

VOICES / VOCES IN THE BORDERLANDS: A COLLOQUY ON RE/CONSTRUCTING IDENTITIES IN RE/CONSTRUCTED LEGAL SPACES

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*"The Mind Knowing Doesn't Always Make
A Difference That Matters."*¹

I. INTRODUCTION

A. "Reading" Popular Culture

While derided as the bane of the Western intellectual tradition and a threat to the most noble of human achievements,² multiculturalism (or postmodernism dressed in grunge) has settled with a shrug into the pages of the Spiegel catalog. Listen, as we are cajoled that:

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My "portion" of this Article is dedicated to Frank Baca.

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¹ The quote is from Sarah Williams, *infra* note 31, at 74.

² See Dinesh D'Souza, *The End of Racism: Principles for a Multiracial Society* (1995).

[I]n a perfect world, it would be out to tell anyone what's in. In the meantime, a few ideas seemed important to us. Diversity. A home should be as surprising as its owner. Integrity. There's a reason some things are called classics. Efficiency. If it isn't smart, it's stupid. Other than that, our advice is to do what you want. Be who you are. Make yourself at home.³

In a section called "News," prominent hues of browns and black are set off by animal prints. The products "mix contemporary style with primitive overtones."⁴ Page after page of discreetly encoded descriptions: "The 'Genoa' chair . . . the Kalibo floor screen . . . the Mexican lion vase . . . the zephyr chair . . . the Cagayan floor lamp," and a "vase with an attitude: [E]xotic!"⁵

We are exhorted to "[r]aise some cane in the library."⁶ But relax, it's only a coy play on words, the "cane" being referred to is in "[t]he 'Plantation' chair, originally designed during British Colonial times to enjoy an evening's viewing of the sky,"⁷ "stir[ring] up images of a tropical retreat."⁸

In the next section, the words "NEW SIMPLICITY"⁹ are overlaid with "Good design knows no boundaries" ¹⁰ This visually mixed message is followed by: "The shape of things to come" ¹¹ "Mixing cultures is only natural" ¹² "The freedom of neutrality" ¹³

Then, new themes are introduced: "Home Country"¹⁴; "Americana. An at-ease attitude. Freedom of expression. The more mixed, the better. Where opportunities are endless."¹⁵ "The New Frontier. There's more to Rustic than 'Cowboys and Indians.' Expand your horizons with ethnic looks from around the world."¹⁶

³ Spiegel Catalog, Fall/Winter 1994, at 276.

⁴ Id. at 278, Item H.

⁵ Id. at 278, 286.

⁶ Id. at 292.

⁷ Id. at 292, Item D.

⁸ Id. at 292.

⁹ Id. at 328-29.

¹⁰ Id.

¹¹ Id. at 330.

¹² Id. at 332.

¹³ Id. at 334.

¹⁴ Id. at 336.

¹⁵ Id. at 337.

¹⁶ Id. at 352.

Juxtapose Spiegel's celebratory excursion into cultural diversity with the Ralph Lauren lay-outs running each Sunday in the New York Times Magazine, depicting in-your-face scenes of money, privilege, and apartheid.¹⁷

"Plantations" and "colonies" cease being sites of enslavement, oppression, and degradation and become instead bucolic and nostalgic memories of sunset-colored retreats. The "primitive" and the "exotic" are broken from their histories of subordination. The coded images and mantras of the political Right: "Americana," "neutrality," "freedom of expression," and "endless opportunities" are insouciantly juxtaposed with "Diversity" and its hues of browns and black. Cultural and racial hybridity with their "mixing of cultures" and "ethnic looks" are stripped of their search and yearning for political and economic re/location and instead, fetishized, commodified, and re-defined as "natural," "better," and "at ease."

Advertising squeezes out old meanings of words, injecting them with new associations. Commercial-speak suctions out pejorative representations replacing them with acceptable and seductive ones. Subtly but inexorably, the language of commerce affects perceptions, alters attitudes, and reframes understanding. Capitalism's need to expand markets and increase sales coopts images, vocabulary, and historical experience. This cooptation can be critiqued from the perspective of the Right as well as that of Progressives. To the dismay of the Right, diversity is portrayed as elegant, chic, and desirable; to the dismay of the Progressives, it is historically transparent and ideologically neutral.

