways Latinos/as/es/x are counted in the US census as of 1980 – is a term that refers to ethnicity, not race. This is not to say that “Hispanics” lack racial categories. [According to the Pew Research Center](#), which uses the word Latinos to describe Hispanics – we were 64.5 million strong in 2021, approximately 19% of the overall US population. Racially, we identified 16% as White Only; 1% as Black only; 44% as multiracial; 35% as some other race only; and 2% as Native Hawaiian or Pacific Islander. And what unites us all into a collective group is our “ethnicity” which the [Miriam-Webster dictionary defines](#) as a group with shared historical or cultural or linguistic backgrounds.

Beyond this simple explanation of Hispanic lie complex and inter-related historical, political and legal factors that have contributed to identity formation for Latinos/as/es/x in the United States. These include:

1. The early legal construction of Mexicans – and by extension all Hispanics-- as White by virtue of the [Treaty of Guadalupe Hidalgo of 1848](#);
2. The discriminatory social treatment of Mexicans –and by extension nearly all Hispanics -- as racialized minorities, subject to similar forms of discrimination experienced by Black Americans during the Jim Crow period; especially in the Southwest;
3. The resulting paradox from being treated as legally white (which certainly provided some legal benefits –such as eligibility for naturalization) but also as socially undesirable or inferior without the ability claim equal protection under the law as racialized minorities;
4. The political unification in the 1960s of at least 4 major groups, each with distinct lived experiences in the United States: Mexican Americans largely in California; Hispanics in New Mexico – who did use that term --and largely connected their ties back to Spain; Cuban

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word "Hispanic."

5. And finally the constant overlay of new waves of migration which adds both diversity of different lived experiences but also unique ways of identifying that are sometimes at odds with the ways in which the more long-term, established groups of Hispanics in the United States identify. There are misconceptions about the share of Latinos in the US who are immigrants. [According to the Pew Research Center](#), only 31.8 percent of the overall U.S. Latino population (nearly 63 million) are foreign born; and among them 41 percent are naturalized citizens. This means that between Latinos born in the US (nearly 70 percent) and those who have naturalized, 82 percent of the overall Hispanic population are US citizens. Furthermore, among the foreign born (about 1/3 of all Hispanics), only around 16 percent remain in irregular status. This means that we continue to connect our identity to immigration, although sometimes in outsized ways due to the rhetorical insistence of viewing us (and treating us – often harshly) as foreigners, despite the data.

The focus on the Mexican American experience in this brief National Hispanic Heritage Month reflection should not erase distinct but also racialized experiences of other Hispanic groups in the United States. One example is Puerto Ricans whose civil rights struggles have also been unique and connected to their efforts to achieve [constitutional parity](#) for those who live in the island and which remains a US territory and also treatment as [equal citizens](#) once they move to the United States. The stories of Mexicans and Puerto Ricans and other groups of Latinos/as/es/x groups in the United States have parallel tracks in the United States but our treatment socially and under law intersect in ways that shape our shared identities.

So what does the Treaty of Guadalupe Hidalgo have to do with Mexicans being "white"?

Most of you probably know something about the Mexican American War but probably know less about how its end-- through the Treaty of Guadalupe Hidalgo --collided with the then existing [1790 Naturalization Law of the United States](#) that required that all persons eligible to naturalize as citizens must be white. This law, which would last for more than a century and a half (repealed finally in 1952) had largely functioned to exclude Asians – initially the Chinese and then the Japanese but ultimately all Asians as well as Arabs from becoming US citizens. Mexicans would likely have suffered the same fate, except for the Treaty of Guadalupe Hidalgo.

In 1844, the U.S. elected [James K. Polk as President](#) on a platform that included expanding the US territory all the way to Oregon and California (at this time part of Mexico). This of course would have included Texas. At this time, Texas considered itself an independent nation (since 1822) but Mexico still viewed Texas as Mexican territory. In 1845, [Texas opted for Annexation](#) to the United

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claimed. President Polk tried to negotiate with Mexico by paying it \$5 million not only for Texas border in the Rio Grande but all of the territory between Texas all the ways to what we now know as Oregon and California. When Mexico refused, the United States sent troops and this led to a 2-year war between the two nations lasting until 1848.

