



1992

Ethnic Diversity: Its Historical and Constitutional Roots

Cruz Reynoso

Follow this and additional works at: <https://digitalcommons.law.villanova.edu/vlr>



Part of the [Law Commons](#)

Recommended Citation

Cruz Reynoso, *Ethnic Diversity: Its Historical and Constitutional Roots*, 37 Vill. L. Rev. 821 (1992).

Available at: <https://digitalcommons.law.villanova.edu/vlr/vol37/iss4/6>

This Lecture is brought to you for free and open access by Villanova University Charles Widger School of Law Digital Repository. It has been accepted for inclusion in Villanova Law Review by an authorized editor of Villanova University Charles Widger School of Law Digital Repository.

1992]

Giannella Lecture

ETHNIC DIVERSITY: ITS HISTORICAL AND CONSTITUTIONAL ROOTS†

THE HONORABLE CRUZ REYNOSO*

I want to talk with you about the law and ethnic diversity in our country. Since the birth of our nation, we Americans have been in a evolutionary process of defining who we are as Americans, what the American community is, and who belongs to it. In that regard, the American experience has been a great historical experiment, successful sometimes, but not successful other times. The experience we have had as a people is intertwined with our Constitution and the principles that the Constitution has established. The basic question we have to ask ourselves is the following: How can we as a people, or as peoples of diverse religions, races and ethnicities live together and prosper together?

Before the birth of our nation, and sadly it continues today, some of the great wars in this world have come about due to the hatred toward those who are different—by religion, race or ethnicity. We see what is happening in the former Soviet Union, Eastern Europe, the Middle East, Africa and even such places as South America. These hatreds are live issues, traumatic issues that have brought a great deal of suffering to the human family. When we as Americans came together to form our nation, I think we asked the same basic question: Can we have a nation, can we have a people, who can live together and consider themselves as one, and yet be as different as the peoples of this world?

One of America's experiments was in religion. Even though the Constitution declares that the federal government shall not establish religion, we understood early that the essence of that constitutional mandate was a concern about our right, as individual Americans, to practice our own religion. Those who penned the Constitution had in mind the great wars of Europe and the

† This Article is the text, with some modifications, of the Sixteenth Annual Donald A. Giannella Memorial Lecture given at the Villanova University School of Law, March 12, 1992. The *Villanova Law Review* co-sponsors the Giannella Lecture.

* Professor of Law, University of California at Los Angeles; former Associate Justice, Supreme Court of California.

Middle East which had killed so many and had brought so much suffering. So they concluded that the new country had to be one in which folk of different religions could live together. The living together by those who practice different religions has not been all that easy. Books have been written about the "other Americans," Americans who were not of European, Protestant ancestry. Fred Hart, former Dean of the University of New Mexico, and still a professor there, tells that his dad remembers when they were growing up in Boston. Signs in some establishment that hired workers would read something like, "Help wanted: Irish and Dogs need not apply." That reaction of prejudice and hatred by some of the owners of those plants was based on religion as well as ethnicity. Indeed, it was not until John Kennedy's presidential campaign that the nation said, "We have matured enough that we can see a Catholic in the White House." That is a long time—from the inception of our country until 1960.

We have succeeded in creating an American culture wherein folk of different religions can live together and consider themselves one people. We appear to have reached a relatively satisfactory solution, at least for a while, because the issue of religion does not come up all the time. There is a fellow you may have heard of by the name Pat Buchanan. He is described by some as a conservative, a right winger, a racist, and by others as a great American. Never is he described as "the Catholic candidate." Yet he is a Catholic, and he often cites his Catholicism to reject the accusation that he is a racist. To me, it is an evolution in the public life of our country that we have a person running for president whose Catholicism hardly gets mentioned.

Others have also suffered. Non-Christians, particularly Jewish people, as well as Hindus and Native Americans have suffered from exclusion. A few years ago, the Alaska Supreme Court issued, I thought, a moving opinion about the rights of a Native American to kill a moose because it was part of the religion of that particular tribe.¹ The Alaska Supreme Court was balancing the right of the state to protect the environment with the right of that particular tribe to exercise its own religion, and, in a sensitive opinion, tried to balance those interests. Thus, the historic process continues.