Advertising and other forms of popular culture also form, deform, reform, and conform identities. Take, for example, an episode from "Saturday Night Live" that aired on October 21, 1994. Dana Carvey is shown impersonating President George Bush. Carvey's image of Bush is of a weak, whining, and inarticulate man with awkward hand gestures and confusing facial expressions. The "real" George Bush is next shown critiquing this comedic impersonation of himself. A split screen then shows both Dana Carvey and George Bush. Bush can be heard whining about the inexactness of Carvey's "Bush" even as he exaggerates his gestures and intonations to match Carvey's. Can we draw some broader meaning when a comedian constructs a negative identity of the President of the United States, arguably the most powerful person on the planet, who responds to this mimicry by challenging the authenticity of the representation only to then assume the invented identity before a television audience of millions?

¹⁷ New York Times Magazine. See also Ralph Lauren, *The Home Catalog*, Fall 1995.

Are all identities up for grabs, the identities of politicians available to lampooners just as those of ethnics and *mestizas* are available to Madison Avenue? Is it useful to search for the relationship between popular culture's construction of identities and its creation of desire and meaning, or the construction of identities of studied peoples by ethnographers, or, more directly for our purposes, the construction of identities of clients by lawyers during the process of legal re/presentation? How does legal discourse resemble and emulate commercial-speak in masking historic forms of subordination? Like Spiegel's manipulation of plantation imagery and signification, does legal discourse also supplant the odious with invented memories, replacing and displacing the obvious with the oblique? Or, unlike George Bush, do lawyers obfuscate by eschewing the playful and the foolish, abjuring any lampooning of their tools, techniques, and vocabularies? Do such questions bear on the lawyer's tasks of speaking for clients and representing them? Isn't a lawyer's or law student's understanding of the dynamism of racial identities and the attendant complexity of client relations informed as much, if not more, by popular culture as by critical theory? Can we link the "reading" of popular culture and the deciphering of its encoded messages with the lawyer's need to "read" the culture of her client?

Students enter law school steeped in messages such as these, multilayered messages in which racist and neocolonialist¹⁸ attitudes merge into the everyday familiarity of objects offered for sale, messages in which the real blends with the ersatz. Yet, upon entering law school, students are confronted with legal materials and legal language that seem curiously ignorant of the rhetoric and the vocabularies of contemporary public speech. Were the nineteenth century colonizers, who packed their plantation cane chairs with their imperialism and headed for Africa, India, Mexico, and the so-called Wild West, to appear today, we fear that many law school classes

¹⁸ We use both the language of subordination/domination and the neocolonialist terminology associated with critiques of imperialism. We do so to draw attention to the connections between domestic and global forms of subjugation. Our academic objectives are consistent with those Peter McLaren has identified:

One of the crucial issues for criticalists working in the field of literacy is to rethink the conditions of the possibility for the subaltern to speak, to escape the labyrinth of subjugation, to make critical counterstatements against the logic of domination that informs the dominant white supremacist ideology of patriarchal capitalism and to transform the ideological precepts that make up the "imponderability" of everyday life where social relations of power and privilege are naturalized throughout the curriculum.

Peter McLaren & Kris Gutierrez, *Pedagogies of Dissent and Transformation: A Dialogue About Postmodernity, Social Context, and the Politics of Literacy*, 3 *Int. J. Educ. Reform* 327, 333 (1994).

would be astonishingly familiar to them. The materials we use and the concepts we employ might be virtually identical to those of their time. Looking around, they would likely be surprised to see women and people with skin in shades of tan to black. But looking down at their casebook they would recognize the measured words and the syllogistic patterns of the appellate judges, writing in what some would describe as expository English, the language of the profession perceived as "normal" in its monolinguality, monoculturalism, and transparent in its representation of reality.¹⁹ Looking forward, this imaginary colonizer might even see a woman of color teaching the class. We posit that all too frequently she or we or I would sound alarmingly like our predecessors from a bygone era.

Just compare the imagery, vocabulary, playfulness, and cultural diversity deployed by popular culture with those that typify traditional legal pedagogy. The schism between the discourse and semiotics of the marketplace and television, (to say nothing of hip-hop videos or rap lyrics) and our classrooms contribute to the persistent and pernicious separation between the personal and professional lives of the lawyer. We model this separation for students in and out of the classroom, inculcating them with what we already know to be an unsatisfying and ineffective way of leading our lives.

