

## CLUSTER II

### CUBANS WITHOUT BORDERS: THE POSSIBLE DREAM

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Cubans are nothing if not bordered. Cubans on the island are not free to go out and Cubans off the island are not free to come in. Nevertheless, these borders, once seen as rigid and legally defined, are increasingly being revealed as both porous and malleable. Cubans living in the United States send massive amounts of aid to Cubans on the island, usually prompted by familial concern, but undermining the border imposed by the embargo all the same.<sup>1</sup> Travel to Cuba, while nominally prohibited, is possible with Treasury Department permission and that permission is rather routinely granted.<sup>2</sup> Travel from Cuba, while also nominally

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\* Professor of Law, Temple University School of Law. I am grateful for the unwavering support of my friend Berta Esperanza Hernández-Truyol, and for the time, energy and wisdom of the scholars who participated in the panel on Cubans Without Borders at LatCrit VI. I also appreciate the thoughtful participation of those in the audience during that session, some of whom have contributed essays to this Symposium growing out of the discussions of the panel. Finally, I am grateful for the excellent research assistance provided by John Necci, Director, Temple Law School Library. Nevertheless, all errors and opinions are mine alone.

1. See, e.g., Roxana Hegeman, *Exiles Prop Up Cuban Economy by Sending Money to Families*, ASSOC. PRESS, Nov. 28, 1997, available at <http://www.athensnewspapers.com/1997/112897/1128.a3cuba.html>. See also Berta Esperanza Hernández-Truyol, *Out in Left Field: Cuba's Post-Cold War Strikeout*, 18 FORDHAM INT'L L.J. 15, 69-70 n.299-301 (1994) and sources cited therein. The Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, Pub. L. No. 104-114, 110 Stat. 785 (1996) (often referred to as the Helms-Burton Act, because it was sponsored by Senator Jesse Helms and Congressman Dan Burton), prohibits many forms of commercial trade and travel to Cuba. See generally *id.* For a good summary of the the history of the Act and the provisions therein, see Andreas F. Lowenfeld, *The Cuban Liberty and Democratic Solidarity (Libertad) Act: Congress and Cuba: The Helms-Burton Act*, 90 AM. J. INT'L L. 419, 420 n.8-12 (1996) (noting that restrictions on travel to and commerce with Cuba have been in effect since February 1962, when President Kennedy authorized the issuance of the Cuban Import Regulations, 31 C.F.R. § 515.201, 27 Fed. Reg. 1116 (Feb. 7, 1962), exercising the authority given to him by the Foreign Assistance Act of 1961, (Pub. L. No. 87-195) § 620(a), 22 U.S.C. § 2370(a)(1) (2000)).

2. For a general description of the restrictions and the process for obtaining permission to visit Cuba, see Cuba—Consular Information Sheet (Dep't State, Aug. 13, 2001), available at <http://travel.state.gov/cuba.html> (last visited Mar. 14, 2002); Travel to Cuba, at <http://state.gov/www/regions/wha/cuba/travel.html> (last visited Mar. 14, 2002); Cuba Travel Violations: New Procedures for Fully Hosted Travelers, available at [http://www.state.gov/www/regions/wha/fs\\_980513\\_cuba\\_travel.html](http://www.state.gov/www/regions/wha/fs_980513_cuba_travel.html) (last visited Mar. 14, 2002) (Fact Sheet prepared by the Office of the Coordinator for Cuban Affairs, Bureau of Inter-American Affairs, May 13, 1998) (Dep't State, May 13, 1998). Despite attempts to lift the embargo, see, e.g., *House Passes Bill Lifting Ban on Travel to Cuba*, WASH. POST, July 26, 2001, at A2, and some softening of the restrictions, see, e.g., Christopher Marquis, *Congressional Leaders Approve a Deal to Allow Food Sales to Cuba*, N.Y. TIMES, Sept. 28, 2001, at A25, significant restrictions remain.

restricted, occurs frequently, as the island exports its music and dance, and some Cubans are given permission to study and work abroad.<sup>3</sup>

The plight of a six-year old boy found floating on an inner tube off the coast of Florida on Thanksgiving Day, 1999, forced a concerted examination of the contours of the borders that for over forty years have defined Cubans both on and off the island. The controversy surrounding Elian Gonzales and whether he should be allowed to remain in the United States or be forcibly returned to Cuba riveted the attention of the news media in the United States and polarized the Cuban exile community. Nevertheless, this cluster of essays is not about the plight of Elian. While Elian inspired the introspection that is reflected in this cluster, and the essays collected here are the product of that introspection, we do not, here, re-engage in that debate. Elian catapulted Cubans and the borders that divide us into the national consciousness and in doing so caused many of us to think more seriously about dismantling those borders. Elian's plight offers a lens through which we can view many experiences of the last forty years.