Issues of religion will always be with us, because who we are religiously is so important to each of us. Yet, we have made so

1. Frank v. State of Alaska, 604 P.2d 1068 (Ala. 1979).

much progress. That is our success story. In America we have been able to live together and consider ourselves as one people, though a people of great religious diversity.

The next area in which we as a nation have worked so hard has been that of race, particularly pertaining to African-Americans. We succeeded so poorly that we experienced here what had happened in other countries—a great war, a great civil war. A larger percentage of Americans were killed and maimed during that war than any other war, over something called race. The Civil War is just a reminder of how important and divisive issues of diversity can be. But from the suffering of this nation in that great war, which pitted brother against brother and sister against sister, came an important amendment to the Constitution—the Fourteenth Amendment. Some post-Civil War amendments, like the Thirteenth, are easily understood. The more difficult Fourteenth Amendment provided the source for a redefinition of who we are as Americans. The constitutional notions of equality and due process found within the pre-Civil War Fifth Amendment were incorporated into the post-Civil War amendments. With the Fourteenth Amendment our country was saying, “We meant what we said in the original Ten Amendments.” We redefined ourselves as a people to include African-Americans, including former slaves. While many African-Americans had lived as freed men and women before the Civil War we had not previously succeeded in dealing with the issue of race.

You recall that in the Lincoln-Douglas debates Abraham Lincoln argued that the Constitution set forth the ideal of equality. Those who signed the Constitution understood that we would not meet that ideal immediately, but that we as Americans had a duty to work day in and day out to get the reality of our country a little bit closer to that ideal. To me, and this may sound strange to you, we reached a new public understanding of the reality that we as Americans are of many races, when we built the Vietnam Veterans Memorial in Washington, D.C., and included a black soldier among the soldiers represented. I think we recognized publicly that all races have sacrificed to make this nation great.

Native Americans, like African-Americans, have suffered because of race. Our country originally dealt with Native Americans through the War Department. We viewed Native Americans as the enemy—they were to be killed or captured. Since then American history has evolved to a better understanding between the Indian and non-Indian.

In recent years, the issue of ethnicity and language has come into the forefront. Ethnicity and language, like religion and race, define us. Are we as Americans, or should we be, a people of one language and one ethnicity? In many states there is what is called the English-only movement. A friend of mine from New England, with whom I have served on several committees of the American Bar Association, came up to me one day and said, "Cruz, I know an elderly couple, friends of mine, who went from New England to Florida, and when they came back they said that they were taken aback. They found portions of Miami where everybody spoke Spanish. Only when the couple explained that they did not speak Spanish was English spoken." My friend said, "Cruz, we must do something about this; we must have one language for all of us." I responded: "You are absolutely right. When are you learning Spanish?"

We have struggled with the issue of language and ethnicity throughout our national life. I do not think that we have yet decided what our national ideal is in that regard. My own view is that we Americans are now, and have historically always been, a people of many languages and many ethnic groups. I mentioned the Native Americans, who were here before the European-Americans, and who enjoyed great civilizations and who created marvelous works of art. Somehow we look at the Native Americans of Mexico and the Latin Americans as being those who created great civilizations and great art. The reality is that Native Americans who have lived in what we now call the United States also had that great creativity. We can look to the great irrigation system constructed in New Mexico, or we can look to the political organization of the Navajo nation. Other ethnic groups, such as the Spanish-speaking, came to this land over a hundred years before the English-speaking. Travel in New Orleans or Florida, certainly in Puerto Rico and the Southwest, demonstrates their influence. Sante Fe, New Mexico claims to be the longest standing city that has been a seat of government in what is now the United States. It goes back to the mid-sixteenth century. So folk of different languages and different ethnic groups have been here for a long time.