We recognize that students have diverse backgrounds and perspectives, as well as varying stakes in cultural debates, and this makes our pedagogical tasks immensely more interesting and more challenging as well. This Article is written with law professors and, ultimately, students in mind. Many students, and our daughters and sons, are already considerably adept at deciphering popular culture. We seek to make them our allies in constructing pedagogical spaces where together we can attenuate the assaults on our sensibilities and our spirits by fashioning new individual and collective identities within new myths, narratives, and ethics.

¹⁹ The concepts of transparency of language and the right use of reason have been explored by Jane Flax. She writes:

The knowledge acquired from the right use of reason will be "True"—for example, such knowledge will represent something real and unchanging (universal) about our minds and/or the structure of the natural world Language is in some sense transparent. Just as the right use of reason can result in knowledge that represents the real, so, too, language is merely the medium in and through which such representation occurs. There is a correspondence between "word" and "thing" (as between a correct truth claim and the real). Objects are not linguistically (or socially) constructed, they are merely *made present* to consciousness by naming and the right use of language.

Jane Flax, *Postmodernism and Gender Relations in Feminist Theory*, 12 *Signs* 621, 624 (1986–87) (emphasis in text).

B. The Borderlands as Metaphor

We begin by using the concepts of essentialism and anti-essentialism as our theoretical backdrop. We then examine the borderland theories of Gloria Anzaldúa, Peter McLaren, D. Emily Hicks, and others as a way out of this dichotomy. We offer the borderlands as a liminal space, a space filled with potentiality. For some students it may represent a place to invent and construct new identities, or to re/member lost ones.²⁰ For other students the borderlands is a way station, a periphery where the norms of the dominant culture can be learned and practiced, but also a place that can be left behind in order to return to one's home community. Students' awareness of the borderlands as a liminal space can assist them not only in the exploration of their own identities but also in their legal representation of clients.

We discuss strategies of transculturation mapped along "literal and figurative borders where a 'person' is crisscrossed by multiple identities."²¹ Border identities inspire our imagination and lure us with the potentiality of "a plural self, one that thrives on ambiguity and multiplicity, on affirmation of differences, not on polarized and polarizing notions of identity, culture, race, or gender."²² The notion of border identities, we suggest, is responsive to the universalizing concerns identified by Professors Elizabeth Spelman²³ and Angela Harris,²⁴ and at the same time allows us to form strategic alliances on the basis of characteristics such as gender.

The border metaphor, with its imbedded notions of multiple nationalities, cultures, and languages, motivates us to consider methodologies drawn from ethnography and literary translation. We refine the analysis undertaken by James Boyd White,²⁵ Clark Cunningham,²⁶

²⁰ The literary and cultural critic Homi Bhabha has pointed out that remembering is "never a quiet act of introspection or retrospection. [Rather, it is] a painful re/membering, a putting together of the dismembered past to make sense of the trauma of the present." Tejaswini Niranjana, *Siting Translation: History, Post-Structuralism, and the Colonial Context* 172 (1992).

²¹ Renato Rosaldo, *Culture and Truth: The Remaking of Social Analysis* 216 (1993). For an opposing view of borderlands and cross-cultural relationships, where border crossings are evil, corrupting, and polluting, see the movie "A Touch of Evil," Orson Wells, dir. 1958.

²² Françoise Lionnet, *Autobiographical Voices: Race, Gender, Self-Portraiture* 16 (1989).

²³ Elizabeth V. Spelman, *Inessential Woman: Problems of Exclusion in Feminist Thought* (1988). See *infra* text accompanying notes 71-72, 91-95.

²⁴ Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 *Stan. L. Rev.* 581 (1990). See *infra* Part II for a discussion of essentialism in feminist legal theory.

²⁵ James B. White, *Justice as Translation: An Essay in Cultural and Legal*

and others by reading their legal scholarship against that of feminist anthropologists and translators who express serious misgivings about the colonialist legacy of ethnography and translation. We propose the concept of the Malinche Paradox to problematize the roles of Outsiders who seek to deploy the discursive tools and tactics of the dominant culture, only to produce unexpected and, at times, unwanted outcomes.

