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# Chicano Indianism: a historical account of racial repression in the United States

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In this article I propose to describe forms of racial repression experienced by people of Mexican origin living under the legal system of the United States. I also propose to document cases in which people of Mexican descent were compelled to argue in court that they should be treated as Caucasians in order to gain the legal rights of full citizens. Focusing on citizenship and racial legislation from 1848 to 1947, I will argue that the U.S. legal system accorded privilege to whites and, conversely, legitimated the inferior treatment of racial minorities. Because Mexican-origin people were of mestizo descent (Spanish and Indian ancestry), they were placed in an ambiguous legal position. Their Indian ancestry linked them to people of color, subjecting them to heightened racial discrimination, while their Spanish ancestry linked them to whites, protecting them from the full impact of the racial laws of the period.

My fundamental aim is not to argue that Mexican-origin people are unaware of their indigenous past or that they have no indigenous historical consciousness. Rather, it is to show that they are among the dark-skinned peoples who historically have been discriminated against by this country's legal system. In embarking on this exploratory venture, I found it necessary to examine documents in which information about the racial repression of Mexican-origin people could be obtained. As primary sources, I consulted federal and state supreme court records and 19th-century citizenship legislation. These legal discourses illustrate more than a century of arguments used to justify racial discrimination in the United States.

My historical inquiry will begin with a review of Mexicans'<sup>1</sup> legal status after the Mexican-American War of 1846–48. I will focus on the conflicting racial laws of the governments of Mexico and the United States with respect to the political rights of mestizos and Indians, describing the dissolution of the Mexican racial caste system and considering the Treaty of Guadalupe Hidalgo to demonstrate how the citizenship laws of Mexico and the United States conflicted and how resolution of the binational conflict adversely affected Mexican people. I will then review the major political events that influenced the Mexicans' racial status from the late 19th to the mid-20th century, including an analysis of how segregationist laws affected Mexicans and how U.S. citizenship legislation conferred unequal political rights on them.

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*This article offers a historical analysis of the racial repression experienced by people of Mexican origin in the U.S. legal system from 1848 to 1947. Using records of court cases and citizenship legislation, it demonstrates that from the 19th to the mid-20th century federal and state racial laws accorded particular legal statuses to Mexicans on the basis of their racial appearance, and it concludes that Mexicans of predominantly Indian descent were more severely discriminated against than Mexicans who were classified as white. [racism, segregation, Chicanos, American Indians, Mexican origin, race, prejudice, citizenship]*

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## U.S. violation of the Treaty of Guadalupe Hidalgo

Through annexation, conquest, and purchase, the United States acquired Mexico's northern frontier between 1845 and 1854 (Weber 1982). The four border states of California, Arizona, New Mexico, and Texas contained numerous small and large settlements of Mexican residents. Mexico also lost parts of its northern frontier that today include Nevada, Utah, parts of Colorado, and small sections of Oklahoma, Kansas, and Wyoming; these areas contained no Mexican settlements and remained under the control of indigenous peoples. At the termination of the Mexican-American War, the American states had the power to determine citizenship eligibility requirements, a power given to them by the Constitution of the United States (U.S. Const. art. IV, sec. 2, cited in Hyman and Wiecek 1982:517–531). As a consequence, the states were able to bar American Indians and all other racial minority groups from obtaining full citizenship privileges (Feagin 1989). The states proposed that only "free whites" (for example, whites who were not indentured servants or criminals) had all the desirable characteristics to receive such privileges (Hull 1985:11, 12; Kansas 1941:79, 80, 85; Konvitz 1946:318).<sup>2</sup> Because most political privileges could be acquired only by a citizen, individuals who did not qualify for citizenship received limited civil rights.<sup>3</sup>

When the United States acquired Mexico's northern frontier, the mestizo ancestry of the conquered Mexicans placed them in an ambiguous social and legal position (Tate 1969). In the U.S. government bureaucracy, it became unclear whether Mexicans were to be accorded the citizenship rights of white citizens or were to be treated as Indian inhabitants. Most government officials argued that Mexicans of predominantly Indian descent should be extended the same legal status as the detribalized American Indians (*People v. De La Guerra* 1870; *United States v. Joseph* 1876; *United States v. Lucero* 1869; *United States v. Santistevan* 1874). Mexicans, on the other hand, argued that under the Treaty of Guadalupe Hidalgo and international laws, the U.S. government agreed to extend all Mexican citizens—regardless of their race—the political rights enjoyed by white citizens. These rights were accorded to them on the basis of the international principle guaranteeing inhabitants of ceded territories the nationality of the successor state unless other provisions are made in the treaty of peace (Kansas 1941).

The Treaty of Guadalupe Hidalgo was exchanged and ratified in Queretaro, Mexico, on May 30, 1848, officially ending the Mexican-American War. It stipulated the political rights of the inhabitants of the ceded territories (including the Indians), set the U.S.-Mexico border, and brought several binational agreements on economic relations to closure. However, Anglo-American legislators violated the treaty and refused to extend Mexicans full political rights. The legislators were able to disenfranchise many Mexicans by arguing that such people were of Indian descent and therefore could not claim the political privileges of white citizens.

### conflicting racial laws in the conquered territories

In 1848, with the end of the Mexican-American War, the United States politically disenfranchised all Indians of the Southwest by rescinding Mexico's racial laws in the newly conquered territories. Since 1812, Mexico had given Indians the right to claim citizenship and full political rights (Knight 1990; Morner 1967; *United States v. Lucero* 1869; Weber 1982). Mexico also no longer practiced a legally based racial caste system. Thus, new racial restriction policies instituted in the conquered territories came to threaten the civil rights of the Mexicans because under U.S. laws, Indians and "half-breeds" were not considered citizens (Kansas 1941; Naturalization Act of 1790, ch. 3, sec. 1; see *In re Camille* 1880).

The eradication of Mexico's racial caste system had begun in the late 1700s when the Spanish crown resolved that generations of miscegenation had thoroughly blurred racial distinctions (Knight 1990; Morner 1967). In 1812, the legal basis of the racial ranking order was finally

abolished. The racial caste system, which for two centuries had distinguished individuals on the basis of race, became nonfunctional for political and social purposes. Its gradual breakdown resulted from the growth of the mestizo population and the political power obtained by upper-class mestizos. By the turn of the 19th century, the mestizos had become the majority and were heavily represented in the upper classes.

Before the breakdown of the racial caste system, Mexico's population had been divided among Spaniards, "*castas*," and Indians (Lafaye 1974; Morner 1967; Vigil 1984). Distinguishing the population on the basis of parental origin had been an adequate legal method of according economic privilege and social prestige to the Spaniards. The Spaniards included both *peninsulares*, individuals who had been born in Spain and were of full European descent, and *criollos*, who were also of full European descent but had been born in the New World. As miscegenation increased among the Spanish elite, the criollo category eventually came to be redefined. The *castas* were mestizos and other persons of mixed blood. The Indian category included only people of full indigenous descent.

Of the various racial groups, the Spaniards enjoyed the highest social prestige and were accorded the most extensive legal and economic privileges. The legal system did not make distinctions between *peninsulares* and *criollos*. Nevertheless, the Spanish crown instituted policies requiring that high-level positions in the government and the Catholic church be assigned to *peninsulares* (Haring 1963), on the rationale that only *peninsulares* were fervently loyal to the Spanish crown. Exceptions were made when a new colony was established in the Americas and when a *peninsular* was unwilling to accept the appointment. It was required, however, that a *criollo* taking such an appointment be a son of *peninsulares*. *Peninsulares* were appointed to positions such as viceroy, governor, captain-general, archbishop, and bishop, whereas *criollos* were appointed to less prestigious positions, such as royal exchequer (treasurer, comptroller) and judge, and, after 1618, to mid-level administrative positions in the church (as priests or directors of schools).

