

# Towards an Ethical Representation of Undocumented Latinos

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## INTRODUCTION

Should there be criteria to evaluate descriptive representatives? Dovi answers with a resounding yes, and has given both normative and empirical scholars of descriptive representation much to consider about not only *why* descriptive representation matters, but *how* it might be properly done (Dovi 2002). She puts forward a criterion to evaluate descriptive representatives by whether they possess “strong mutual relationships with dispossessed subgroups” (ibid, 736).<sup>1</sup> This criterion, though deceptively simple, masks several serious challenges it poses to mainstream assumptions in the literature, such as the uniformity of the historically disadvantaged group and the suitability of traditional mechanisms of accountability. Building on Dovi’s work, I introduce intersectionality theory to reveal how the representation of dispossessed subgroups, such as undocumented Latinos, requires fostering accountable relationships through deliberation.

What specifically makes someone a preferable descriptive representative? According to Dovi, it is the ability of the dispossessed subgroup to hold the representative accountable. The underlying assumption here is that electoral incentives are not enough to serve the justice-oriented rationale for descriptive representation (Phillips 1995). The electoral incentive is a double-edged sword in that it can convince a descriptive representative to support a dispossessed subgroup, but it could also convince them to distance themselves from certain groups (see Cohen 1999). A dispossessed subgroup will have much more difficulty holding a representative accountable if their relationship is determined by whether their vote is needed or wanted.

Dovi issues an implicitly intersectional corrective to this problem of accountability by means of identity, namely calling for a constitutive representational relationship between the preferable descriptive representative and the dispossessed subgroup. Her criterion acknowledges that in-group stratification renders shared identity insufficient to ensuring representation for the dispossessed subgroup. While this relationship is simple enough to understand at a theoretical level, it is difficult to operationalize using traditional measures of legislative interest due to the need to evaluate the potentially private motivations of representatives.<sup>2</sup> Instead, one must examine the quality of deliberation between the descriptive representative and the dispossessed subgroup.

This article focuses on Latino descriptive representatives and the representation of undocumented Latinos to demonstrate how Dovi’s criterion can be actualized. Latinos are the

quintessential heterogeneous population to examine using Dovi’s criterion as its membership consists of individuals with overlapping identities. The history of Latino activism necessitated the creation of a political Latino identity that strategically unites privileged and dispossessed members to challenge explicit racism and economic and political subordination (Beltran 2010). I argue that the behavior of some Latino representatives demonstrates that Dovi’s criterion can be evinced by representational relationship between these elected officials and non-electoral advocates, such as immigrant rights activists.

## INTERSECTIONALITY AND DESCRIPTIVE REPRESENTATIVE

Dovi’s criterion for the preferable descriptive representative is compatible with intersectional theory due to the latter’s primary goals of rethinking the relationship between categories of difference and its commitment to social justice (Hancock 2016; Collins and Bilge 2016). Both Dovi and intersectionality theorists like Crenshaw (1989) acknowledge that identities are historically and socially constructed according to macrostructural forces, such as legal codes, patterns of discrimination, and public policy.<sup>3</sup> The ever-changing configurations of opportunities and disadvantages presented to historically disadvantaged social groups allows for some members of the group to improve their social, political, and economic well-being ahead of—and sometimes at the expense of—other group members, leading to important intra-group differences.

Intersectionality theory acknowledges that certain identities and their attendant power relations interact to render some subgroups powerless and/or invisible. Conversely, it allows the privileged subgroups to claim greater power within the social group by using the privileged category, however mediated by structural forces outside the group, of their intersectional identity.<sup>4</sup> This internal power differential also allows them to speak for the entire social group in the greater society.

Intersectionality theory also complements Dovi’s approach by explicitly focusing on the multiple categories of differences that can be found within a social group, and helps us move past abstractions of the social group’s disadvantages vis-à-vis the dominant social structures by pinpointing exactly *who* in the group is suffering from *which* disadvantages. By accepting that members of historically disadvantaged groups do not experience identical forms of marginalization, but that some are marginalized in multiple and different ways, intersectionality theory only adds further credence to Dovi’s argument that a descriptive representative is not automatically

a suitable representative for the larger social group. The dispossessed subgroup faces a qualitatively different disadvantage that requires an accounting of the intersecting categories of difference to properly address their needs; in short, they may need a different kind of representation altogether.