In the seventeenth century, when the English-speaking Europeans came to the eastern shores of the United States, so did those who spoke French and German and other languages. Indeed, in his autobiography, Benjamin Franklin spoke about how the United States Constitution was translated into the German

language during the political debates about whether or not the Constitution should be approved by the people of this country. It seems to me that we have always recognized the importance of people who are of different ethnic groups and tongues.

Take a look at the history of my own state of California. While I spent four years in New Mexico, and I tell folks that I consider myself part manito (a New Mexican is a manito), I was born in California. First came the Native Americans, then the Mexicans and Spaniards who came and settled that land well before the Americans got there. Then came groups from South America, particularly the Chilean community in San Francisco, in large parts because they were fishermen and traders who sailed up and down the Pacific coast. In the middle of the last century, the Americans came to California, and about the same time came many Chinese, followed by Japanese and Filipinos. Currently we have great influxes of people from Southeast Asia and Central America. In Los Angeles, I see whole communities change in a matter of few years. I used to stay in a certain part of Los Angeles which a few years ago was mostly Mexican-American (Chicano) and Anglo-Americans. Now it is mostly Central Americans.

We have seen these great historical changes in our country. It seems to me that we have the political foundation and the ideals of our Constitution to help us meet those realities. Those ideals will help us craft a country in which we consider ourselves as one people, while continuing to enjoy the strength which comes from different religions, races, languages and ethnicities.

We start with basics. The Constitution states that all of us, all the "persons" in this country, enjoy constitutional protections; it is not "citizens," the "English-speaking" or the "Spanish-speaking," who are protected, but all of us as "persons." The United States Supreme Court had occasion to deal with the issue of ethnicity and language in a case that came before it in 1923. You may have read about it in your Constitutional Law classes, *Meyer v. Nebraska*.² You may remember that it is a case that dealt with a state statute enacted around 1919 during the First World War.³ There was a strong anti-German feeling during that time in America. I recall older persons I knew, who were adults during that war, telling me that in their schools, German books and mu-

2. 262 U.S. 390 (1923).

3. *Id.* at 397 (citing NEB. LAWS 1919; ch. 249 (entitled "An act relating to the teaching of foreign languages in the State of Nebraska" (approved April 9, 1919))).

sic were destroyed. If they were German, they could not be good. At the time, the Nebraska legislature enacted a criminal statute that prohibited the teaching of German to youngsters before they had graduated from the eighth grade.⁴ There was a parochial school in Nebraska called the Zion Parochial School where youngsters were taught in English and in German.⁵ A young teacher by the name of Meyer, despite the law, continued to teach in German. He was arrested and convicted.⁶ Here is what the statute said:

No person individually or as a teacher, shall, in any private, denominational, parochial or public school, teach any subject to any person in any language other than the English language. . . . Languages, other than the English language, may be taught as languages only after a pupil shall have attained and successfully passed the eighth grade as evidenced by a certificate of graduation issued by the county superintendent of the county in which the child resides.⁷

Meyer appealed his conviction, but the courts in Nebraska upheld the constitutionality of the statute.⁸ Interestingly, court decisions in Nebraska excluded the “dead languages,”—Latin, Greek and Hebrew—from this statute.⁹ The legislature, according to the state supreme court, did not mean that students could not study dead languages, only that they could not study certain “live” languages.¹⁰ Eventually the case reached the United States Supreme Court, and the Court looked at the facts and asked itself whether the statute could be constitutional. The Court tried to define what “liberty” meant under the Fourteenth Amendment.¹¹

Although the Justices did not talk about it, I think they were also concerned about the Ninth Amendment. When the first Ten Amendments were introduced, an important political debate took place regarding the question of whether those protections that we

4. *Id.* (citing NEB. LAWS 1919, ch. 249, § 2).

5. *Id.* at 396-97.

6. *Id.* at 396.

7. *Id.* at 397 (quoting NEB. LAWS 1919, ch. 24, §§ 1-2).

8. *Id.*

9. *Id.* at 400-01.

10. *Id.* at 401.