The social and economic mobility of the rest of the population was seriously limited by the legal statuses ascribed to their ancestral groups. In theory, Indians were economically more privileged than mestizos because they held title to large parcels of communal land protected by the Spanish crown and the Catholic church (Haring 1963; Morner 1967). However, regardless of their landed property, the Indians were accorded little social prestige in Mexican society and were legally confined to subservient social and economic roles regulated by the Spanish elite. Most Indians were placed in *encomiendas* and *repartimientos* (Indian communities where land and labor were controlled by Spanish missionaries or government officials), Indian pueblos, or haciendas and were held in a perpetual state of tutelage. The mestizos enjoyed a higher social prestige than the Indians but were considered inferior to the Spaniards. They were also often ostracized by the Indians and the Spaniards, and they did not enjoy certain legal privileges accorded to those groups. For example, most mestizos were barred by royal decree from obtaining high- and mid-level positions in the royal and ecclesiastical governments (Haring 1963; Morner 1967). Moreover, the Spanish crown did not reserve land for the mestizos as it did for the Indians. For the most part, the only economic recourse most mestizos had was to enter the labor market or migrate toward Mexico's northern and southern frontiers. Each migrant who was the head of a household was awarded 150 acres and exempted from taxation for a period of approximately ten years (León-Portilla 1972; Rubel 1966; Weber 1982). After 1680, mestizos were occasionally allowed to become parish priests in Mexico's frontier settlements or in sparsely populated areas.

By the late 1700s, the rigid racial order had relaxed owing to changes in the interracial sexual and cohabitation practices of the Spanish elite (Bonifaz de Novello 1975; Morner 1967). It had become common for upper-class Spanish males to take mestizo or Indian women as concubines and afterward legitimate their offspring. In such cases the racial status of the child became *criollo*

and not mestizo. These criollos had the racial status of Spaniards but were not accorded the corresponding legal privileges. They were barred from positions reserved for the Spaniards of full European descent, and they suffered certain sanctions for marrying peninsular women. By the early 1800s, large numbers of criollos, mestizos, and Indians were becoming increasingly defiant of bounded social roles and were trespassing their borders with deliberate speed. Criollos attempted to pass for peninsulares in order to obtain more social privileges. Indians often passed for mestizos in order to obtain wage labor in the urban centers, mestizos passed for Indians as a means of acquiring the land titles of the Indians (Bonifaz de Novello 1975; Morner 1967), and mestizos who had amassed great fortunes tried to improve their social standing by passing for criollos. The blurring of the racial distinctions made it difficult for the Spanish crown to enforce the laws and the prescribed social norms, in particular because the majority of the population was indistinguishably mestizo.

The final blow to the racial order came about through the political defection of the masses. By the early 1800s, movements to liberate Mexico from Spanish colonial rule had erupted throughout the country, and as a consequence the Spanish crown attempted to avert revolutionary action by instituting the 1812 Spanish Constitution of Cadiz. The new constitution legally abolished the *casta* system and the racial laws. Theoretically, the constitution conferred on Spaniards, mestizos, and Indians the same political rights regardless of racial origin. The laws of Cadiz, however, were unable to avert the national independence movements. In 1821, the masses won the Mexican War for Independence and instituted a provisional constitution (the Plan de Iguala) reaffirming the racial philosophy of the Constitution of Cadiz. After the War of Independence, race could no longer be legally used to prevent Indians and mestizos from exercising citizenship rights. For example, it became common for mestizos and full-blooded Indians to be elected to the presidency. All subsequent Mexican constitutions ratified the spirit and language of the Constitution of Cadiz.

In northern Mexico, the frontier experienced the same legislative changes as the interior. Indians were considered Mexican citizens and were accorded full political rights. In New Mexico, southern Arizona, and California the acculturated Indians and the secularized mission Indians actively exercised those rights (Spicer 1962; Weber 1982). In New Mexico numerous Pueblo Indians were elected to town and county political offices, and in California acculturated American Indians often held high-ranking posts in the military (Heizer and Almqvist 1971; *United States v. Ritchie* 1854; *United States v. Vallejo* 1861). Of course the new laws had limited effects on the majority of the American Indians, because Mexico held title to territories inhabited by unconquered indigenous populations. The majority of the Shoshone, Navajo, Apache, and Comanche Indians had not been conquered by the Mexican state. And the new legislation did not eradicate the Mexican elites' attitudes of racial and economic superiority toward the American Indians and mestizos.

When Mexico ceded its northern territory to the United States, then, it had already abolished all racial restrictions on citizenship. The Indians had theoretically been incorporated as Mexican citizens. In practice, of course, this legislation had not abolished racial prejudice and discrimination in Mexico, and the Indians continued to be stigmatized as uneducated people. However, the mestizo racial category had taken on a new social meaning. Because most of the population was mestizo, being mestizo had become a source of pride rather than a stigma. The European race continued to hold high social prestige in Mexico, but the masses no longer considered it the only prestigious racial group (Knight 1990; Vigil 1984). In the legal domain, race could no longer be used as a civil rights barrier.

The racial policies of the United States, however, were less liberal than Mexico's. The United States at that time conferred full citizenship rights on "free whites" only. Thus, the states' constitutional right to deny Indians U.S. citizenship introduced the ideological and legal foundation for limiting the Mexican people's political rights. Moreover, government officials

often used the Mexicans' indigenous heritage to undermine the civil rights language of the Treaty of Guadalupe Hidalgo. Article VIII of the treaty stated that the United States agreed to extend U.S. citizenship to all Mexican citizens, regardless of ancestry, who remained in the ceded territories. If individuals did not want U.S. citizenship, they had to so indicate within one year; otherwise they would become citizens automatically (cited in Tate 1969). Under Article IX the United States further agreed that Mexicans who chose to become U.S. citizens would have all the attendant rights. Article IX stipulated that "Mexicans who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican Republic . . . shall be incorporated into the Union of the United States, and be admitted at the proper time . . . to the enjoyment of all the rights of citizens of the United States" (cited in Tate 1969:20).

Regardless of the treaty, however, the U.S. government refused to ratify the racial equality laws of Mexico. When the annexed southwestern territories joined the Union, their state constitutions did not extend to American Indians the political rights guaranteed by the Treaty of Guadalupe Hidalgo and the Mexican constitution. And soon after the enactment of the treaty, controversy arose over the citizenship status of the Mexicans. The exclusionary Indian citizenship laws, endorsed by the southwestern legislators, became the legal basis for limiting the political rights of the Mexicans. Government representatives commonly argued that the language of the treaty and the U.S. Constitution was unclear as to whether Mexicans of Indian descent should be treated as American Indians or should be extended the privileges of whites (Surace 1982; *United States v. Joseph* 1876; *United States v. Lucero* 1869; *United States v. Ritchie* 1854; *United States v. Santistevan* 1874).

Ironically, the political privileges that the Spanish and Mexican governments had previously given people in the Southwest were abolished by the U.S. racial laws. The Mexican mestizos and Indians entered a new racial caste-like order in which their civil rights were limited. Given the nature of the U.S. racial system and its laws, the conquered Mexican population learned that it was politically expedient to assert their Spanish ancestry; otherwise, they were susceptible to being treated as American Indians (Padilla 1979). At the same time, as this historical blueprint suggests, it became politically expedient for American Indians to pass for Mexican mestizos if they wished to escape the full impact of the discriminatory Indian legislation (Forbes 1973). Let us now examine how the political disenfranchisement of the Indians affected the Mexican population.