Strolovitch (2007) has demonstrated the folly of relying on more privileged members of the group to help the dispossessed subgroup. Her examination of interest groups that serve historically disadvantaged groups finds that the intersectionally stigmatized groups are not only empirically underrepresented by these groups, but that the issues that concern them receive fewer, if any, resources.<sup>5</sup> She ultimately finds that representing intersectionally stigmatized groups cannot be done if the mechanism of accountability only works for privileged groups.

The question then becomes: which mechanism of accountability is appropriate for a descriptive representative of a social group that has intersectionally stigmatized subgroups? For the answer, I shall return to Dovi's criterion for the preferable descriptive representative, and examine how it applies to the case of undocumented Latinos. More specifically, I will apply an intersectional reading to Dovi's discussion of mutual relationships.

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#### THE REPRESENTATION OF UNDOCUMENTED LATINOS

The term Latino is a pan-ethnic term that refers to a numerically large, heterogeneous population. While the different national ethnic subgroups who comprise the pan-ethnic group have experienced political, social, and economic marginalization since their incorporation or immigration into the United States, their actual experiences of marginalization are highly dependent on such cross-cutting, and intersecting, categories as national legal status, class, sexuality, race, and age (Beltran 2010). National legal status is especially pertinent to Latinos because the vast majority of the estimated 11 million undocumented immigrants in the United States are Latino.<sup>6</sup> This makes the Latino population an ideal case study for how Dovi's criterion for the preferable descriptive representative applies to an intersectionally stigmatized population.

For some, the diversity among Latinos suggests political scientists should give up on Latino representation. For example, Rouse (2013, 6) argues that Latinos are too varied and diverse to establish the kind of representational relationship between legislator outputs and constituent interests as evidenced by models of African-American representation. Empirical evidence has provided mixed results as legislator ethnicity either has no impact on the policy representation, as signified by roll call votes or bill sponsorship of Latino constituents (Hero and Tolbert 1995; Knoll 2009; Casellas 2011), or has an indirect relationship possibly related to issue salience (e.g., Kerr and Miller 1997; Preuhs 2007; Wallace 2014).

While quantitative measures have indicated that the Democratic Party is able to provide Latinos with substantive representation on policy issues regardless of legislator ethnicity, qualitative research suggests that Latino legislators *do* envision themselves as having a responsibility to represent their Latino constituents, including undocumented immigrants (Casellas 2011, 125), and engaging in distinct legislative behaviors designed to incorporate the interests of undocumented Latinos into the debate. For example, Rouse (2013, ch.6) profiled a Latino state legislator who worked to make a restrictive immigration bill less punitive toward undocumented immigrants, even though this group cannot vote.

Undocumented Latinos provide a vexing challenge to the traditional understanding of the legislator-constituent relationship.<sup>7</sup> The most pressing is the fact that no undocumented immigrant, Latino or otherwise, can hold office while being undocumented, making it nearly impossible for them to achieve descriptive representation on that dimension of identity. At best, a representative may share this ethnicity. Undocumented Latinos do not have a direct electoral relationship to any legislator due to being structurally barred from the franchise, necessitating the need for others to do this with them and for them. (It is important to note that the undocumented

are not completely powerless or voiceless, as evidenced by the successful movement organizing by undocumented youth (Abrego 2011; Rincon 2010; Terriquez 2015), but their legal status does pose burdens and risks to their participation.) As such, the basis of the relationship between Latino descriptive representatives and undocumented Latinos cannot rely on electoral or institutional incentives.

It may be argued that the policy preferences of Latino citizens who can vote will incentivize Latino representatives to be held accountable to the needs of undocumented Latinos, but such a rationale assumes that the interests of documented and undocumented immigrants are the same, or at least mutually beneficial. It also assumes that these interests align with those of Latino (citizen) voters, whose intensity of interest in the issue can vary based on contextual factors.<sup>8</sup> However, if we recognize that the interests of a historically disadvantaged group are based on contextual factors, as suggested by intersectionality theory, then we can see that alliances between documented, undocumented, and citizen Latinos depend on broader social, economic, and political conditions.