11. The Fourteenth Amendment states, in pertinent part: “No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” U.S. CONST. amend. XIV, § 1.

receive from the first ten amendments were exclusive. In many states, many people said, "No, we want to make clear that those protections are by way of description, for there are many other rights that we have as Americans that government does not have the right to take away." That conclusion was echoed in the *Meyer* case:

While this Court has not attempted to define with exactness the liberty thus guaranteed [by the Fourteenth Amendment], the term has received much consideration and some of the included things have been definitely stated. Without a doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, to establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.¹²

Notice that none of these protections mentioned are found in the Constitution. The Court was saying that surely the right to marry, the right to have children, the right to bring up your family have to be so fundamental that Congress and the states cannot monkey around, if you will, with those rights. Those unstated rights include the right to worship God according to the dictates of a person's own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men and women. The Court then went on to discuss the importance of language to an individual.¹³ The Court ruled that the Nebraska statute was unconstitutional, and that the state had to have an overwhelmingly important reason to prohibit a youngster from learning German, or a teacher from teaching German.¹⁴ The state, the Court wrote, clearly may go very far in order to improve the quality of its citizens, physically, mentally and morally.¹⁵ The individual, however, has certain fundamental rights which must be respected and that includes the right of languages.¹⁶ It seems to me that such a right

12. *Meyer*, 262 U.S. at 399.

13. *Id.* at 400-03.

14. *Id.* at 402-03.

15. *Id.* at 402.

16. *Id.* at 400-01.

includes the right of ethnicity. The right to one's own language was recognized as fundamental within our constitution.

The Court had another occasion to look at the issue of ethnicity in a case from the state of California. We produce a great deal of constitutional law from the state of California. A case came up in 1947, if I remember correctly, called *Oyama v. California*.¹⁷ California had passed a statute that prohibited aliens from owning land in California.¹⁸ The breadth of the statute had been narrowed by court decisions; by the 1940s the statute had been interpreted to mean that Japanese could not own land in California. A Japanese immigrant had bought and paid for some land and then put the title in the name of his son, so the son was the legal owner.¹⁹ The father then filed in court to become the guardian, and, in fact, was the child's actual guardian.²⁰ The statute declared that if a person, who could not legally become a citizen, paid for the land, it would be presumed that such payment was an effort to get around the statute.²¹ In that event, the land would escheat to the state.²² Interestingly, it was the Attorney General of California who brought the action against Mr. Oyama. The only person who testified was the person in charge of the land.²³ The Oyamas did not testify because the hearing took place during the Second World War, when the Oyamas were confined in a concentration camp.²⁴

The trial court decided against the Oyamas, and the case was appealed in the California courts.²⁵ The courts found that the father had paid for the land, and that the Oyamas were clearly trying to get around the statute, and, therefore, the land properly escheated to the state.²⁶

The United States Supreme Court looked at the case from the point of view of the little boy, Fred Oyama, and said, "Wait a

17. 332 U.S. 633 (1948).

18. *Id.* at 635-36 & nn.1 & 3 (citing Alien Land Law, 1 CAL. GEN. LAWS, Act 261 (Deering 1944 & Supp. 1945)).

19. *Id.* at 636-37.

20. *Id.*

21. *See id.* at 636 (citing Alien Land Law, 1 CAL. GEN. LAWS, Act 261, § 9(a)).

22. *Id.*

23. *Id.* at 638. The witness, John Kurfurst, had been left in charge of the Oyama property when the Oyama family was evacuated in 1942 as part of the evacuation of persons of Japanese descent during World War II. *Id.* at 637-38.

24. *See id.* at 638.

25. *See id.* at 639.

26. *Id.* at 639-40.

minute. We are looking at the rights of a citizen, Fred Oyama.”²⁷ Another contemporaneous statute in California permitted parents to make a gift of land to a child by paying for the land.²⁸ The Court underscored that an American citizen, the child, was being treated differently because of who his parents were.²⁹ This case presented a conflict between a state’s right to formulate a policy in land holding within its boundaries and the right of American citizens to own land anywhere in the United States.³⁰ The Court concluded that when these two rights clash, the rights of a citizen may not be subordinated merely because of his father’s country of origin (that is, the ethnicity of the citizen).³¹

So we start to see a constitutional pattern which protects persons from discrimination on the basis of ethnicity. And I just want to remind us that the Constitution so often deals in the negative, that is, “You can’t do A, B, and C,” but what it really means is that people have certain rights. While the Court ruled that the Constitution provided protection from discrimination, it really was defining the right of Americans to their own language and ethnicity.