### **the denial of citizenship for American and Mexican Indians**

After ratification of the Treaty of Guadalupe Hidalgo, government representatives of the annexed region began to pass new racial-restriction citizenship laws (Cal. Const. 1849, art. II, sec. 1; New Mexico Organic Law [Act] of 1850, sec. 6, cited in First Legislative Assembly 1851:20; Organic Act of Arizona 1863, revised 1864, ch. 24, sec. 6, cited in Hoyt 1877:226; Tex. Const. 1845, art. III, sec. 1). Most American Indians were prohibited from obtaining citizenship, and the anti-Indian legislation adversely affected the Mexicans of partial or full Indian descent. Unless a Mexican was predominantly white, he or she was subject to racial harassment (Forbes 1973; Tate 1969). Those classified as Mexican Indians were not entitled to exercise full political rights or even basic civil rights: they were not allowed to vote, practice law, marry Anglo-American women, or run for political offices such as district judge (Konvitz 1946; Murphy 1970). They were also subject to severe human rights infringements, such as being placed in debt peonage and being forced to live on reservations.

After the annexation of Mexico's northern frontier, the southwestern territories and states enacted ruthless, discriminatory Indian legislation. The Anglo-American legislators were able to enforce the laws with the help of the U.S. military and the Anglo-American settlers. It became common policy to place American Indians on reservations, drive them out of the southwest, or

exterminate them (Heizer and Almquist 1971; Lamar 1966; Newcomb 1985; Spicer 1962, 1969). With few exceptions, only former mission Indians were allowed to reside in white settlements and to retain title to secularized mission lands or family parcels. By the mid-1860s, however, most mission Indians had lost their property and become vagrants and paupers. Many of the mission Indians also ended their days in debt peonage, because between 1850 and 1865 it became lawful to place in bondage Indians who were vagrants, paupers, or orphans (Heizer and Almquist 1971; Lamar 1966). In many California towns it was also lawful to enslave them. By the late 1870s, the process of displacing Indians from their fertile southwestern land was practically complete. Thousands of Indians had been exterminated and the remainder placed on reservations. In Texas, indeed, this had been achieved as early as 1852 (Newcomb 1985). The Anglo Americans' blatant disregard for the Indians' right to life became an alarming warning to the Mexicans. If Mexicans were to have more political rights than Indians, they could not be identified as Mexican Indians.

Of the annexed regions, California and Arizona enacted the most discriminatory Indian legislation, clearly and strongly professing that all Indians, regardless of territorial origin, were to be denied citizenship. To a large extent, California's and Arizona's exclusionary racial laws reflected the Anglo-American political brokers' interest in limiting the rights of the Mexicans and preventing them from having any governmental power. Both states passed laws to disenfranchise Mexicans of Indian descent and to allow only white Mexicans full political rights.

In California, the state constitution of 1849 included a racial-restriction clause allowing only whites the right to vote. The purpose of this clause was to disenfranchise Mexicans of Indian descent, who constituted the overwhelming majority of the conquered population. The constitution made it explicit that only white U.S. males and white Mexican males had the right of suffrage; Indians and mestizos were ineligible to vote and therefore were stripped of most political rights. The California constitution stated:

Every White male citizen of the United States, and every *White male citizen of Mexico*, who shall have elected to become a citizen of the United States, under the treaty of peace exchanged and ratified at Queretaro, on the 30th day of May, 1848, of the age of twenty-one years who shall have been a resident of the state six months next preceding the election, and the county or district in which he claims his vote thirty days, shall be entitled to vote at all elections which are now or hereafter may be authorized by law. [Cal. Const. 1849, art. II, sec. 1; emphasis added]

The state legislators were aware that this racial restriction infringed the Treaty of Guadalupe Hidalgo and international laws of territorial cession. They were, however, more concerned with preventing Mexicans from obtaining political control of California.

The legislative debates of California's first constitutional convention of 1849 summarized the overriding view that Mexicans were Indians and should not be given the right to vote. Mr. Hoppe, a state legislator, proposed that it was unwise to give the descendants of Mexican Indians the right to vote, regardless of whether or not they were acculturated and paid taxes. He stated in reference to Mexicans that

there are Indians by descent, as well as full-blooded Indians. . . . Many of the most distinguished officers of the Mexican government are Indians by descent. At the same time, it would be impolitic to permit the full-blooded Indians who held [*sic*] property the right to vote. Those who held property would, of course, be taxed. [cited in Heizer and Almquist 1971:102]

The legislators further argued that denying Mexicans the right to vote did not violate the Treaty of Guadalupe Hidalgo. Mexicans would be allowed to become U.S. citizens and at the same time would be denied the right to vote. Mr. Bott, one of the state legislators, proposed:

This Treaty . . . is binding in every clause because it does not contradict the Constitution of the United States, it does not prescribe who shall be our voters. If it had made citizens of Mexico directly citizens of the United States, it would not have said that they should be voters of the State of California. [cited in Heizer and Almquist 1971:101]

Mr. Dimmick, another legislator, concurred with Mr. Bott and argued in favor of denying Mexicans the right of suffrage: "Are we to admit them to rights superior to those which we enjoy ourselves? Does anyone pretend to assert that we are under obligation to do this? Does it follow that the right of suffrage is one of these rights? . . . It is not necessarily the right of a citizen" (cited in Heizer and Almquist 1971:101). The final decision of the convention rested on the premise that the legislators were obliged to give Mexicans the right to vote or else the U.S. Congress would reject the state's constitution because it blatantly violated the Treaty of Guadalupe Hidalgo (Heizer and Almquist 1971:100-102). Nonetheless, the legislators concurred that neither the treaty nor the U.S. Constitution precluded them from placing racial-restriction clauses in the language of the California constitution. They concluded that Mexicans were to be given the right to vote only if they were "white." Ironically, the California state legislators did not clarify what they meant by a "white Mexican" and thus left open to local interpretation what racial criteria constituted a white, mestizo, or Indian Mexican. At the community level, this legal ambiguity allowed Anglo Americans to discriminate against Mexicans. Each township had the power to determine whether its Mexican residents were white and therefore to exempt them from or subject them to the state's racial laws (Padilla 1979).

When Arizona gained political independence from New Mexico in 1863, its existing territorial constitution was abandoned. Arizona legislators decided to base parts of their new territorial constitution on California's constitution: California's citizenship and electoral eligibility requirements were adopted, and only white males and white Mexican males were allowed to vote (Organic Act of Arizona 1863, revised 1864, ch. 24, sec. 6, cited in Hoyt 1877:226). A fundamental purpose was to disqualify American Indians, mestizos, and Mexican Indians from the electoral process (Hoyt 1877; Tate 1969). Arizona's territorial act disenfranchised Mexican Indians and mestizos until 1877, and the legislators passed additional racist laws against Mexican citizens. Once again Mexicans were disqualified, on the basis of race, from serving as justices of the peace and from practicing law (Murphy 1970); between 1864 and 1888 only white males were allowed to enter those professions. The Anglo-American power brokers were apparently determined to prevent Mexican Indians and mestizos from influencing Arizona's political structure.

The constitutions of Texas and New Mexico were less discriminatory against Indians and theoretically extended the full rights of citizenship to most Mexicans. The Texas constitution of 1845 and the amendments of 1850 extended the right of citizenship to "free whites," Mexicans, and a few detribalized, taxpaying Indians (Judd and Hall 1932). To acquire this right of citizenship, however, Mexicans had to have resided in Texas prior to 1845 (Padilla 1979); any Mexican immigrants arriving in Texas after that date had to prove that they were white in order to apply for citizenship. The detribalized American Indians were classified as citizens but were not given the right to vote (*Elk v. Wilkens* 1884), and the only American Indians who were granted citizenship (without suffrage) were those who resided in Mexican towns and had adopted the Mexican culture. Few other than the detribalized Mexican Apaches from the San Antonio District were eligible to be considered citizens (Weber 1982). Most likely, Mexicans and a few American Indians were granted citizenship because they no longer posed a political threat to the Anglo power structure. By 1850, most Indians had been exterminated and Mexicans constituted a minority population (Montejano 1987; Newcomb 1985).