In 1848, the US and Mexico entered into the Treaty of Guadalupe Hidalgo to end the war. The treaty added an additional 525,000 square miles to United States territory, including the land that makes up all or parts of present-day Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming. Mexico also gave up all claims to Texas and recognized the Rio Grande River as America's southern boundary. In return, the United States paid Mexico \$15 million and agreed to settle all claims of U.S. citizens against Mexico.

In addition, the Treaty of Guadalupe Hidalgo guaranteed citizenship to any Mexican national who chose to stay in what had been Mexican territory and would now become US land—a type of naturalization through treaty at a time when only whites could acquire it. This how Mexicans became legally white.

But were Mexicans treated socially as “White” in the United States?

The answer to this question is emphatically no. Mexican-Americans and their progeny who opted for citizenship in the US through the Treaty of Guadalupe Hidalgo were never really treated as white in the US both because they were racialized and also due to [new waves of Mexican immigration](#) that quickly followed and grew, which made it impossible to tell who was who. Discrimination, thus, was based both on social constructions of race – Mexicans socially were not viewed as white – but also on immigration status – Most Mexicans, including US citizens, would be perceived and treated a perpetual foreigners and also discriminated on that basis.

In fact, some scholars have referred to an equivalent period of [Juan Crow](#) for Mexicans in the Southwest. [“Mexicans” – and by extension all Hispanics](#) – were excluded from juries, had to attend segregated “Mexican schools” – this is what they were called – and could not eat at certain restaurants, or shop at the same stores, or stay in the same hotels, or even play in the same parks as whites.

There was also policing violence and of course harsh border enforcement – and even private lynching. Historians [William Carrigan and Clive Webb](#), for example, documented nearly 600 lynching incidents during the first five decades following the signing of the Treaty of Guadalupe Hidalgo.

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The paradox that resulted from Mexicans legal treatment as white given this social reality is that Mexicans – and by extension all Hispanics– would have been excluded from protections of the 14th Amendment except that Mexicans fought back to claim social racial discrimination and they did so quite successfully in the courts.

These important civil rights cases included the first set of cases to desegregate schools in California and Texas. Back in the 1940's in the US, Hispanic kids throughout the Southwest were forced to attend segregated "[Mexican only](#)" schools – or Mexican Schools as they were known. Nearly a decade prior to Brown v. Board of Education in both California and in Texas, Mexican parents and Mexican students fought against these so-called Mexican schools, which segregated Mexican and other Hispanic schools into remedial and under-funded schools based on educational policies that schools districts considered were necessary in order to help these kids overcome their linguistic and literacy so-called deficiencies.

In the case of [Mendez v. Westmister](#), Sylvia Mendez, a child of Mexican and Puerto Rican parents, was five-years old when she joined three other families in filing a class action lawsuit against the Westmister School District in a California federal district court. In 1946, the 9th Circuit agreed with [LULAC](#), one of the first Hispanic civil rights organizations in the United States, that separate for Mexican schools was not equal since Mexican kids were segregated into unequal schools based on untested assumptions about their intellectual or linguistic deficiencies. Bilingualism was treated as a liability rather than an asset and it was used pretextual to assume that Mexican kids had to catch up. [Sylvia Mendez](#) is now in her 80's and in 2011, received the Presidential Medal of Freedom from President Obama. Part of her civil rights legacy has been to ensure that cases like Mendez v. Westmister are taught in schools and become better known as part of our mainstream history. A similar case in Texas – [Delgado v. Bastrop ISD](#) was decided in Texas in 1948 and similarly found that segregated "Mexican" schools in Texas violated equal protection because they were not equal.