Empirical studies have demonstrated that at times of racially-charged anti-immigrant rhetoric, which is often anti-Latino, Latinos of all legal statuses are likely to participate in pro-immigrant protest demonstrations and more likely to develop a sense of shared ethnic identity (Barreto et al. 2009; Martinez 2008). Nevertheless, it remains unclear whether Latino citizens can always be depended upon to hold legislators accountable

due to the fact the contextual factors that lead to this sense of shared identity, namely anti-Latino immigrant rhetoric (Zepeda-Millan, Wallace, and Wallace 2013), can and often do become less salient at different times. This second-hand accountability also gives the legislator much license in how he chooses to explain his behavior to these constituents in regard to the issues affecting undocumented immigrants.<sup>9</sup> Yet, it runs into the same problem that Strolovitch found in her study: there is no guaranteed mechanism to ensure accountability to the intersectionally marginalized group beyond the privileged members of the social group. A legislator can explain away inaction on issues affecting undocumented immigrants much more easily to Latino citizen voters, as these issues are less likely to impact them as directly.

Dovi's requirement that a descriptive representative have a strong mutual relationship with the dispossessed subgroup moves us past the electoral incentive, and towards an informal mechanism of accountability of inclusion. Vote seeking, or reward-seeking behavior more generally, is insufficient to explain representation; undocumented immigrants are structurally and legally barred from offering any kind of electoral incentive to the descriptive representative. Instead, the aim of a good representative should be to foster direct inclusion of the intersectionally stigmatized group so that the descriptive representative and the intersectionally marginalized group recognize one another as members of the same community, embrace their different sociopolitical locations, and acknowledge their distinct, but equally important, responsibilities to one another in the representational process.

Direct inclusion refers to the Latino descriptive representative establishing a line of communication with non-electoral advocates of the intersectionally stigmatized subgroup. Latino representatives might share the same ethnicity as undocumented Latinos, but that does not mean the representative understands the community's needs due to his or her citizen status. The Latino representative must encourage the "active engagement" (Dovi 2002, 736) of undocumented Latinos and their non-elected advocates,<sup>10</sup> and foster an ongoing dialogue between them in order to allow them to keep the representative accountable.

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There is evidence that some Latino legislators have indeed engaged in such deliberative behaviors. The late Marco Firebaugh, a former California state legislator, is an example of a preferable descriptive representative as he maintained extensive ties to the non-electoral advocates of the undocumented Latino community. Seif's (2004) examination of an immigrant rights advocacy organization finds Firebaugh working in concert with Latino citizen professionals and undocumented Latino students to advocate for in-state college tuition for undocumented youth.<sup>11</sup>

Firebaugh worked to establish mutual recognition by emphasizing how his Latino identity was influenced by his own status as an immigrant, and his parents' status as working-class immigrants. However, he did not use his own personal experience or beliefs as a guide to representing undocumented immigrants, but rather worked "in concert" with the advocates to strategize and educate others about issues affecting undocumented Latino immigrants. Interviews with Latino citizen advocates who worked with him on this issue reported that he would "arrange one-on-ones with [college] student leaders" on the issue, as well as others (Mendez 2015, 115, 117). Firebaugh recognized undocumented immigrants generally and undocumented Latino immigrants specifically as his constituents, and the immigrant rights advocates recognized him as their representative. Firebaugh not only serves as an example of Dovi's preferable descriptive representative because he was recognized by the advocates of the undocumented Latino community, but because he worked with them to establish shared aims, fulfilling another of Dovi's requirement for a preferable descriptive representative (2002, 737–38).

The above example fits with the active engagement Dovi prescribes, but is also compatible with the deliberative aspects of Mansbridge's (2003) anticipatory representation, which offers a possible mechanism of accountability. I would endorse Mansbridge's for two reasons. The first is that the representative is not evaluated by whether constituents vote to reelect them, but by the quality of the deliberative relationship. The second is that it calls for a dynamic representational relationship that takes into account time and changes in the political environment. The ability to account for change is crucial for undocumented immigrants given how institutional support or opposition policies can change depending on public opinion or who controls the levers of government. Both features of anticipatory representation are mutually reinforcing.<sup>12</sup> The mechanism of accountability here is the ability of representative to communicate and engage in mutual education with constituents (Mansbridge 2003, 518).

As a non-voting bloc, undocumented immigrants (and by extension, their advocates) must contend with the fact that even

descriptive representatives are still held accountable to the voting constituency in their districts. As such, a deliberative relationship is crucial to helping descriptive representatives and advocates for a dispossessed subgroup maintain mutual relationships even in the face of disagreements brought by conflicting prerogatives. Dovi's requirement that preferable descriptive representatives construct shared aims (2002, 738) to improve the standing of all members of the group does not require alignment or agreement, but allows for both sides to come together and explain their differences.