Between 1850 and 1913 the citizenship laws extended to the Indians in New Mexico were ambiguous, and governmental opinions vacillated between liberal and racist positions. The differing attitudes toward the Indians appear to have been strongly associated with the shifts of political power from the Mexican mestizos to the Anglo Americans. From 1850 to the mid-1870s, a period when the Mexican mestizos retained considerable negotiating power, relatively liberal Indian legislation was passed in New Mexico (Lamar 1966). Conversely,



between the mid-1870s and 1913, as the Anglo Americans gradually came to monopolize New Mexico's government, attitudes toward the Indians became less sympathetic.

New Mexico's first territorial constitution was drafted on May 15, 1850, and was titled the Organic Act of New Mexico. Twenty delegates were present at the constitutional convention: 11 Mexicans and 9 Anglo Americans (Larson 1968). The Organic Act conferred full rights of citizenship upon "free whites" and those citizens of Mexico who had become citizens of the United States as a result of the Treaty of Guadalupe Hidalgo (First Legislative Assembly 1851:20).<sup>4</sup> Within days, confusion arose over two issues: were the Pueblo Indians part of the conquered Mexican population that had obtained U.S. citizenship under the Treaty of Guadalupe Hidalgo, and did they thereby acquire the right of suffrage? A month after the act was drafted, the Cochiti Indians (part of the Pueblo Indians) sent a delegation to Santa Fe, where it met with government officials to discuss the Cochiti's citizenship status (Larson 1968).<sup>5</sup> The Cochiti were assured that civilized Indians were counted as part of the conquered Mexican population and were therefore eligible to vote. When New Mexico's first territorial election was held, the Cochiti and other Pueblo Indians were allowed to vote.

On September 5, 1853, however, the U.S. Congress rescinded the Pueblo Indians' voting rights (Larson 1968). Ironically, though Congress prohibited the Pueblo Indians from voting, New Mexico's territorial legislators gave them a special citizenship status that allowed them to vote at the township level (Deavenport 1856:142). The Pueblo Indians, however, had to demonstrate that they practiced a Mexican lifestyle (that, for example, they had a "Mexican political village structure"). New Mexico's courts also prohibited federal Indian agents from relocating any Pueblo Indian onto a reservation (*United States v. Kolowski* 1874; *United States v. Lucero* 1869; *United States v. Santistevan* 1874; *United States v. Varela* 1874).<sup>6</sup> The courts reasoned that because the Pueblo Indians had adopted the Spanish culture and the Mexican township system, they had the right to obtain special privileges not extended to other Indian groups. In *United States v. Lucero* (1869), for example, the main argument offered in defense of the Cochiti was that generations of Spanish cultural indoctrination had uplifted their race. It was concluded that they had become a Mexicanized Indian race that had adopted the culture, names, and traditions of their Mexican neighbors. The court offered the following opinion:

Their names, their customs, and their habits, are similar to those of the people in whose midst they reside, or in the midst of whom their pueblos are situated. . . . In the absence of law or decision on the subject, are we not at liberty to conclude from these facts that the laws, the decision of the courts, and the acquiescence of the people, all recognized the pueblo Indians as citizens, as "Mexicans"? We do so conclude. [*United States v. Lucero* 1869:454, 456]

In short, the court decided that the Pueblo Indians of Cochiti were part of the conquered Mexican people who had obtained U.S. citizenship under the Treaty of Guadalupe Hidalgo.

The liberal New Mexico Supreme Court rulings and territorial laws were short-lived. In 1876 the U.S. Supreme Court overturned the Pueblo Indians' right to claim U.S. citizenship under the Treaty of Guadalupe Hidalgo (Davis and Mechem 1915; *United States v. Joseph* 1876). It appears that the dissolution of the Pueblo Indians' citizenship rights coincided with the growth of the Anglo-American community. In the late 1870s the Anglo-American population gradually increased; by 1880 it had become the majority, numbering over 90,000 (Lamar 1966). And with population growth came political power. The Pueblo Indians' right to claim citizenship faced its first serious challenge when Anthony Joseph charged that he had been discriminated against by New Mexico's legal system.

In 1874, Joseph, an Anglo-American resident of New Mexico, challenged the Pueblo Indians' property rights and attempted to lay claim to a parcel of their land. Government officials fined him and evicted him from the Pueblo territory. Joseph refused to pay the fine, and the dispute was finally resolved in court. He lost the trial at the territorial level (*United States v. Joseph* 1874) but, unsatisfied with the court's decision, appealed to the U.S. Supreme Court. In *United*

*States v. Joseph* (1876), he argued that the Pueblo Indians had no legal right to the land because they were not U.S. citizens. In response, the Supreme Court offered a convoluted decision regarding the citizenship status of the Pueblo Indians. The Court ruled that under the Treaty of Guadalupe Hidalgo the land of the Taos Pueblo Indians was protected from homesteaders. The Court also ruled, however, that although many Pueblo Indians practiced Mexican customs, they could not be considered U.S. citizens of Mexican descent. It concluded that because of the topic's complexity, the final decision would have to be made in future cases when the political rights of the Pueblo Indians were questioned. The final blow to the citizenship rights of the Pueblo Indians came from the Supreme Court in 1884. In *Elk v. Wilkens* the Court ruled that Indians—whether or not they were acculturated—were not U.S. citizens.

In New Mexico, the impact of the federal Supreme Court rulings on Indian issues was to dismantle the Pueblo Indians' special status. For example, in 1897 the Pueblo Indians' right to vote in town elections was rescinded (Davis and Mechem 1915). Moreover, when the New Mexico territory gained statehood in 1912 additional discriminatory laws were passed. Under the new state constitution (adopted January 21, 1911) the Pueblo Indians were declared to be "like any other Indian tribe" and their tribal land was brought under U.S. jurisdiction as "Indian country" (N.M. Const. 1911, art. XXI, sec. 8). Finally, in 1913, one year after statehood, New Mexico's supreme court passed a ruling stipulating that the Pueblo Indians were savages and therefore had no right to claim U.S. citizenship under the Treaty of Guadalupe Hidalgo. In *United States v. Sandoval* (1913) the court concluded that although the cultural heritage of the Pueblo was ambiguous, New Mexico's constitution classified them as an Indian tribe and not as a Mexican ethnic group. The court offered the following analysis of the Pueblo Indians' culture, concluding that they were a primitive and inferior people:

The people of the pueblos, although sedentary rather than nomadic in their inclinations, and disposed to peace and industry, are nevertheless Indians in race, customs, and domestic government. Always . . . adhering to primitive modes of life, largely influenced by superstition and fetichism [sic], and chiefly governed according to the crude customs inherited from their ancestors, they are essentially a simple, uninformed and inferior people. [*United States v. Sandoval* 1913:39]

*United States v. Sandoval* effectively symbolized the degeneration of the Indians' legal status during the Anglo-American political domination of New Mexico. Moreover, the derogatory views that the state and federal courts held of the Indians reflected the general racial prejudice felt by Anglo Americans toward people of Indian descent. Larson (1968) and Lamar (1966) posit that during the 19th century the major obstruction to New Mexico's statehood was the racial prejudice of U.S. congressmen toward a Spanish-speaking and predominantly nonwhite population. Congress was unwilling to extend statehood to a Mexican population that did not represent "the best blood on the American continent" (Larson 1968:303).

During the 19th century, then, racial laws in the Southwest discriminated against the Mexican-origin population, in particular those of Indian descent. Mexicans who were of American Indian or predominantly Mexican Indian descent were not able to exercise the full rights of citizens. It is now necessary to further examine the legislative and judicial repression of Mexicans and Indians in order to show why Mexicans were pressured to argue in court that they were of Caucasian descent.