Our purpose is to use interdisciplinary materials to identify techniques that can be used to ameliorate our own and the student's "cultural dyslexia," a term meaning "the inability to read the alien, cultural worlds of other people."²⁷ In this way we can maintain fluidity and connectedness in our personal and professional identities, as well as a synergy between our scholarship and our pedagogical agendas. We explicitly propose two techniques with which to diminish cultural dyslexia: slow-motion reading²⁸ and resonance.²⁹ Slow-motion reading is a methodology proposed decades ago by the French feminist lawyer and literary critic, Claudine Herrmann, as a way of using our personal experience to interpret what we read, a way of listening to our internal voice interrogate the text. The concept of resonance was developed by the Norwegian anthropologist Unni Wikan to increase cross-cultural understanding and appreciation by applying both feeling and thought; this concept of "feeling-thought" is one she borrows from the Balinese.³⁰

C. Enactments as Method.

This Article attempts to model slow-motion reading and resonance by incorporating personal narrative into the text. We try to listen closely to one another and to understand with our hearts and our heads. We write this Article in this way to honor the varying and conflicting roles we each assume, and to bring coherence to the work we perform each day, in and out of the home by suturing together the public and private domains in our scholarship. We seek to break the silence within the academy that

Criticism (1990).

²⁶ Clark D. Cunningham, *The Lawyer as Translator, Representation as Text: Towards an Ethnography of Legal Discourse*, 77 Cornell L. Rev. 1298 (1992).

²⁷ Gísli Pálsson, Introduction: Beyond Boundaries, in *Beyond Boundaries: Understanding, Translation and Anthropological Discourse* 1, 23 (Gísli Pálsson ed., 1993) [hereinafter *Beyond Boundaries*].

²⁸ See Nancy Kline, Translator's Introduction to Claudine Herrmann, *The Tongue Snatchers* at xi-xvi (Nancy Kline trans., 1989).

²⁹ See Unni Wikan, *Beyond Boundaries: The Power of Resonance*, in *Beyond Boundaries*, supra note 27, at 184, 188-191.

³⁰ Id. at 189.

enshrouds our family relations and work at home, to bridge the psychic distance between our front doors and the law school door, and to embroider our scholarship with the experience gleaned from our home lives. We try to make ourselves heard through different voices, the disembodied voices that characterize the stances of objectivity and neutrality of expository writing, the voice written in the "I" when we are telling our individual stories, and the voices that move between the "I" and the "we" when we are reviewing the collaboration that resulted in this Article. We share our stories in order to bring alive the notion that essentialism can cabin our thinking and circumscribe our comprehension of our own experiences as well as delude us into concluding that the experiences of others are like our own.

In stating our goals, we make several claims. First, we claim it is a good thing to seek to help oneself and one's students enter those particular spaces known as the "borderlands." Second, we make a claim that "we" share this goal. We assert that a bilingual Latina from New Mexico and an Anglo woman originally from the deep South can, ever mindful of our differences, collaborate on this particular project. Third, we claim that these insights and concepts can be transformed into particular skills which can be useful to law students. We assert that translation lessons from ethnography, language theory, feminist theory, and postmodernism can help students represent clients with whom they differ.

We borrowed our Article's opening epigram "The mind knowing doesn't always make a difference that matters." from Professor Sarah Williams.³¹ Her observation, reminds us not only of the futility of relying on our intellect, but also of the persistence we must show in acquiring multicultural competence. "Feeling-thought," we posit, in agreement with Professor Wikan,³² and not just "mind-knowing" can help us listen to and learn from each other, students, and our clients about different ways of reading the worlds around us.

The two of us met in the academy after taking very different journeys and starting from very different places. Margaret, a bilingual Latina from northern New Mexico, and her immediate family experienced the mobility made possible by the educational, social, and economic fissures that created a Latino middle class after World War II. Her mediocre undergraduate schooling through five state colleges in two states was capped by law school at Harvard. Margaret wears fuchsia, cobalt, and purple shoes that telegram multilingual messages. Melissa, an Anglo from the deep South, enjoyed a

³¹ Sarah Williams, *Abjection and Anthropological Praxis*, 66 *Anthropological Q.* 67, 74 (1993).

³² See Wikan, *supra* note 29, at 202-204.

middle class upbringing. She attended The University of the South (Sewanee), a genteel and socially conservative Southern college and then Vanderbilt, a New South, corporate-oriented law school. Melissa wears black leather flats, shoes that whisper different signals.