When I was a youngster in Orange County, California, we still had segregated schools. For several years I was sent to a public grammar school referred to as “The Mexican School.” There were other schools called “The American Schools.” I was born in the then-little town of Brea; Orange County was rural in those pre-Disneyland days. I had gone to school in Brea for a couple years and then my family moved to the nearby community of La Habra. There were a lot of folks in La Habra of Mexican ancestry. When September came, we looked for a school and found a place that looked like a school we were used too—it was built with bricks, it was two stories and had a playground in the back. My brothers and I went there to sign up, and the school officials said, “No, you don’t go to this school, you go to another, the Wilson School.” So we went to Wilson School. We noticed that all the youngsters there were Latinos and Chicanos, and we asked why we were being sent to this school. We were told that we were being sent to this school to learn English. Since my brothers and I already knew English, we were little bit suspicious that maybe

27. *See id.* at 640.

28. *Id.* at 640 & n.16 (citing CAL. PROB. CODE ANN. § 1407).

29. *Id.* at 640-41.

30. *Id.* at 647.

31. *See id.* at 646-47.

that was not the reason. After a few months a black family with two youngsters moved into our barrio. They did not speak a word of Spanish; they only spoke English. Nonetheless, they were sent to our school. So we got doubly suspicious. Incidentally, educationally-speaking, it was not a lost cause at all. You may have heard of the "immersion system" of learning a language other than your own; those black youngsters were speaking Spanish as well as we in about six months. Meanwhile, we noticed that there were Anglo-American families whose houses literally abutted on Wilson School, and they were being sent to distant schools. After a while we recognized that, in fact, ours was a segregated school.

A few years after I "graduated" from Wilson (grades kindergarten through sixth), the school was integrated. A lawsuit was filed challenging the segregation of Mexican-American school children in a nearby school district. A federal judge ruled that under California law, school segregation was unlawful.

Related issues reached the United States Supreme Court. It was in a different context that the case of *Hernandez v. Texas*³² came before the high Court in 1954. A Texan who was Mexican-American had been convicted of murder and appealed.³³ He was unhappy that there had been no Latinos, Chicanos or Mexican-Americans on the jury.³⁴ The county in Texas where he was tried was fourteen percent Mexican-American, yet for twenty-five years there had not been one Latino on a jury commission, a grand jury or a petit jury.³⁵ During that time apparently 6,000 persons had been called to serve on one of those commissions or juries and not one had a Spanish surname.³⁶ Indeed, the Court also pointed out that there were some suspicious matters in that community. In the courthouse, there were two bathrooms, one unmarked, and the other with a sign that read "Colored Men" and then below it "Hombres Aqui" (Men Here). That made the Court a little bit suspicious.³⁷ There was at least one restaurant in town, the Court said, that had a sign in front that read, "No Mexicans Served." Until very recently the public schools had been segregated.³⁸ There was extensive testimony in the record by the authorities

32. 347 U.S. 475 (1954).

33. *Id.* at 476.

34. *Id.* at 476-77.

35. *Id.* at 480-81 & n.12.

36. *Id.* at 482.

37. *Id.* at 479-80.

38. *Id.* at 479.

arguing that they had never discriminated against Latinos; all they tried to do was to find the best possible people to serve.³⁹ The Supreme Court concluded that despite the generalized denial, it was very difficult to believe that out of 6,000 people, they had not been able to find one qualified Latino.⁴⁰ The Court noted that “[t]he state of Texas would have us hold that there are only two classes—white and Negro—within the contemplation of the Fourteenth Amendment,”⁴¹ even as late as 1954. Incidentally, you will find *Hernandez v. Texas* reported just before a case that may sound familiar to you, *Brown v. Board of Education of Topeka*.⁴² The Court was busy in those days. The Court rejected the Texas notion out of hand. “The Fourteenth Amendment,” the Court said, “is not directed solely against the discrimination due to a ‘two-class theory’—that is, based upon differences between ‘white’ and Negro.”⁴³ The Court went on to say that the Constitution indeed protects everybody:

The exclusion of otherwise eligible persons from jury service solely because of their ancestry or national origin is discrimination prohibited by the Fourteenth Amendment. The Texas statute makes no such discrimination, but the petitioner alleges that those administering the law do.⁴⁴

And, in fact, the Court was convinced that that is exactly what had happened. So again we have a confirmation by the Court that ethnicity is protected.

For those of you who might be concerned about the current Supreme Court, I just want to tell you that the following is written by a distinguished observer of the court:

Even Justice Rehnquist, the modern Justice who takes the least interventionist view of equal protection and who is the strongest opponent of the expansion of “suspect classification” jurisprudence, acknowledged in *Trimble v. Gordon* . . . that classifications based on “national origin, the first cousin of race” . . . were areas where “the

39. *Id.* at 481.

40. *Id.* at 482.

41. *Id.* at 477.

42. 347 U.S. 483 (1954).

43. *Hernandez*, 347 U.S. at 478.

44. *Id.* at 479.

Framers obviously meant [equal protection] to apply.”⁴⁵

So apparently even those who take lightly the post-Civil War amendments are convinced that in this area, in the area of ethnicity, there is no question that it is protected by the Constitution.

Finally, I want to mention a case decided by the California Supreme Court called *Castro v. California*.⁴⁶ It is one of my favorite cases, maybe because I was the director of a legal services group called California Rule Legal Assistance (CRLA) which filed this action on the behalf of its clients. The challenged California constitutional provision read: “[N]o person who shall not be able to read the Constitution in the English language, and write his or her name, shall ever exercise the privileges of an elector in this State.”⁴⁷ That constitutional provision was passed in 1891, and I will come back to that fact in a few minutes.⁴⁸

Our clients were able to show that in Los Angeles County where they lived, there were seventeen newspapers published in Spanish, eleven magazines, many radio and television stations, and through these, they were able to know exactly what the public issues of the day were and were able to cast a vote that was educated.⁴⁹ The California Supreme Court, analyzing the state constitutional provision by the standards of the federal Constitution, said, in essence, “It cannot stand. We consider the right of citizens. The right to vote is very important.” The court determined that the state could not take away the right to vote unless there was a very important reason to do so, and here the court simply did not find that reason. These voters, by reading and hearing, could, in fact, educate themselves.⁵⁰ Then, at the end of the opinion, the court added one of my favorite paragraphs in American jurisprudence. Writing for the court, Justice Raymond Sullivan said:

We add one final word. We cannot refrain from observing that if a contrary conclusion were compelled it would indeed be ironic that petitioners, who are the

45. CONSTITUTIONAL LAW 624 n.3 (Gerald Gunther ed., 11th ed. 1985) (citing *Trimble v. Gordon*, 430 U.S. 762, 777 (1977) (Rehnquist, J., dissenting)).

46. 466 P.2d 244 (Cal. 1970).

47. *Id.* at 245 (quoting CAL. CONST. art. 2, § 1).

48. *Id.* The English literacy requirement was proposed in 1891 by a California state assemblyman, A.J. Bledsoe, who in 1886 had been part of a committee that expelled all persons of Chinese ancestry from Humboldt County, California. *Id.*

49. *Id.* at 254-55.

50. *See, e.g., id.* at 254-57.

heirs of a great and gracious culture, identified with the birth of California and contributing in no small measure to its growth, should be disenfranchised in their ancestral land, despite their capacity to cast an informed vote.⁵¹

So we have come a long way—in California and in the nation.

In *Castro*, the court reviewed the history of constitutional and statutory changes in California, and in one of the footnotes it cited to a case called *People v. Hall*.⁵² It is one of my favorite cases in California jurisprudence for a reason opposite that of *Castro v. California*. Let me tell you about the *Hall* case. When California was first formed into a state, the English-speaking and the Spanish-speaking worked cooperatively. They got together in the constitutional convention of 1849 and agreed upon a constitution, even though some who were at that convention spoke no English, and others spoke no Spanish. Yet they got together and created a constitution that was published in both English and Spanish.