### **citizenship by birth: racial restrictions and the 14th Amendment**

Passed in 1865, the 13th Amendment to the U.S. Constitution abolished slavery and involuntary servitude, freeing blacks from slavery and releasing thousands of American Indians held in indentured bondage (Feagin 1989; Heizer and Almquist 1971). The question of whether blacks and other racial minorities should be incorporated into the nation as voting citizens then arose. The federal government determined that if racial minorities were to be allowed to vote,

a federal law rescinding the states' right to prescribe citizenship requirements had to be enacted (Hyman and Wiecek 1982). The 14th Amendment was passed in 1868 with the intention of legislating a uniform citizenship law and eliminating the states' right to establish citizenship eligibility (U.S. Const. amend. XIV, sec. 1, cited in Hyman and Wiecek 1982:517–531). Ironically, although the 14th Amendment became the paramount law of the land and people born in the United States were granted full citizenship rights, including the right to vote, the amendment excluded the American Indians from its protection. Thus, this legislation adversely affected the Mexicans because Anglo-Americans continued to argue that most Mexicans were Indians and therefore should receive the same treatment (Surace 1982). Let us look at two judicial cases in which Anglo Americans attempted to deny Mexicans and American Indians the protection of the 14th Amendment by arguing that both populations were Indian.

Regardless of whether American Indians adopted the lifestyle of Euro-Americans, the government refused to grant them the right to obtain citizenship under the 14th Amendment. A case in point is John Elk, an acculturated Indian, who in 1884 was denied that right. According to the U.S. Supreme Court, Elk was technically a tribal Indian because his people had never enacted a treaty with the United States and had not been granted U.S. citizenship. Although Elk was a taxpayer, had terminated all relations with his reservation, and had served in the U.S. military, he was found unfit to claim citizenship. He was also denied the right to apply for naturalization, because Indians were ineligible: Indians could only become citizens by an act of Congress. With the *Elk v. Wilkens* ruling, the government made it clear that Indians were disqualified from applying for citizenship or naturalization. This law also applied to the American Indians of partial Mexican descent, including many Pueblo Indians of New Mexico (*United States v. Sandoval* 1913).

Throughout the late 1800s, anti-Indian feelings were projected onto Mexicans and used as a rationale for denying them full citizenship rights (*Hardy v. De Leon* 1849; *Kilpatrick v. Sisneros* 1859; *McKinney v. Saviego* 1855; *People v. Naglee* 1850). In 1870, Pablo De La Guerra, a district judge and a prominent citizen of Santa Barbara, was prosecuted by the state of California for "illegally acting" as a U.S. citizen. In the state supreme court hearing, the attorneys for the state argued that De La Guerra was not a U.S. citizen because the Treaty of Guadalupe Hidalgo had never had the power to make citizens of Mexicans or Indians. Therefore, they proposed that Mexicans who had remained in the United States after the Mexican-American War might only obtain citizenship by naturalization. Embellishing the facts, the attorneys for the state further argued that because the constitution prohibited Indians from applying for naturalization, and because Mexicans were Indian, Mexicans were also ineligible to apply for naturalization. In his defense, De La Guerra argued that he was white and was therefore exempt from California's racial laws. The court records indicate De La Guerra testified that he "was born at Santa Barbara in 1819, and has ever since resided at that place and is admitted to have been a *White male citizen of Mexico*" (*People v. De La Guerra* 1870:339, emphasis added).

Although the state supreme court ruled in favor of De La Guerra, concluding that he was white and therefore not subject to Indian jurisdiction laws, it passed a convoluted decision that upheld California's right to limit citizenship on the basis of race. (De La Guerra was also judged to be a U.S. citizen because the Treaty of Guadalupe Hidalgo had conferred that privilege upon him.) The court ruled that although De La Guerra was entitled to the full rights of citizenship because he was white, nonwhite Mexicans were not entitled to the same rights. The court stated that citizenship did not guarantee Mexicans full political rights because the government had the power to limit political privileges for certain types of Mexicans. It was implicit in the language of the court that only white Mexicans were entitled to full political rights. Ironically, although two years earlier the federal government had passed the 14th Amendment, which prohibited the states from limiting the political rights of U.S. citizens on the basis of race, the state supreme court upheld California's right to practice racial discrimination. It is unclear

whether the court elected to ignore the 14th Amendment or decided that it did not apply to Mexicans. The court's concluding statement affirmed California's right to discriminate against Mexicans of Indian descent:

The elective franchise is denied to certain persons who had been entitled to its exercise under the laws of Mexico. The possession of all political rights is not essential to citizenship. When Congress admitted California as a State, the constituent members of the State, in their aggregate capacity, became vested with the sovereign powers of government, "according to the principles of the Constitution." They then had the right to prescribe the qualifications of electors, and it is no violation of the treaty that these qualifications were such as to exclude some of the inhabitants from certain political rights. [*People v. De La Guerra* 1870:343-344]

The court further proposed that Mexican Indians born in the United States were ineligible to vote because Indians were denied that right.

New Mexico and Arizona took similar discriminatory actions. Despite the 14th Amendment, the Arizona legislators continued to deny nonwhite Mexicans the right of suffrage as well as to prevent them from serving as lawyers or justices of the peace (Murphy 1970). In New Mexico, although the Mexican mestizos retained considerable control of the territorial government during the 1870s, there is evidence that the Anglo Americans attempted to disenfranchise Mexicans by accusing them of being traitors. Mexican judges, in particular, came under overwhelming attack (*Carter v. Territory of New Mexico* 1859; *Quintana v. Thompkins* 1853).

Throughout the late 19th century, state governments prevented "American-born" racial minorities from exercising their citizenship rights (Kansas 1941). Anglo Americans argued that the spirit of the 14th Amendment applied only to blacks and whites and that therefore Asians, American Indians, Mexicans, and "half-breeds" were not entitled to its protection (Hull 1985; Konvitz 1946; Padilla 1979). As large numbers of American racial minorities began to challenge the states' interpretations of the 14th Amendment, their cases began to appear before the states' supreme courts. The federal Supreme Court was then pressured to offer a final and uniform decision on two citizenship questions: were nonblack racial minorities who had been born in the United States citizens; and if they were, should they be entitled to full political rights? In 1897 the case of *United States v. Wong Kim Ark* reached the federal Supreme Court, and the racial questions were resolved. The Supreme Court ruled that a child born in the United States acquired citizenship by virtue of the 14th Amendment and that race and national origin could not be used to deny a person the rights of citizenship.<sup>7</sup> The Court also ruled that the Civil Rights Act of 1866 (ch. 31, sec. 1-6) guaranteed all persons born in the United States (and not subject to any foreign power), regardless of racial background, full and equal benefit of the laws enjoyed by white citizens. Ironically, the Court exempted the majority of the American Indians, the rationale being that the spirit and language of the 14th Amendment were based on the principles of the Civil Rights Act of 1866, which exempted most American Indians.

Following the *Wong Kim Ark* decision, Mexicans born in the United States were in theory indisputably guaranteed the full legal rights of citizenship. However, because most Indians were denied the 14th Amendment's protection, Mexicans remained a vulnerable target of discrimination. Mexicans born in the United States were entitled to full political privileges, but at the community level they were subject to the Anglo Americans' interpretations of the 14th Amendment. There are abundant historical records demonstrating that anti-Indian attitudes were extended to Mexicans and that on a daily basis the two ethnic groups were often treated alike (Spicer 1962; Surace 1982; Taylor 1934). For example, newspapers typically depicted Mexicans as half-breeds or quarter-Indian bloods who stole cattle and assassinated Anglo Americans (Paredes 1978; Pitt 1966). Journalists also warned the American public to be wary of Mexicans because many "savage" Indians were attempting to pass for Mexican (Kenner 1969; Lange and Riley 1970, 1975; Reister 1928).

Discriminatory anti-Indian attitudes also surfaced in the area of naturalization, and the Mexican immigrant became the target. Reasoning that Mexicans were Indian, federal agencies

attempted to extend to Mexicans the exclusionary naturalization laws that applied to Indians. This was potentially damaging to the Mexican population as the era of Mexican migration began to unfold in the late 19th century. Thousands of Mexicans were entering the United States in an attempt to escape the repressive Mexican hacienda system, while others were deciding to settle in the Southwest as a means of reuniting families separated by the U.S.-Mexico border (Galarza 1964; Paredes 1978). Over 8,000 Mexican immigrants entered the United States legally between 1869 and 1900, and many more thousands of unregistered immigrants arrived (Galarza 1964; Zambrano 1986). It is thus important to explore the racial rationales used by Anglo Americans to prevent Mexican immigrants from obtaining U.S. citizenship.