Researching and writing this Article has provided the two of us with the opportunity to examine issues, ideas, and tactics collaboratively by paying careful attention to our differing positions.³³ Doing so, we face once again the contingency of experience.

*mm:*³⁴ *Melissa and I began this Article in an unknowing way. She visited my law school during the 1994–95 academic year. I learned before she arrived that she had written a paper on law and feminism using the narrative form.*³⁵ *It was recommended to me because I too have written using autobiographical narrative form.*³⁶ *Soon after we met, we exchanged articles. I cried as I read the stories, hers and her students'. I read her self-disclosures about her feelings, her vulnerabilities, and her pain, wondering if she could have told me the things she has allowed me and others to read about her. I wonder about this, knowing that there are admissions about myself in my writing that I could not easily have shared with my colleagues.*

*Melissa and I talk about our children; we talk often and we talk in detail. There is reciprocity and symmetry in what we share.*³⁷ *We tell each other about our good days and bad days.*

³³ "Positionality" defines gender, race, class and other aspects of identity as markers of relational "positions" rather than essential qualities. The validity of knowledge is enhanced when it includes an acknowledgement of the knower's specific position because contextual and relational factors, while not fixed, are crucial for defining identities. Frances A. Maher, and Mary Kay Tetrault, *Frames of Positionality: Constructing Meaningful Dialogues about Gender and Race*, 66 *Anthropological Q.* 118 (1993). See also Katherine Bartlett, *Feminist Legal Methods*, 103 *Harv. L. Rev.* 829, 880 (1990).

³⁴ Throughout this Article, *mm* introduces Margaret Montoya's narrative.

³⁵ Melissa Harrison, *A Time of "Passionate Learning": Using Feminism, Law & Literature to Create a Learning Community*, 60 *Tenn. L. Rev.* 393 (1993).

³⁶ Margaret E. Montoya, *Máscaras, Trenzas Y Greñas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse*, 17 *Harv. Women's L.J.* 185 (1994).

³⁷ See Eva Hoffman, *Lost in Translation: A Life in a New Language* (1989) for another story about the exploration of "subjectivities" through a friendship between a Polish emigre and Ivy league "Americans." Hoffman writes:

My American Friends . . . share so many assumptions that are quite invisible to them, precisely because they're shared. These are assumptions about the most fundamental human transactions, subcutaneous beliefs, which lie just below the stratum of political opinion or overt ideology: about how much "space," physical or psychological, we need to give each other, about how

About mothering successes, mothering excesses, and mothering doubts.

Our small talk is about clothes, hair, weight, age, our periods, exercising, and not exercising. Sometimes we talk about politics, books, travel.

By the time we had agreed to try to work together, we had laid a foundation. We resolved to try to talk meaningfully about Difference. We began in a contradictory fashion, but then this was to be an undertaking filled with ambiguity and contradictions, by spending the better part of a day talking about how we were similar. Looking back, emphasizing how we were "the same" was a choice we each appear to have made. We were still very tentative with one another; the relationship couldn't yet bear the weight of a discussion about our differences. Such discussions came about because of this joint work, and the work itself moved us to where we could, and indeed had to, discuss Difference as well as our differences.

mh.³⁸ Margaret and I both tell stories, and part of our bond is that we have told them to one another. We tell stories both in our work and in our private lives. That is a way in which we link the two worlds. It is a way to bring coherence to our lives. Our storytelling is an integral part of our relationship. We could not have a relationship were we not self-disclosing persons.

Our stories remind us of our commonality and our positionality.³⁹ We share the fact that we tell stories. The difference in our stories shows our positionality. We have told each other stories of segregation. Margaret tells the story of how her parents could not ride the "white" bus but had to ride the "Mexican" bus to and from school in southern New Mexico.⁴⁰

much "control" is desirable, about what is private and what public, about how much interest in another person's affairs is sympathy and how much interference, about what's a pretty face or a handsome body, about what we're allowed to poke fun at and what we have to revere, about how much we need to hide in order to reveal ourselves. To remain outside such common agreements is to remain outside reality itself—and if I'm not to risk a mild cultural schizophrenia, I have to make a shift in the innermost ways. I have to translate myself. But if I'm to achieve this without becoming assimilated—that is, absorbed—by my new world, the translation has to be careful, the turns of the psyche unforced. To mouth foreign terms without incorporating their meanings is to risk being bowdlerized. A true translation proceeds by the motions of understanding and sympathy; it happens by slow increments, sentence by sentence, phrase by phrase.