An example of this comes from an immigrant rights advocate who organized a meeting between a group of community leaders and a Latino state legislator from an electorally competitive district. They met to discuss an education bill for bilingual education learners, and while their meeting did not end in agreement on a specific proposal, the advocate left feeling as though the legislator listened to him and was willing to continue to engage with the group. The purpose of the meeting was to help cultivate a relationship between the undocumented community and their representative; it was the first step (Mendez 2015, 124–25).

This anecdote demonstrates that while there was disagreement, both parties were interested in the same thing, namely, beneficial policy for bilingual education learners. The immigrant rights advocate's hopeful tone is a signal that by engaging with one another, the legislator might be more receptive to the ideas of his undocumented constituents on issues in the future. Even though the Latino legislator has to be mindful of his voting constituency, and therefore possibly less responsive in terms of policy to his undocumented constituents, the dialogical relationship between him and his undocumented constituents is enough to ensure accountability. He still must meet with the advocates for the undocumented community, learn from them, and engage on their issues in whatever ways he can as they are all committed to the integration and protection of undocumented immigrants.

## CONCLUSION

This brief article has argued that intersectionality theory is compatible with Dovi's criterion for a preferable descriptive representative. Intersectionality theory helps identify not only that intra-group stratification exists, but how it manifests across cross-cutting categories to render certain groups structurally powerless; in this case, it was not only the recognition that undocumented Latinos exist and face barriers that most Latino citizens do not, but that a vote-seeking model of representation could never work for them because they cannot vote. Future work should examine the triadic relationship between dispossessed subgroups, non-elected representatives, and elected representatives. ■

## NOTES

1. Her criterion is based on the justice-oriented rationale for descriptive representation, which includes introducing overlooked interests into the public debate, fostering inclusion, and building trust in political institutions (Dovi 2002, 736; see also, Phillips 1995).
2. The standard measures of legislative interest, such as roll call voting, only allow us to judge what a representative does, but not necessarily *why* they vote in a particular way or whether such voting behavior is in line with what the marginalized group wants (but, see Broockman 2013).
3. Intersectionality was coined by Kimberle Crenshaw (1989) and refers to the theory that power relations and their attendant identities, such as racism, sexism, and classism, are mutually constitutive and leave those at its intersections vulnerable to overlapping oppressions.
4. See Hancock 2009 for a discussion about categories of privilege in intersectionality research.
5. Strolovitch finds that the practical demands of bureaucratic maintenance often prevent even the most socially aware leaders from addressing the concerns of the intersectionally marginalized.
6. Due to limited space, I cannot fully address the category of "illegality" and its interactions with other ethnic groups. For further information, see DeGenova 2014.

7. Mansbridge refers to this relationship as a sanction-based model where constitutions reward or punish legislators through their vote (2009).
8. The continued political underrepresentation of Latinos is a kind of marginalization that can influence Latino citizens to prioritize their needs over those of undocumented Latinos.
9. The problem of accountability identified here is inspired by Jennifer Rubenstein's work on surrogate accountability (2007).
10. Due to space issues, I will not be able to explore this topic of non-elected representatives, who I refer to as advocates in order to avoid confusion in the manuscript with elected representatives (see Urbinati and Warren 2008). Non-elected representatives, or advocates, can be citizens or undocumented immigrants, but these are individuals who have chosen to serve as links between the greater community of undocumented immigrants and elected officials.
11. This law, referred to as AB540, was among the first in the United States to grant undocumented students in-state tuition to public universities (see Rincon 2010).
12. Mansbridge (2003) does not consider anticipatory representation to be a sanction-based form of accountability, but does expect representatives to act in this manner in order to eventually procure an electoral reward at a future time. For this reason, I explicitly focus on the deliberative nature of this model.