But then, sadly, the atmosphere started changing in California, and the case of *People v. Hall*,⁵³ decided in 1854, gives you a sense of how much change had come about. The legislature had passed a statute that prohibited any testimony against a white person in court if the testimony came from a black, mulatto or an American Indian.⁵⁴ A white man was convicted of murder by the testimony of a Chinese man.⁵⁵ At that time we had no intermediate court, so the lawyers for the convicted appealed directly to the California Supreme Court.

The California Supreme Court was composed of three members at that time, and it wrote an opinion that is great fun to read in its historical context. The court pointed out that the Native Americans are part of the Mongoloid races and that eons ago, the Mongoloid races from Asia had travelled over the Bering Straits and through Alaska. In the course of many thousands of years these migrants ended up in the lands we now call the United States. The Indians and the Chinese were of the Mongoloid race. When the legislature said Indians could not testify, it obviously

51. *Id.* at 259.

52. *Id.* at 248 n.11 (citing *People v. Hall*, 4 Cal. 399 (1854)).

53. 4 Cal. 399 (1854).

54. *Id.* at 399 (quoting Act of April 16, 1850 (regulating California criminal proceedings)).

55. *Id.*

meant to include anybody of the Mongoloid race.⁵⁶ Since Chinese belong to the Mongoloid race, the court reasoned, they obviously cannot testify against a white man, and so the court reversed the murder conviction.

The *Hall* court described the Chinese people as a “distinct people . . . whose mendacity is proverbial; a race of people whom nature has marked as inferior, and who are incapable of progress or intellectual development beyond a certain point, as their history has shown”⁵⁷ This quote does not include another discussion in which the court noted that if allowed to testify against a white person, the Chinese would soon want to vote, want to be lawyers, and would even want to sit on the bench.⁵⁸ The court ruled on the basis of clear statutory construction. The court seemingly asked, “How could anybody disagree that Indian means Chinese.” Indeed, the court wrote: “[E]ven in a doubtful case we would be impelled to this decision on the grounds of public policy.”⁵⁹

Sadly, just a few years thereafter, Manuel Dominguez, who had been at the California constitutional convention, and had signed the constitution, was not permitted to testify in a court of law in San Francisco in 1857 because he was of Indian ancestry. That is part of the history of California. To look at the *Castro* decision and see how the law has evolved is a matter of great satisfaction to me.

Incidentally, I have always been interested in Los Angeles. If you visit Los Angeles, go down to the area where Los Angeles was first founded, La Placita (the little plaza). There is a plaque there which has the names of all of the people who helped found Los Angeles. The Spaniards were great record keepers. The records identify people by race and by occupation as well as other characteristics. That plaque identifies the race of the original settlers. I have a book here⁶⁰ which published a census taken about the time Los Angeles was founded. Let me just go down the line; you will see the great variety of people that founded California. The reality contrasts with the early romanticized movies that came out of Hollywood portraying Spanish vaqueros as typical. Here are the real Californios: Josef de Lara, Spaniard; his wife Maria, india

56. *Id.* at 400-04.

57. *Castro*, 466 P.2d at 248 n.11 (quoting *Hall*, 4 Cal. at 404-05).

58. *Hall*, 4 Cal. at 404-05.

59. *Id.* at 404.

60. FOREIGNERS IN THEIR NATIVE LAND 33 (David J. Weber ed., 1st ed. 1973).

sabina; Josef Navarro, mestizo; his wife Maria, mulata; Basillio Rosas, indian; a husband, indian; his wife, indian; another husband Alejandro Rosas, indian; his wife Juana, coyote indian (a mixture of pure Indian and mestizo); Pablo Rodriguez, indian; his wife Maria Rosalia, indian; Manuel Camero, mulato; his wife Maria Tomasa, mulata; Luis Quintera, negro; his wife Maria Petra, mulata; Jose Moreno, mulato; Antonio Rodriguez, chino (Chino is a person who has negroid features, but was born of white parents).⁶¹ That is the real mixture of Los Angeles from whence so many of us come.