Id. at 210–11.

³⁸ Throughout this Article, *mh* introduces Melissa Harrison's narrative.

³⁹ For an explanation on positionality see *infra* text accompanying notes 73–77.

⁴⁰ For the historical context for an expanded form of this story see Margaret E. Montoya, *Bordered Identities*, Law & Soc'y Assn. Anthology (forthcoming).

I tell the story of when I was a little girl going to visit my grandmother in Birmingham, Alabama, and stopping at a gas station where there were "colored" and "white" water fountains. My story is of living until I was ten years old in a small town in Alabama where there were no African-Americans because the townspeople boasted that any "n-----s" who tried to come into the town would be "run off." My story is of admitting fear when groups of young men of color got on the subway when I was living in New York City and of sometimes moving out of the subway car to avoid them. Margaret's story is of having white people move out of the subway car when she and an African-American male friend got on the subway when they were both law students at Harvard.

We are positioned differently vis-a-vis race, and I am in the privileged position. But we are not always positioned that way. In other circumstances we share privilege. We are both heterosexual and are learning how our privilege operates vis-a-vis our lesbian and gay friends and colleagues. We are both privileged by our current economic situation and by our professional positions and our educational opportunities. In addition, we are both able-bodied.

One of the most important common bonds we share is that we are both feminists⁴¹ and it is in that struggle to live as feminists in our workplace and in our personal lives that we also share stories. Margaret tells about her daughters, and how to teach them that it is appropriate for girls to be assertive and aggressive. I tell the story of my gentle, six year old son who got beaten up on the playground by the more aggressive boys; and how I cry for him because his gentleness is something I value so much and yet I fear that it will cause him pain as he grows older because he may not be as rough and tough as the dominant culture requires. I tell the story of what I refer to as my moment of greatest success as a feminist mom when my son asked, "Mom, why did God forget to give boys vaginas?"

⁴¹ There are differences in how women of color and white women view and identify with feminism. See *infra* text accompanying notes 70-72. For one example of Latina feminism see Montoya, *supra* note 36.

II. Anti/Essentialism and the Borderlands

A. Legal Feminism and Anti/Essentialism.

We find the concept of borderlands useful in thinking about essentialism and anti-essentialism because the very concept challenges the idea of a single perspective. A borderland can refer to the actual physical border between two geographic entities. However, we refer to psychic borderlands defined by Gloria Anzaldúa as "physically present wherever two or more cultures edge each other, where people of different races occupy the same territory, where under, lower, middle and upper classes touch, where the space between two individuals shrinks with intimacy."⁴² D. Emily Hicks defines "border writing" as that which "emphasizes the differences in reference codes between two or more cultures and depicts, therefore, a kind of realism that approaches the experience of border crossers, those who live in a bilingual, bicultural, biconceptual reality."⁴³

Peter McLaren defines "border identities" as "created out of empathy for others by means of a passionate connection through difference. Such a connection is furthered by a narrative imagination which enables critical linkages to be made between our own stories and the stories of cultural others."⁴⁴ He theorizes that "[b]order identities are identities in which readers and narrators are both one and the Other in the sense that the border crosser is both 'self' and 'other.'"⁴⁵ This awareness of the Other and of the blurring of identities is dislocating. This may mean that we look for conflict rather than consensus.⁴⁶ This may mean "that we need to learn to theorize, to deliberate, to make collective decisions, to resolve disputes, in new, probably time-consuming and awkward ways."⁴⁷ The

⁴² Gloria Anzaldúa, *Borderlands, La Frontera: The New Mestiza*, at Preface (1987).

⁴³ D. Emily Hicks, *Deterritorialization and Border Writing*, in *Ethics/Aesthetics: Post-Modern Positions* 47, 49 (Robert Merrill ed., 1988).

⁴⁴ Peter McLaren, *Critical Pedagogy and Predatory Culture: Oppositional Politics in a Postmodern Era* 106 (1995).

⁴⁵ Peter McLaren, *Border Disputes: Multicultural Narrative, Identity Formation, and Critical Pedagogy in Postmodern America*, in *Naming Silenced Lives: Personal Narratives and the Process of Educational Change* 201, 221 (Daniel McLaughlin & William G. Tierney eds., 1993) (quoting Hicks, *supra* note 43, at 52).