### **citizenship by naturalization: Mexican immigrants**

In the 19th century, Mexican immigrants who planned to participate in American electoral politics and receive other political rights had to obtain citizenship by way of naturalization. For Mexicans and other racial minorities the process was arduous. Racial minorities did not have the right to apply for naturalization merely because they were immigrants (Hull 1985; Kansas 1941; Konvitz 1946). On the contrary, from 1790 to 1940 only "free white immigrants"—and, after 1870, black immigrants—were extended the privilege of naturalization (Naturalization Act of 1790, ch. 3, sec. 1; Naturalization Act of 1795, ch. 20, stat. 2, sec. 1; Naturalization Act of 1802, ch. 28, stat. 1; Naturalization Rev. Stat. of 1870, sec. 2169). The historical failure of the federal government to classify Mexicans as white adversely affected the Mexican immigrants who planned to apply for citizenship. If Mexican immigrants wanted to be naturalized, they had to prove that they were eligible to apply because they were white (Padilla 1979); consequently, they also had to prove that they were not Indian, because the naturalization eligibility requirements excluded Indians. In effect the naturalization process discouraged Mexican immigrants from asserting their indigenous heritage within the legal system. In Arizona, there is evidence that still more restrictive naturalization policies prevented Mexican immigrants from obtaining citizenship. The citizens of Apache County considered the naturalization racial clauses to be excessively lax, and so in 1885, local government officials defied the rules of the naturalization board and took it upon themselves to determine which types of white immigrants would be allowed to become U.S. citizens (Murphy 1970).

It is difficult to determine how many Mexican immigrants were successful in obtaining naturalization and how many were turned down on the basis of race (Hull 1985). The case of *In re Rodriguez* (1897), however, delineates the type of rationale used by the naturalization board to exclude Mexican immigrants. In 1897, Ricardo Rodriguez, a citizen of Mexico, filed in the county court of Bexar, Texas, his intention to become a citizen of the United States. His application was denied on the ground that he was an Indian and therefore not eligible to apply for citizenship. Rodriguez appealed, and his case was heard by the San Antonio Circuit Court. In his defense, Rodriguez argued that although his race was Indian he no longer practiced Indian traditions and knew nothing about that culture.

The naturalization board contested Rodriguez' right to apply for naturalization, arguing that the federal government did not extend this privilege to nonwhites other than blacks. The board, represented by attorney A. J. Evans, asserted that although many Mexicans were white and qualified for naturalization, most Mexicans, like Rodriguez, were Indian and thus ineligible to be naturalized (Naturalization Rev. Stat. of 1870, sec. 2169). Evans argued that Rodriguez was unmistakably Indian in appearance:

I challenge the right of the applicant to become a citizen of the United States, on the ground that he is not a man or person entitled to be naturalized. . . . [The] applicant is a native-born person of Mexico, 38 years old, and of pure Aztec or Indian race. . . . The population of Mexico comprises about six million Indians of unmixed blood, nearly one-half of whom are nomadic savage tribes, . . . about 5 million whites

or creoles . . . and twenty-five thousand . . . mestizos, or half-breeds derived from the union of the whites and Indians. . . . Now it is clear . . . from the appearance of the applicant, that he is one of the 6,000,000 Indians of unmixed blood. . . . If an Indian, he cannot be naturalized. [*In re Rodriguez* 1897:346–347]

Evans' colleagues, Floyd McGown and T. J. McMinn, presented supporting legal cases to contest Rodriguez' naturalization application. Offering several precedents in which racial minorities had been denied the privilege of naturalization, they argued that the federal government had made it very clear that only blacks and Americans of pure European descent were eligible. McGown and McMinn stated that the precedent for denying Mexican immigrants the right to apply for naturalization had been set in 1878 by *In re Ah Yup*. In that case the Circuit Court of California had ruled that the Chinese were not white and therefore were ineligible to apply for citizenship. The attorneys argued that *In re Ah Yup* indisputably applied to Mexicans because everyone knew that Chinese, Mexicans, and Indians were mongolians. That argument was their ethnological analysis. They then stated that the decision to exclude half-breed immigrants from citizenship had also been upheld by the government in the case of *In re Camille* (1880), in which the Circuit Court of Oregon had ruled that half-breed Indians were not white and therefore not eligible for naturalization. Using *In re Camille* as their precedent, the attorneys for the board of naturalization argued that Mexican mestizos were disqualified from applying for naturalization because the court had ruled that a person must be at least three-quarters white to receive the privileges of a white citizen. They also appealed to a Utah Supreme Court decision on a Hawaiian immigrant (*In re Kanaka Nian* 1889) as evidence that racial minorities who inhabited conquered territories were ineligible for naturalization. Employing unsubstantiated rhetoric, Evans and McGown asserted that inhabitants of ceded territories, such as Hawaii and the Mexican northwest, could not apply for naturalization. Because Kanaka Nian had been born in Hawaii and Rodriguez in Mexico, neither one was eligible.

The final case used to challenge Rodriguez' right to naturalization was the U.S. Supreme Court case *Elk v. Wilkens* (1884). The attorneys representing the board of naturalization argued that *Elk v. Wilkens* clearly indicated the U.S. government had never intended to naturalize Indians, even those who were acculturated or had terminated their tribal relations. Therefore, they concluded Mexicans were ineligible because everyone knew that the true Mexican was an acculturated Indian. In sum, the attorneys for the board argued on the basis of race against extending Rodriguez the right to apply for naturalization. In supporting arguments they alleged that the Treaty of Guadalupe Hidalgo did not have naturalization powers, and they concluded by opining that acculturation did not transform an Indian into a white person.

The dissenting opinion was offered by T. M. Paschal in defense of Rodriguez. Paschal's opinion clearly supported Rodriguez, yet it had a racist tone and indicated an intolerant attitude toward cultural diversity. Paschal argued that Rodriguez was an undesirable candidate for naturalization and should be denied that right based on the fact that he was an Indian and an ignorant Mexican who was unable to read or write Spanish or English. Paschal asserted, however, that the federal laws of the land had to be upheld by the district courts and Mexican immigrants had to be given the right to apply for citizenship. He argued that when the Treaty of Guadalupe Hidalgo was ratified the United States agreed to extend Mexican citizens the same political privileges enjoyed by whites. Therefore, Paschal proposed, if the U.S. government had agreed to treat the Mexicans of the ceded territory as "white," then the same treatment had to be extended to Mexican immigrants, irrespective of race. Paschal concluded that although Rodriguez was an Indian, the racial precedents set by the *In re Ah Yup*, *In re Camille*, *In re Kanaka Nian*, and *Elk v. Wilkens* cases did not apply to Mexicans, for the U.S. government had agreed to extend them the privileges of whites. Naturalizing Rodriguez, he argued, would not violate the racial clauses of the naturalization laws. To provide further evidence that Rodriguez was eligible, Paschal asked Rodriguez to testify in his own behalf and prove to the

court that he no longer identified himself as Indian. What follows are the counsel's questions and Rodriguez' replies:

Q. Do you not believe that you belong to the original Aztec race in Mexico?

A. No, Sir.

Q. Where did your race come from? Spain?

A. No, Sir.

Q. Does your family claim any religion? What religion do they profess?

A. Catholic religion.

Paschal then said, "The supporting affidavits show upon their face that the applicant is 'attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same'" (*In re Rodriguez* 1897:338). District Judge Maxey concurred with Paschal's defense. Maxey concluded that Rodriguez was eligible for naturalization based on international laws of territorial cession and on his having proven that he was no longer an Indian.