Let me just read you a passage from that same book. A very distinguished early Californio, Pablo de la Guerra, who was later a state senator, is quoted. The title of the book was FOREIGNERS IN THEIR NATIVE LAND, taken from a speech he delivered in the California legislature in 1856:

It is the conquered who are humble before the conqueror asking for his protection, while enjoying what little their misfortune has left them. It is those who have been sold like sheep—it is those who were abandoned by Mexico. They do not understand the prevalent language of their native soil. They are *foreigners in their own land*. I have seen seventy and sixty year olds cry like children because they have been uprooted from the lands of their fathers. They have been humiliated and insulted. They have been refused the privilege of taking water from their own wells. They have been denied the privilege of cutting their own firewood.⁶²

This is our history.

Yet we have struggled. As the cases from the California and the United States Supreme Courts indicate, we have indeed made a great deal of progress. The struggles continue. Issues like education and political empowerment create conflict. As we all know, progress does not come overnight. My hope is that as we struggle with these issues, we will also struggle with that notion of how can we be diverse and yet be one people.

For myself, I have enjoyed that diversity. I have a friend by the name of Bill Ong Hing, a professor at Stanford. He invited my family and me to go to his church where a Chinese play was

61. *Id.* at 34-35.

62. *Id.* at vi (quoting Pablo de la Guerra, Speech to the California Senate (1856)).

presented. We enjoyed tremendously seeing a culture that my family and I had not seen before. I remember walking down the streets of San Francisco and a gentleman coming up to Bill. The two of them chatted for a couple of minutes in Chinese and then spoke in English. I did not feel that they were talking about me during that time. So often we reject folk who speak a language other than our own, because we think, "Well, they must be talking about me." I never thought that any one person was that important. I would hope that we learn to enjoy the reality that other people are different and that they have a language, a cultural richness, if you will, that we can enjoy. Indeed, I really do give thanks for the fact that we have people in this country who speak different languages and come from different cultures who will make our country far stronger economically and far stronger politically.

I always think of the advertising that we as Americans do. I am told that there was a time when General Motors was advertising in Latin America for their then-new car called the Nova. Apparently nobody had told them that "Nova" in Spanish is "No va," which means "It won't go." It was not a successful advertising campaign. Or another time when my former colleague, Justice Joseph Groden of the California Supreme Court, came back from a long trip in China, and he told me there were Coca-Cola signs all over China. I asked about Pepsi-Cola because I had read that Pepsi had a contract with the Chinese government. At that time Pepsi-Cola had a little ditty, you may remember many years ago, that went something like, "Pepsi, come alive with Pepsi." Unfortunately, it had been mistranslated in Chinese to read, "Pepsi brings your ancestors back to life," and the Chinese, with their respect for their ancestors, were not amused. Pepsi apparently lost its contract.

I also remember reading an article by a German industrialist who said basically, "You know, I speak English, and I go to all of these gatherings where folk come from all over the world selling their high-tech equipment. I go and look at all that and I see that the Americans make very good equipment, and the Japanese have very good equipment, as do other nationals. They all look very good. Then afterwards, though I speak English, I socialize with folks generally in the German language, because I feel more comfortable in German. All I can tell you is that in Germany, you'll sell in the German language."

I think that our diversity will indeed bring strength to us, and I think that we can profit from it. But more importantly, we need

to continue working with the reality that we are a very diverse people, ethnically and linguistically. Despite those differences, as with differences of race and religion, we ought to look at what unites us, what makes us all Americans. We need to look at our history, at the land, at the suffering we have been through as a people. We need to examine the ideals that we find in the Constitution, those very ideals that have brought the California and the United States Supreme Courts to declare that there are those rights so important that government can not take them away from us. If nobody can take those rights away from us, we need to rejoice in those rights, to rejoice in our differences, to appreciate those differences, and to profit one from another.