⁴⁶ Martha Minow, *Beyond Universality*, 1989 U. Chi. Legal F. 115, 132-33 (1989).

⁴⁷ Jennifer Nedelsky, *The Challenges of Multiplicity*, 89 Mich. L. Rev. 1591, 1608 (1991) (book review).

full implications of being constantly aware of difference is that we treat diversity as central, not incidental.

What does it mean to live in the borderlands or with a border consciousness? It feels extremely disruptive and insecure. "[T]he abject is that which 'beckons the subject ever closer to its edge'. . . . Edges—boundaries, borderlands, margins—are places where a plethora of postmodernist and feminist writers and writers of color engaged with comparative cultural studies remember, reconstruct and construct anew the imaginative power of cultures and identities."⁴⁸ Thus, abjection is about boundary loss. As Gloria Anzaldúa says:

Borders are set up to define the places that are safe and unsafe, to distinguish *us* from *them*. A border is a dividing line, a narrow strip along a steep edge. A borderland is a vague and undetermined place created by the emotional residue of an unnatural boundary. It is in a constant state of transition.⁴⁹

It is not a comfortable space, but there are "certain joys."⁵⁰ According to Anzaldúa:

Living on borders and in margins, keeping intact one's shifting and multiple identity and integrity, is like trying to swim in a new element, an "alien" element. There is an exhilaration in being a participant in the further evolution of humankind, in being "worked" on. I have the sense that certain "faculties"—not just in me but in every border resident, colored or non-colored—and dormant areas of consciousness are being activated, awakened . . . not comfortable but home.⁵¹

Thus, the borderlands are a place of abjection and exhilaration; a place where the person is "crisscrossed by multiple identities,"⁵² where we are a "plural self, one that thrives on ambiguity and multiplicity."⁵³

The image of borderlands—with its implicit recognition of both difference and commonality—illuminates a tension for feminists: how do we "attempt to talk about all women in terms of something we have in common [while not] undermin[ing] attempts to . . . [acknowledge] the differences among us, and vice versa?"⁵⁴ How can we make sure that

⁴⁸ Williams, *supra* note 31, at 68.

⁴⁹ Anzaldúa, *supra* note 42, at 3 (emphasis in text).

⁵⁰ *Id.* at Preface.

⁵¹ *Id.*

⁵² Rosaldo, *supra* note 21, at 216.

⁵³ Lionnet, *supra* note 22, at 16.

⁵⁴ See Spelman, *supra* note 23, at 3.

voices are not silenced and that we do not assume to speak inappropriately for others while claiming that social critiques of patriarchy can be made?

We propose borderlands as a way to theorize and dissolve the tension between essentialism and anti-essentialism. Essentialism, in the general philosophical sense, is "understood as a belief in the real, true essence of things, the invariable and fixed properties which define the 'whatness' of a given entity."⁵⁵ The category "woman" has been used by men to essentialize women's nature and then as the starting point of, and justification for, the oppression of women. Constructionism, on the other hand, insists that essence itself is an historical construction, not a naturally occurring phenomenon.⁵⁶ Constructionists, for example, insist that "woman" is a category created by society, not an immutable essence.

In a different, but related sense, the term "gender essentialism" has been used to critique the practice of some feminists who have described women's experience as unchanging across "race, class, sexual orientation, and other realities of experience."⁵⁷ This critique asserts that first men, and then women, of privilege have "erase[d] or appropriate[d] the experiences of those unlike themselves."⁵⁸

Most, if not all, feminist theorists consider themselves constructionists in the philosophical sense. Very few believe that woman is an immutable essence which exists metaphysically outside of historical construction.⁵⁹ Many feminist theorists share the critique that gender essentialism has operated to privilege the voices of white, middle class, educated, heterosexual women and to silence the voices of women of color, lesbians, and the disabled. However, these theorists disagree in the emphasis they place on difference and the extent to which difference limits the truth claims one can make.

The paradox for feminist theorists is that some form of essentialism (viewed in the most general sense of identifying commonalities) is necessary for a critique of unjust social structures. Unless we can speak of and for groups of people, we can never move beyond the results of individual actions to address social, economic, and political oppression.

⁵⁵ Diana Fuss, *Essentially Speaking: Feminism, Nature and Difference*, at xi (1989).

⁵⁶ *Id.* at 2.