As mature, educated scholars, those of us who have lived with these borders for over forty years are poised to take a leadership role in pointing the way to reunification. We have been the beneficiaries of a liberal, and in some cases also a legal, education; and most of us left Cuba when we were old enough to remember it. Thus we struggle with a dual sense of loss. The loss is dual because not only did we lose the opportunity to grow up in our homeland, but because for a long time we lacked the opportunity to find out for ourselves what our homeland was really like, or at least what it would "really" feel like to us. As the borders between Cuba and the United States have become increasingly porous, the opportunity to remedy the second loss has grown and has been enhanced by the receptivity to new and alternative ideas that is often the product of a liberal, and perhaps especially a legal, education. Although none of us may really be able to go home again, many of us are trying, and in doing so we are beginning to point the way toward reconciliation and reunification. This cluster of essays represents one attempt at that endeavor.

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3. The Cubans Without Borders panel at LatCrit VI provided evidence of this. Among us was Jesus Jambrina, a Cuban journalist who had received permission from the Cuban government to study in the United States. Although the Cuban government eased travel restrictions in 1991, and artists and others seem to be able to travel outside of Cuba at will, travel is particularly difficult for certain professionals, particularly physicians. For a description of the Cuban government's legislation and policies concerning travel abroad by Cubans, see Hernández-Truyol, *supra* note 1, at 68 n.291-92, and the U.S. State Department's Country Reports on Human Rights Practices 2001, (Bureau of Democracy, Human Rights, and Labor Mar. 4, 2002), available at <http://www.state.gov/g/drl/rls/hrrpt/2001/wha/8333.htm>.

Each of the essays in this cluster describes both division and unity. The authors, all born in Cuba, each discuss a division and analyze the ways in which the division can be healed. They bring their personal experiences to bear on the analysis, sometimes overtly, sometimes not. Still, division and reunification are the themes of the essays. We are divided in the way we perceive ourselves, and in the dual ways we are, in turn, perceived: we are and are seen as dual-lingual, dual-cultured, and dual-citizens—neither fish nor fowl.<sup>4</sup> On a personal level, reunification occurs as we try to unite the parts on either side of the hyphen that divides the parts of our self. Thus, we write in both English and Spanish, we travel to Cuba, we take the time to know island Cubans as people rather than caricatures, and in doing so we hope to arrive at an understanding that respects the wounds of the past while acknowledging the differences of the present.

Of the paths to reunification, traveling to Cuba—transcending the physical border—is the most concrete but, in many ways, the most difficult. The mere prospect of such travel can pit members of a family against one another and cause wounds deeper than many inflicted by Fidel himself, as the controversy over Elian showed. Traveling to Cuba—returning—is loaded with symbolic meaning not only for Elian but for each of us as well. Although for some it symbolizes reunification, for others it symbolizes acceptance of communism and Fidel, and acceptance is a tribute that many see as incompatible with the repudiation that prompted exile in the first place. Although some parents who left everything behind while fleeing Fidel are pleased to hear that their children have not repudiated their birthplace but want to return and learn about their homeland, others see in the act of returning a rejection of the principles that led them to emigrate so many years before. The physical border has become symbolic of the ideological border, and crossing one can be seen as tantamount to crossing the other.