But perhaps of the most important Civil Rights cases for Hispanics – decided two weeks prior to Brown v. Board of Education – was [Hernandez v. Texas](#) – a unanimous decisions penned by Chief Justice Earl Warren –and which challenged the exclusion of Mexicans from juries in the State of Texas. Hernandez v. Texas for the first time clarified that, despite their legal treatment as white – "Mexicans" – and by extension nearly all Hispanics – faced discrimination that should be recognized as protected under the 14th Amendment. [At the time](#), in about 70 counties across the state of Texas, including Jackson County, where Hernandez had committed the murder for which he was tried and convicted to life in prison by an all-white (Anglo) jury, without a a single

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that a group of 4 Latino – and really Mexican – Houston lawyers would argue before the Supreme Court and win. They included John J. Herrera, Gus Garcia and Carlos Cadena. But because Mexicans were considered white, the argument was that they had not endured discrimination because of their race. Garcia gave an impassioned argument to contest this narrative during oral arguments. He only provided the compelling data of jury exclusion but very personal stories of how he, while arguing the Hernandez case in Texas, had to use a restroom for “colored” folks with a sign in Spanish reading “Hombres Aqui” – men here. The Court’s holding read:

Throughout our history, differences in race and color have defined easily identifiable groups which have at times required the aid of the courts in securing equal treatment under the laws. But community prejudices are not static, and, from time to time, other differences from the community norm may define other groups which need the same protection. Whether such a group exists within a community is a question of fact. When the existence of a distinct class is demonstrated, and it is further shown that the laws, as written or as applied, single out that class for different treatment not based on some reasonable classification, the guarantees of the Constitution have been violated. The Fourteenth Amendment is not directed solely against discrimination due to a "two-class theory" -- that is, based upon differences between "white" and Negro.

Hispanics were not always called Hispanics. What is the origin of the term, why does it matter, and why does it remain somewhat contested to today?

In the 1960’s, [the term Hispanic and even the term Latino were not commonly used](#). Instead, at the time, communities referred to themselves by referencing their nationality origins in Latin America or sometimes Spain: Spanish; Mexicans; Cubans Puerto Ricans, Latin American, etc. Also at this time, the US Census was collected very differently; racial identification was done by the government and not by the individual. There were also few racial categories that could be marked: you were either Black; White; or Native American. For most of whom today we refer to as “Hispanics” the default was white. This all changed in 1980 with what we have come to recognize as a bifurcated question first about ethnicity – and only are you Hispanic (Yes or No), followed by a question about expanded categories of race that now included Asians and Pacific Islanders, for example.

How we got to the inclusion of Hispanic in the US census is a story about a social movement of distinct communities in the US – united by cultural affinity, language, or ties to Spain or Latin America – coming together to be counted and be recognized nationally. At the time [President Lyndon B. Johnson](#)– whom as you know, signed many of the civil rights laws – saw issues affecting issues affecting Mexicans, Puerto Ricans, or other groups as regional issues that

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It is important to acknowledge here that there were some challenges to who was coming together and how to define the community. For some, the movement was about being “brown and proud.” For others, race was not the unifying feature and the term Brown left out Black and White Hispanics and also perhaps inadvertently included other groups, like certain Asians (Filipinos or Indians) and Arabs. The term “Hispanic” became the least problematic – and it also sort of was viewed as more “American” in that it was – in contrast to a term like Latino – more English-sounding and also perhaps more detached from Latin America – which also helped make this a US domestic project, sort of speak, of people who are from the United States and not who hail from foreign places. It also of course less political than other terms like [Chicano](#) that were not even contemplated. While all of this made some sense, the term has had to be sold to communities and it still causes some tension. Some groups in the United States even today [reject Hispanic](#) precisely because it sounds too assimilated (or even imposed by the U.S. government) and opt for terms like Latino or Chicano, or go back to Puerto Rican, Cuban, Mexican, etc., viewing these terms are more connected to their identities, lived experiences, or even political ideology.

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