## REFERENCES

- Abrego, Leisy J. 2011. "Legal Consciousness of Undocumented Latinos: Fear and Stigma as Barriers to Claims-Making for First-and 1.5-Generation Immigrants." *Law & Society Review* 45 (2): 337–70.
- Barreto, Matt A., Sylvia Manzano, Ricardo Ramirez, and Kathy Rim. 2009. "Mobilization, Participation, and Solidaridad Latino Participation in the 2006 Immigration Protest Rallies." *Urban Affairs Review* 44 (5): 736–64.
- Beltran, Cristina. 2010. *The Trouble with Unity: Latino Politics and the Creation of Identity*. Oxford: Oxford University Press.
- Broockman, David. 2013. "Black Politicians Are More Intrinsically Motivated to Advance Blacks' Interests: A Field Experiment Manipulating Political Incentives." *American Journal of Political Science* 57 (3): 521–36.
- Casellas, Jason. 2011. *Latino Representation in State Houses and Congress*. Cambridge: Cambridge University Press.
- Cohen, Cathy. 1999. *The Boundaries of Blackness: AIDS and the Breakdown of Black Politics*. Chicago: University of Chicago Press.
- Collins, Patricia Hill, and Silma Bilge. 2016. *Intersectionality*. Cambridge: Polity Press.
- Crenshaw, Kimberle Williams. 1989. "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Anti-Discrimination Doctrine, Feminist Theory, and Anti-Racist Politics." *The University of Chicago Legal Forum* 140: 139–67.
- DeGenova, Nicholas. 2014. "Immigration 'Reform' and the Production of Immigrant 'Illegality'." In *Constructing Immigrant "Illegality": Critiques, Experiences, and Responses*, eds. Cecilia Menjivar and Daniel Kanstroom, 37–62. New York: Cambridge University Press.
- Dovi, Suzanne. 2002. "Preferable Descriptive Representatives: Will Just Any Woman, Black, or Latino Do?" *American Political Science Review* 96 (4): 729–43.
- Hancock, Ange-Marie. 2009. "An Untruncated Intersectional Analysis of the 2008 Election." *Politics & Gender* 5 (1): 96–105.
- . 2016. *Intersectionality: An Intellectual History*. New York: Oxford University Press.
- Hero, Rodney E., and Caroline Tolbert. 1995. "Latinos and Substantive Representation in the US House of Representatives: Direct, Indirect, or Nonexistent?" *American Journal of Political Science* 39 (3): 640–52.
- Kerr, Brink, and Will Miller. 1997. "Latino Representation, It's Direct and Indirect." *American Journal of Political Science* 41 (3): 1066–71.
- Knoll, Benjamin R. 2009. "Amigo de la Raza? Reexamining Determinants of Latino Support in the US Congress." *Social Science Quarterly* 90 (1): 179–95.
- Mansbridge, Jane. 2003. "Rethinking Representation." *American Political Science Review* 97 (4): 515–28.
- . 2009. "A 'Selection Model' of Representation." *Journal of Political Philosophy* 17 (4): 369–98.
- Martinez, Lisa. 2008. "Flowers from the Same Soil": Latino Solidarity in the Wake of the 2006 Immigrant Mobilizations." *American Behavioral Scientist* 52 (4): 557–79.



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- Mendez, Matthew. 2015. "In/Visible Constituents: The Representation of Undocumented Immigrants." PhD diss., University of Southern California.
- Phillips, Anne. 1995. *Politics of Presence*. New York: Clarendon.
- Preuhs, Robert R. 2007. "Descriptive Representation as a Mechanism to Mitigate Political Backlash." *Political Research Quarterly* 60 (2): 277–92.
- Rincon, Alejandra. 2010. *Undocumented Immigrants and Higher Education*. LFB Scholarly Publishing LLC.
- Rouse, Stella. 2013. *Latinos in the Legislative Process: Interests and Influence*. Cambridge: Cambridge University Press.
- Rubenstein, Jennifer. 2007. "Accountability in an Unequal World." *Journal of Politics* 69 (3): 616–32.
- Seif, Hinda. 2004. "'Wise Up!' Undocumented Latino Youth, Mexican-American legislators, and the Struggle for Higher Education Access." *Latino Studies* 2 (2): 210–30.
- Strolovich, Dara. 2007. *Affirmative Advocacy: Race, Class, and Gender in Interest Group Politics*. Chicago: University of Chicago Press.
- Terriquez, Veronica. 2015. "Intersectional Mobilization, Social Movement Spillover, and Queer Youth Leadership in the Immigrant Rights Movement." *Social Problems* 62 (3): 343–62.
- Urbinati, Nadia, and Mark E. Warren. 2008. "The Concept of Representation in Contemporary Democratic Theory." *Annual Review of Political Science* 11: 387–412.
- Wallace, Sophia J. 2014. "Representing Latinos: Examining Descriptive and Substantive Representation in Congress." *Political Research Quarterly* 67 (4): 917–29.
- Zepeda-Millan, Chris Wallace, and Sophia Wallace. 2013. "Racialization in Times of Contention: How Social Movements Influence Latino Racial Identity." *Politics, Groups, and Identities* 1 (4): 510–27.