Perhaps one of the reasons the Elian episode elicited such strong emotions is that it conflated the crossing of the physical border—returning Elian—with the crossing of the ideological border—accepting Fidel's regime. Those who opposed the return of Elian almost certainly did not oppose it because they thought boys should be raised by cousins rather than fathers or because they thought that Elian's father was an unfit parent. They opposed Elian's return because it was a return to Cuba; returning him from the United States was seen as acknowledging that at least in some cases, it was better to be in Cuba than in the United States. For many in exile who left everything behind to come from Cuba to the United States,

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4. As Myra Mendible observes in *Paradise Lost, Paradise Found: Oral Histories and the Formation of Cuban Identities*, 55 FLA. L. REV. 269 (2003), we are members of the "one-and-a-half" generation who are, "in Gustavo Perez Firmat's catchy phrase, 'born in Cuba, made in the U.S.A.'" *Id.*

to suggest that living in Cuba might be preferable to living in the United States was to impugn the sacrifice they made when they left Cuba to come to the United States. The Elian controversy thus represented much more than a custody fight over a little boy. Only that understanding explains the vehemence of the feelings so graphically documented by the United States media.

The conflation of the physical border with the ideological one also revealed the bipolar nature of the ideological division. Just as one can be only on one side or another of the physical border, so, ideologically, Castro's revolution has largely been viewed as either good or bad. In the United States, where the Cuban revolution has been both the darling of liberals and the bane of conservatives, nuanced analysis has been virtually nonexistent. The Cuban community has also suffered from monovision. Among many in the Cuban-exile community, the issues have been too emotionally charged to permit nuanced analysis, and the Elian controversy was no exception. For many in that community, Fidel is the devil incarnate, period.

Ironically, one of the things that Cuban exiles have in common with Fidel is the bipolar way in which each views the revolution. For both exiles and Fidel the revolution was either good or bad. Nothing in-between is conceivable. For Fidel, any expression of dissent from a revolutionary goal or deed is regarded as counter-revolutionary, is decidedly bad, and is sometimes dangerous to the health or life of the disagreeer.<sup>5</sup> For an exile, any expression of agreement with a revolutionary goal or deed proves that the agreeer is a *comunista* or *Castrista* and is, therefore, presumptively bad.<sup>6</sup> No in-betweens are brokered by either side. Yet, it is from the in-between that reconciliation must come. Only after a more nuanced analysis that recognizes the existence of both good and bad on each side can the sides come together.

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5. The Cuban government's repression of dissenting views has been widely documented and often criticized. See, e.g., *Cuba's Repressive Machinery, Human Rights Forty Years After the Revolution* (Human Rights Watch, June 1999), available at <http://www.hrw.org/reports/1999/cuba>; Hernández-Truyol, *supra* note 1, at 80-94. As recently as April, 2002, the United Nations Commission for Human Rights encouraged "the Government of Cuba to accede to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights" and to "allow the United Nations High Commissioner for Human Rights to send a personal representative with a view to cooperation between her Office and the Government of Cuba in the implementation of the present resolution." *Situation of Human Rights in Cuba*, U.N. Comm'n on Human Rts., 48th Sess., U.N. Doc. E/2002/23-E/CN.4/2002/200 (2002), available at <http://www.unhcr.ch/huridocda/huridoca.nsf>.

6. For a chilling description of the strength of this reaction, see Francisco Valdes, *Diaspora and Deadlock, Miami and Havana: Coming to Terms with Dreams and Dogmas*, 55 FLA. L. REV. 283 n.30 (2003), describing how a well-known Miami restaurant was bombed after it allowed a Cuban singer (from the island) to perform.

An analysis that examines nuances would acknowledge that Castro's revolution did things that were both good and bad. It would neither demonize nor cannonize, but would instead acknowledge the pain of those who left while validating the accomplishments of some who stayed. Validation of the experiences of those on both sides of the border is crucial to reunification. Reunification cannot occur if we simply tell those who fled under threats of persecution, or those who lost friends and loved ones to human rights abuses, that bygones should be bygones because more than forty years have elapsed. We cannot ask people to forget what they gave up. Acknowledging the exiles' sacrifice is necessary if we are to move toward dismantling the bipolar border and embark on a path to reunification. But, acknowledging that Castro's revolution did good things is also important. Accepting that he improved literacy and health care for the general population need not signify acceptance of all of the means he used to effect such improvement, but must occur if we are to pave the way to a more sophisticated, more realistic understanding of circumstances on the island.<sup>7</sup>

Traveling to Cuba or returning Elían each provide a point of departure for this more nuanced analysis, perhaps because the choices in each situation are starkly bipolar. The Cubans Without Borders panel at LatCrit VI was a microcosm of this polarity and the ways to move beyond it. It revealed the diversity of the Cuban experience and the paths both communities can take toward reconciliation.