Interestingly, Elizabeth Hull (1985) argues that although a large number of Mexican immigrants were naturalized in the early 20th century, it was not until 1940 that the U.S. government changed the language of the naturalization laws and without a doubt conferred that privilege on Mexican Indians. According to Hull, it was only with passage of the Nationality Act of 1940 that the U.S. government formally allowed indigenous immigrants from the Western hemisphere to obtain naturalization rights, and only with several revisions of the act that it allowed all "nonwhite immigrants" to obtain citizenship. Chinese were granted that privilege in 1943, Japanese in 1945, Filipinos and East Indians in 1946, and all other races in 1952 (Hull 1985; Konvitz 1946).

## **de jure racial segregation**

In the late 1800s, when de jure segregation was enacted at the federal level, the question of whether or not the Mexican people came under the mandate of the segregationist "Jim Crow" laws became salient. Because the U.S. government had failed to designate a racial category for Mexican people, their racial status in the courts remained ambiguous. The government acknowledged that most Mexicans were partly white, but because of their Indian ancestry it failed to classify them as Caucasian (Padilla 1979). Classifying them as Indian, however, was politically problematic (Heizer and Almquist 1971; Weber 1982). There is evidence indicating that in the Southwest, dark-complexioned Mexicans were segregated from whites. I will therefore discuss judicial cases in which nonwhite people of Mexican origin were discriminated against by the U.S. legal system. I will also examine the Mexican people's responses. Understandably, Mexican litigants defended themselves in court by challenging the applicability of the segregationist laws to their ethnic group. Their attorneys attempted to protect them by arguing either that Mexicans were white or that they had the political right to be treated as white citizens. To introduce this discussion, I will briefly review the first two major segregationist cases to come before the federal Supreme Court: *Robinson v. Memphis & Charleston Railroad Co.* (1883) and *Plessy v. Ferguson* (1896). These cases will illustrate both the rationale for passing national segregationist laws and the rationale for including nonwhite Mexicans under those laws.

In 1883 the landmark segregationist ruling on *Robinson v. Memphis & Charleston Railroad Co.* legally allowed the exclusion of racial minorities from hotels, restaurants, parks, public conveyances, and public amusement parks. This ruling also upheld the right of business owners to provide segregated services for racial minorities or to refuse them services. The arguments of subsequent segregationist laws were structured or supported by this Supreme Court decision,

and they were not completely overturned until passage of the Civil Rights Act of 1964 (Salinas 1973).

The significance of the *Robinson* case was that it successfully overturned the liberal Civil Rights Act of 1875, which had prohibited discrimination on the basis of race, religion, and national origin. Sections 1 and 2 of the act were overturned because of their allegedly unconstitutional implications, for the Court concluded that they advocated reverse discrimination against whites. The majority opinion was that allowing racial minorities to be in public places forced whites to interact with them and thus violated the civil rights of white people. It also stated that excluding nonwhites from public places was not a violation of the 13th and 14th Amendments because interacting with whites was a privilege and not a right for racial minorities.

Thirteen years after the *Robinson* ruling, *Plessy v. Ferguson* (1896) was deliberated by the Supreme Court. This case became the most devastating and segregationist ruling to date, as the Court legalized all forms of social segregation, including school segregation. The ruling also provided more specific language about who could legally be segregated. In *Plessy*, the Supreme Court justices addressed the problem of racial classifications, ruling that for purposes of segregation every state had the right to determine who was white and who was nonwhite. It also gave each state the power to decide if any racial minority group should be segregated. That is, although the Court did not mandate that "all racial minorities" be segregated, it supported the states' rights to institute segregation if desired by the state legislators. The *Plessy* decision served to reinforce the Mexicans' inferior political status. In other words, during the era of de jure segregation the indigenous heritage of Mexican-origin people linked them to the people of color, and dark-complexioned Mexicans could be racially segregated.

In Colorado and Texas, for example, people of Mexican origin were legally excluded from public facilities reserved for whites. In *Lueras v. Town of Lafayette* (1937) and *Terrell Wells Swimming Pool v. Rodríguez* (1944), the courts concluded that Mexicans were not white and therefore were not entitled to use such facilities. Although the two Mexicans in these cases argued that they were of Spanish descent, their dark skin color indicated that they were racially mixed and thus they lost the trials (Salinas 1973). Social scientists Albert Camarillo (1984) and Guadalupe Salinas (1973) report that similar civil rights injustices occurred in California and Arizona during the same period.

School segregation cases serve to further illustrate discrimination against dark-complexioned Mexican-origin people on the basis of race. Although the rationales used to segregate Mexican students ranged from racial to social-deficit justifications (including language, intelligence quotients, and the "infectious diseases of Mexicans"), some legislators attempted to segregate Mexican students on the ground that most of them were nonwhite (Wollenberg 1974). California provides the best examples of how the indigenous racial ancestry of the Mexican students was used to place them under the mandate of de jure segregation. During the 1920s and 1930s, government officials attempted to classify Mexican students as Indians; their intent was to pass a paramount state law that would give all school boards the unquestionable right to segregate Mexicans (Donato, Menchaca, and Valencia 1991). On January 23, 1927, the attorney general of California offered the opinion that Mexicans could be treated as Indians and should be placed under the mandate of de jure segregation (Hendrick 1977:56), and in 1930 he issued a similar opinion. According to him, Mexicans were Indians and therefore should be treated as such: "It is well known that the greater portion of the population of Mexico are Indians and when such Indians migrate to the United States they are subject to the laws applicable generally to other Indians" (cited in Weinberg 1977:166). Finally, in 1935 the California legislature passed legislation officially segregating certain Mexican students on the ground that they were Indian. Though the school code exempted white Mexicans, it clearly applied to Mexicans of Indian



descent. Without explicitly mentioning Mexicans, the code prescribed that schools segregate Mexicans of Indian descent who were not American Indians:

The governing board of the school district shall have power to establish separate schools for Indian children, excepting children of Indians who are wards of the United States government and children of all other Indians who are descendants of the original American Indians of the United States, and for children of Chinese, Japanese, or Mongolian parentage. [cited in Hendrick 1977:57]

The ambiguous school code made Mexican students the principal target of discrimination and released American Indians from mandated school segregation (Donato, Menchaca, and Valencia 1991; Gonzalez 1990). Dark-complexioned Mexican students could be classified as Indians and the segregationist educational codes applied to them. California school boards now had the legal right to use race as a rationale to segregate certain Mexicans.<sup>8</sup>

During the early 1930s, the two states with the largest concentrations of Mexicans practiced school segregation on a large scale. In Texas by 1930, 90 percent of the schools teaching Mexican students were racially segregated (Rangel and Alcala 1972). In California by 1931, 85 percent of the Mexican students were in segregated schools or classrooms (Hendrick 1977). However, the rationales for segregating Mexican students varied, as schools could not use race to segregate white Mexican students. The case of *Independent School District v. Salvierra* (1930) illustrates this point. In 1930 the Mexican community of Del Rio, Texas, won a partial victory when it proved in court that the Del Rio Independent School District had unlawfully segregated white Mexican students (Rangel and Alcala 1972). The attorneys for the school board justified the segregationist actions by arguing that the Texas legislature, the U.S. Constitution, and federal statutes allowed government agencies to segregate Mexican students when it was necessary. They also argued that the district had primarily segregated nonwhite Mexican students. The judge ruled that because half the Mexican population in Del Rio was Spanish and belonged to the white race, not all of the Mexican students were subject to the mandates of de jure segregation. However, the judge also ruled that the Del Rio school board would not be asked to rescind its actions. First, the school board had not acted with malice when it segregated the Mexican students of Spanish descent. The judge proposed that this error resulted from the failure of the Texas courts to determine whether all Mexicans belonged to the same race. Second, because federal statutes on treaties had recently allowed government agencies to reverse treaty agreements, the school board had the right to segregate any Mexican student who did not speak English (*Independent School District v. Salvierra* 1930:794). The judge concluded that because a large number of the Mexican students were white, it would be unjust to segregate Mexicans arbitrarily. White Mexican students, therefore, could be segregated only if they did not speak English.