Of the seven members of the Cubans Without Borders panel at LatCrit VI only one, me, who organized the panel, had neither returned nor attempted to return to Cuba. By contrast, Professor Yvonne Tamayo was the most recent returnee, having made her first trip to Cuba just weeks

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7. Improved literacy and healthcare have long been cited as the most significant accomplishments of the revolution. See, e.g., Hernández Truyol, *supra* note 1, at 21-29; Jim Lobe, *Learn From Cuba, Says World Bank*, INTER PRESS SERV., Apr. 30, 2001, at <http://www.foodfirst.org/cuba/news/2001/wb-ips.html> (describing World Bank President James Wolfensohn's comments on the significant progress made by Cuba on health and education). Its reduction in infant mortality rates "places it firmly in the ranks of the western industrialised nations," and in education performance Cuba "'is very much in tune with the developed world, and much higher than schools in, say, Argentina, Brazil, or Chile.'" *Id.* (quoting Jo Ritzen). Cuba's gains in health and education are probably due to the commitment of fiscal resources to those areas. Thus,

[p]ublic spending on education in Cuba amounts to about 6.7 percent of gross national income, twice the proportion in other Latin American and Caribbean countries and even Singapore . . . . Cuba devoted 9.1 percent of its gross domestic product (GDP) during the 1990s to health care, roughly equivalent to Canada's rate. Its ratio of 5.3 doctors per 1,000 people was the highest in the world.

before LatCrit VI, and Jesus Jambrina was the only island-raised Cuban among us. Both Professor Myra Mendible and Judge Ana Otero had returned, and Professor Berta Esperanza Hernández-Truyol had attempted to return, only to be foiled by bureaucracy, as she describes in the essay that she wrote for this Symposium. Of the two other contributors to this Symposium, Professor Ofelia Schutte has returned often, while Professor Francisco Valdes has not.

Despite the differences in our choices, what emerged from our planning discussions, the panel presentations themselves, and the reflections memorialized in the essays that compose this cluster and other submissions to this Symposium, was the similarity in our longings and our fears. I, having not returned, can understand Yvonne's desire to return and to see for herself, through the eyes of an adult, the country in which she was born and that shaped much of who she is. Yvonne, who has so recently returned, can understand my deference to the feelings of my parents, who would see my return as a betrayal of the principles that they stood for when they left, and as a repudiation of the decision they made by leaving. We can both understand how difficult it will be for Jesus to decide whether to return to Cuba once his authorized stay in the United States has finished. What we all have in common is that Castro has marked us, and continues to do so, whether we are here or there.

The key to reunification is recognizing that although the choices—returning or staying—are bipolar, their implications need not be. Returning need not mean approval of Castro's regime. More importantly, it need not mean that exile, and the pain suffered by exiles who left everything behind, was in vain. Lasting reconciliation cannot occur unless pain suffered is acknowledged. Many of the experiences described by the essays in this cluster, and in this Symposium more generally, illustrate this point eloquently. In doing so, they show that reunification is possible and demonstrate how it can be achieved.

In the first essay in this cluster, Professor Berta Esperanza Hernández-Truyol begins where many of us do—with her own experience in thinking about returning to Cuba—and uses it, together with the polarities revealed by the Elian saga, as a springboard for a critical examination of whether any common ground of *cubanidad* might still exist and serve as a platform for reunification.<sup>8</sup> As she explains, she “suspected that while social, political, and economic differences might result in some insurmountable divides, cultural tropes might unite us, even if not always through desirable traditions.”<sup>9</sup> In *Building Bridges V—Cubans Without Borders: Mujeres Unidas Por Su Historia*, Professor Hernández-Truyol traces the

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8. Berta Esperanza Hernández-Truyol, *Building Bridges V—Cubans Without Borders: Mujeres Unidas Por Su Historia*, 55 FLA. L. REV. 225 (2003).

9. *Id.* at 230.

role of women in Cuban society by reviewing Cuba's laws on women, international norms on gender equality, and United States laws as they affect Cuban women in the United States.<sup>10</sup> Surprisingly, she finds that "cultural assumptions about sex roles have persisted in Cuban societies whether within the island or in the Cuban community within the U.S."<sup>11</sup> She concludes that "further study is likely to reveal additional commonalities with respect to attitudes in matters such as family, race, and sexuality."<sup>12</sup> Her work is thorough and scholarly, and offers a unique view of a too-long neglected subject. She reveals, for example, that the first Cuban feminists emerged during the Cuban fight for independence during the latter part of the nineteenth century, and describes their role not only in that fight but in crafting laws that would allow women to start on the path to equality.<sup>13</sup> The picture she paints is of brave women who nevertheless succumb to *marianismo* and male dominance when the danger is past.<sup>14</sup> The story of women in Cuba today, she finds, is not much different from that of Cuban women in exile, but her insight is that the similarity of oppression and subordination can provide the unifying trope for a post-subordination ideology.<sup>15</sup> Her conclusion that the common experience of sexism can serve as a unifying force is both novel and inspiring, for, at bottom, it posits that the glass is at least half full.

In the next essay, *Paradise Lost, Paradise Found: Oral Histories and the Formation of Cuban Identities*,<sup>16</sup> Professor Myra Mendible advances the cause of mutual understanding by deftly exploring "how conflicts between Cubans on and off the island boil down to [a] critical intersection where personal stories assume historical significance."<sup>17</sup> Professor Mendible offers lessons from post-colonialism and examines the role of history in defining the condition of exile.<sup>18</sup> She describes the role that her personal history has had in defining her identity and the way she has come to terms with her condition as "in-between" two cultures.<sup>19</sup> She also examines the way in which such personalized histories have shaped visions of Havana, both as paradise lost and paradise found.<sup>20</sup> Professor Mendible returned to Havana in search of answers to questions raised by years of hearing seemingly incomplete versions of history; her essay

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10. See generally *id.*

11. *Id.* at 231.

12. *Id.*

13. *Id.* at 231-32.

14. See generally *id.*

15. See generally *id.*

16. See generally Mendible, *supra* note 4.

17. *Id.* at 271.

18. See generally *id.*

19. *Id.* at 277.

20. *Id.* at 271.

lucidly explains her discoveries.<sup>21</sup> We see that the experience of returning proved transformative, even though it raised more questions than it answered.<sup>22</sup> It gave her a framework upon which to build a more nuanced understanding of what had previously been “a clear-cut polarity.”<sup>23</sup> It can serve as a model for a more widespread reunification.

Professor Yvonne Tamayo’s reflections on her first trip to Cuba since leaving as an exile over forty years ago is an example of the kind of personalized history Professor Mendible urges.<sup>24</sup> In *Cubans Without Borders: Finding Home*, poignantly subtitled “*Everybody Gets To Go Home But Cubans*,” Professor Tamayo describes her return and her discovery that she and many of the Cubans she met shared some core values, even as their views on other matters differed.<sup>25</sup> Professor Tamayo was struck both by what has changed and what has not.<sup>26</sup> By integrating what she learned on the island with what she has learned as a United States-trained lawyer, Professor Tamayo offers a view of how the physical, intellectual, and emotional borders might be constructively navigated. Having the occupant of the house that used to belong to her family “slowly but deliberately” close the door in her face graphically illustrated the border that made her an outsider in what had been her home, but seeing the ways in which Cuban families interacted and the reasons many stayed showed her that in some areas of life, the borders did not exist.<sup>27</sup> Her detailed account of a conversation with a theretofore forbidding Cuban official shows that many intersections are possible even for those who are physically and ideologically separated.<sup>28</sup> Finding the points of commonality she shared with island Cubans allowed Professor Tamayo to see Cubans and their life on the island in a complex, nuanced way.<sup>29</sup> Such a view forecloses the kind of absolutist thinking that led to demonstrations and violence in Miami over the return of Elian. It points toward dismantling the borders that now separate us.

The final essay in the cluster, written by Professor Frank Valdes, brings together the threads explored in the preceding essays, and therefore is the perfect closing for this cluster. In *Diaspora and Deadlock, Miami and Havana: Coming to Terms with Dreams and Dogmas*,<sup>30</sup> Professor Valdes

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21. *Id.* at 277-81.