Educational historian Gilbert Gonzalez (1990) proposes that the *Independent School District* case set the legal precedent cautioning school boards in the Southwest not to use race as the only justification for segregating Mexican students. After the Del Rio incident other rationales were often used to legitimate school segregation, but they were only smokescreens for racism. A case in point is *Roberto Alvarez v. Lemon Grove School District* (1931), in which a California school board used language as a justification for segregating Mexican students (see Alvarez 1986; Gonzalez 1990). In this case, however, the court ruled in favor of the Mexican community and ordered the desegregation of the Mexican students (Alvarez 1986), arguing that separate facilities for Mexican students were not conducive to their Americanization. Americanization symbolically meant the right to be acculturated into the Anglo-Saxon society (Gonzalez 1990).

In 1947 the era of de jure segregation in the schools finally came to an end for the Mexican community of the Southwest. The *Mendez v. Westminster* case (1946, 1947) ended de jure segregation in California and provided the legal foundation for overturning the school segregation of Mexican students throughout the Southwest. In that case, Judge Paul McCormick ruled that the school board had segregated Mexicans on the basis of their "Latinized" appearance

and had gerrymandered the school district in order to ensure that Mexican students would attend schools apart from whites (Wollenberg 1974). He decided that neither *Plessy* nor the 1935 educational code of California applied to Mexican students because there was no federal law stipulating that all Mexicans were Indian (Gonzalez 1990). He also concluded that the segregation of Mexican students was illegal because the 14th Amendment and the Treaty of Guadalupe Hidalgo had guaranteed Mexicans equal rights in the United States. The Westminster school board appealed the ruling, but the U.S. Circuit Court of Appeals in San Francisco upheld the decision on April 14, 1947 (Gonzalez 1990). Although the *Mendez* case helped to end de jure segregation in the schools, the segregation of Mexican students remained widespread. In 1968 nearly 50 percent of Mexican-origin students attended segregated schools, and in 1980 about 70 percent of Latino students (two-thirds of whom were of Mexican origin) were enrolled in schools with minority enrollments of 50 percent or more (Donato, Menchaca, and Valencia 1991).

## conclusion

I have described some of the racial repression experienced by people of Mexican origin in the United States, intending not to document all forms of racial discrimination but rather to examine how the legal system was used to deny Mexican-origin people their political rights. As part of my analysis, I have also examined the circumstances that strongly influenced some Mexican-origin people to assert their Caucasian ancestry in court in order to obtain their full rights of citizenship.

Court and legislative records from 1848 to 1947, I argue, reveal that the skin color of Mexican-origin people strongly influenced whether they were to be treated by the legal system as white or as non-white. During the 19th century, Mexican-origin individuals who were predominantly of Indian descent were subject to heightened racial discrimination. They were, for example, not allowed to become naturalized citizens if they were immigrants, to vote in the states of California and Arizona, to practice law in the state of Arizona, or to be exempted from segregationist legislation. The segregationist laws continued to affect darker-skinned Mexicans into the mid-20th century. Furthermore, 19th- and early-20th-century legal records indicate that although New Mexican state officials attempted to confer full citizenship privileges on "Mexicanized American Indians," the federal government rescinded their actions. In the legal domain, the federal government failed to acknowledge the existence of people who practiced both Mexican and American Indian traditions; these individuals experienced greater racial discrimination than the rest of the Mexican population. The legal records also indicate that *under the law* Mexican-origin people of predominantly Caucasian ancestry were ostensibly allowed to exercise the full political rights of citizens. However, the question of whether they could actually exercise those political rights is beyond the scope of this article. In the state of Texas, for example, there is evidence that local governments found alternative legal methods of discriminating against Mexicans who were identified as white. In the *Independent School District v. Salvierra* court case, it was determined that "white Mexican students" could be legally segregated if they did not speak English.

I also argue that the Treaty of Guadalupe Hidalgo played three major roles in protecting the Mexican-origin population. In 1898, as a result of the treaty, the Naturalization Act of 1790 became inapplicable to Mexican immigrants (Kansas 1941); unlike other racial minorities, Mexican immigrants were exempted from the act and allowed to apply for naturalization. In the 19th century, the treaty also served to protect the political rights of some Mexicans, albeit only those of predominantly Caucasian ancestry; in the states of California and Arizona, "white Mexican males" were given the right of suffrage because the state legislators concluded that the treaty gave certain types of Mexicans full political rights. And in the 20th century, the treaty

was used to help dismantle de jure school segregation for the Mexican-origin students of the Southwest. In *Mendez v. Westminster* (1946, 1947) McCormick ruled that the treaty and the 14th Amendment prohibited the unequal treatment of the Mexican population (Wollenberg 1974). *Mendez* was used in subsequent school desegregation cases and became the legal foundation for ending the era of de jure school segregation.

In sum, this analysis outlines a history of racial repression and discrimination against members of the Mexican-origin community in the United States. Government officials used the people's indigenous ancestry to deny them equal citizenship rights and to keep them in a politically subordinate position. The legal case studies in particular demonstrate that Indianism was used to construct an image of Mexican-origin people as inferior and therefore deserving of separate and unequal treatment. With respect to future scholarship on the racial history of the Chicano people, I trust that this exploration has demonstrated the value of using legislative and judicial records as evidence that this American minority group has experienced severe racial discrimination in the United States.

## notes

1. The terms *Mexican* and *Chicano* refer to people of Mexican origin who reside in the United States. *Mexican* is used in reference to those individuals who lived in the 19th and early 20th century, and *Chicano* to those living in the contemporary period.

2. For extended discussions of the racial terms *white* and *Caucasian*, refer to the court cases *In re Camille* (1880), *In re Ah Yup* (1878), and *United States v. Thind* (1922). In all of these cases the courts stated that the term *white* had historically referred only to Caucasians. White women were considered part of the "free white" population, but they were not allowed to vote or run for political office.

3. Refer to Konvitz (1946) and Kansas (1941) for extended discussions of civil rights offenses committed against nonwhites. Among these offenses were denying people the right to vote or run for political office, prohibiting nonwhite men from marrying white women (in most states), and restricting various occupations to white citizens.

4. The Mexican delegates to the first constitutional convention also voted against legalizing slavery in New Mexico (Larson 1968).

5. In northern New Mexico during the Spanish and Mexican periods, the relationship between the small-scale mestizo farmers and the American Indians of the Rio Arriba was one of both conflict and cohesion. The mestizos in the Rio Arriba region retained their social distance from the Indians, yet ironically, they developed economic and kinship alliances with them; it became common for the mestizos to trade with and even marry the Indians (Kutsche 1979; Swadesh 1974). The relationship between the Spanish elite and the Indians in Rio Abajo (also in northern New Mexico), however, is better described as one of conflict and mutual exploitation. The Indians often raided the farms of the Spanish elite, stealing livestock and crops. In turn, the Spanish elite attempted to place Indians in a state of semislavery.

6. The government of New Mexico reconsidered the Pueblo Indians' political rights on February 16, 1859, in a heated debate on the issue of extending suffrage to acculturated Pueblo Indians. Many legislators favored extending voting rights to the Pueblo Indians. Transcripts of the assembly debate are rare—most had disappeared by 1877 (Davis and Mechem 1915).

7. In *United States v. Wong Kim Ark*, Justice C. J. Fuller offered the dissenting opinion and argued that the U.S. government should have the right to deny any race the right of citizenship for whatever reason. Fuller stated: "I am of opinion that the President and Senate by treaty, and the Congress by naturalization, . . . have the power . . . to prescribe that all persons of a particular race, or their children, cannot become citizens" (*United States v. Wong Kim Ark* 1897:732).

8. Refer to Donato, Menchaca, and Valencia 1991 for a comprehensive history of the school segregation of Mexican students in the 20th century.

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