22. *Id.*

23. *Id.* at 279.

24. Yvonne A. Tamayo, *Cubans Without Borders: Finding Home: “Everybody Gets to Go Home But Cubans,”* 55 FLA. L. REV. 215 (2003).

25. *See generally id.*

26. *See generally id.*

27. *Id.* at 218.

28. *Id.* at 218-20.

29. *See generally id.*

30. Valdes, *supra* note 6.

poignantly describes his own emigration experience and uses it to gain insights into the polarities that divide Cubans on both sides of the Florida Straits and on ways of neutralizing those polarities.<sup>31</sup> Professor Valdes begins by describing the polarity that has marked his life, observing that

Because Fidel, and his allies and acolytes, have not-ever-been willing to risk a loss or diminution of their power and status, no matter what, I never have found myself able to accept their extended, indefinite and totalitarian monopoly on all power, information, and wealth in Cuba. At the same time, I have been repeatedly disappointed and repelled by the rigid and unrelenting authoritarianism of Miami's exile politics—an Orwellian authoritarianism that is perpetrated in the name of political pluralism and freedom of expression. Having been raised amidst the ugliness created between these two poles—my two hometowns—I have been unable to come to terms with either.<sup>32</sup>

Professor Valdes then traces the “post-Fidel Cuban exodus” and analyzes the contrasts and similarities between the cultures on both sides of the Florida Straits, sparing neither.<sup>33</sup> He also analyzes the effect of United States politics on the relationship between Cubans in Miami and Havana, concluding that

[T]he Left's romance with Havana and disdain for Miami have produced the same net effect here as the Right's romance with Miami and disdain for Havana have produced over there: the Right's partisan promotion of the Miami elites' agenda nonetheless has allowed the Havana elites to exacerbate and exploit the fears and concerns of Cubans on the island as a means of maintaining their corrupt control, while the Left's partisan promotion of the Havana elites' agenda ironically has allowed the Miami elites to excite and exaggerate diasporic fervor and fanaticism . . . . The net effect of these interventions, both over here and over there, is to reinforce rigidity, license impunity and inflame conflict. It is way past time to recognize that both kinds of essentialization, valorization and demonization are false, exploitative and destructive.<sup>34</sup>

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31. *See generally id.*

32. *Id.* at 285 (footnotes omitted).

33. *See id.* at 287-89.

34. *Id.* at 304-05.

Professor Valdes then provides a blueprint for moving to a post-subordination society, both in Miami and in Havana, and concludes with five LatCrit exhortations that can serve as principles to guide the way to reunification.<sup>35</sup> His essay is insightful and compelling. It invites precisely the kind of thoughtful and deliberate analysis that is necessary, and it should inspire scholars from many disciplines to continue the dialog that will eventually lead to reunification of what he describes as his two hometowns.

It is because I emphatically agree with Professor Valdes' characterization of Havana and Miami as our two hometowns, that I want to conclude this introduction by describing what I learned from Jesus Jambrina, a Cuban-born and Cuban-educated journalist who was studying in the United States, and who gave a moving oral presentation (in Spanish, aided by voluntary simultaneous translation from a member of the audience), at LatCrit VI. Jesus revealed that within present-day Cuba itself, there exists a society that is as diverse, and as nuanced, as those existing outside the island. In discussing issues such as class-based and racially-based discrimination in Cuba, and talking about the plight of gays, lesbians, and transsexuals in Cuba, Jesus forced us to see that contemporary Cuban society is complex and faces many of the challenges faced by the society located on the other side of the Florida Straits. It is that more complex, nuanced understanding that will allow Cubans on both sides of the Straits to go beyond demonizing one another to reach an individualized understanding that will allow each side to transcend the borders that now divide us.

This is neither a quixotic undertaking nor an impossible dream. The fact that nine participants in LatCrit VI have started to work towards it shows that it can be done. What we need now is more. We need to talk and write about the borders that separate us and how we can overcome them, so that we can continue to lead by example. Our pain and the pain of our parents need not condemn our children to growing up without knowing the land of their parents, from which, for good or ill, at least some of their heritage derives.

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35. *Id.* at 313-16.