⁵⁷ See Harris, *supra* note 24, at 585.

⁵⁸ Judith Resnik, *Ambivalence: The Resiliency of Legal Culture in the United States*, 45 *Stan. L. Rev.* 1525, 1538 (1993); see also Judith Resnik, *Visible on "Women's Issues,"* *Iowa L. Rev.* 41, 48 (1991).

⁵⁹ One example is Robin West, who posits that women share an essence in their biological ability to have children and this connects them and sets them apart from men. See Robin West, *Jurisprudence and Gender*, 55 *U. Chi. L. Rev.* 1 (1988).

Martha Nussbaum seeks to reclaim essentialism for feminists by positing "internalist essentialism" as a way to resolve this paradox. Internalist essentialism is grounded in human experience and is an historically sensitive account of the most basic human needs and human functions "in terms of which human life is defined."⁶⁰ We need some form of essentialism, according to Nussbaum, for compassion and respect "can have their home only within a view that recognizes a determinate conception of the human being."⁶¹ "[C]ompassion . . . require[s] the belief in a common humanity." It is "internalist" because it does not depend on an outside metaphysical foundation. In other words, essences do not exist outside of historical circumstances. Internalist essentialism focuses on human functions because once one identifies the important human functions, one is in a position to critique whether social and political systems are attending adequately to those functions. "Are they giving people what they need in order to be capable of functioning in all these human ways?"⁶² Nussbaum argues that these human functions should be defined as vaguely as possible in order to be as inclusive as possible.⁶³

⁶⁰ Martha C. Nussbaum, *Human Functioning and Social Justice: In Defense of Aristotelian Essentialism*, 20 *Pol. Theory* 202, 214 (1992).

⁶¹ *Id.* at 237.

⁶² *Id.*

⁶³ *Id.* at 215. Nussbaum's list of Basic Human Functional Capabilities is as follows:

1. Being able to live to the end of a complete human life, as far as is possible; not dying prematurely, or before one's life is so reduced as to be not worth living.
2. Being able to have good health, to be adequately nourished, [and] to have adequate shelter; having opportunities for sexual satisfaction; being able to move from place to place.
3. Being able to avoid unnecessary and nonbeneficial pain and to have pleasurable experiences.
4. Being able to use the five senses; being able to imagine, to think, and to reason.
5. Being able to have attachments to things and persons outside ourselves, to love those who love and care for us, to grieve at their absence, in general, to love, grieve, [and] to feel longing and gratitude.
6. Being able to form a conception of the good and to engage in critical reflection about the planning of one's own life.
7. Being able to live for and with others, to recognize and show concern for other human beings, to engage in various forms of familial and social interaction.
8. Being able to live with concern for and in relation to animals, plants, and the world of nature.
9. Being able to laugh, to play, to enjoy recreational activities.
10. Being able to live one's on [sic] life and nobody else's; being able to live one's own life in one's very own surroundings and context.

Moreover, she argues that this "thick, vague" form of essentialism "does not believe in saying anything at all without rich and full information, gathered not so much from detached study as from the voices of those who live the ways of life in question."⁶⁴

We do not grasp the significance of suffering or lack or impediment unless and until we set it in the context of a view of what it is for a human being to flourish."⁶⁵ Martha Nussbaum's position can be categorized as one which seeks to stress the commonality of humans, in opposition to extreme relativism.⁶⁶

We find Nussbaum's "thick, vague" conception of essentialism useful to articulate a broad baseline of what is human in order to challenge social institutions. We must combine her conception of "internalist essentialism" with her exhortation to demand an inquiry into differences in order that the general good be appropriately realized in specific cases. That searching analysis of difference can be informed by the works of Angela Harris, Kimberlé Crenshaw, and Elizabeth Spelman.

Angela Harris' work suggests a move beyond essentialism toward "multiple consciousness," which is defined as "the recognition of a self that is multiplicitous, not unitary; the recognition that differences are always relational rather than inherent; and the recognition that wholeness and commonality are acts of will and creativity, rather than passive discovery."⁶⁷ Commonality is not something we possess in an essential womanness but is something we create. In Harris' words, "bridges between women are built, not found [W]hat will truly bring . . . us together is the use of effort and imagination to root out and examine our differences, for only the recognition of women's differences can ultimately bring [the] feminist movement to strength."⁶⁸ Even though Harris criticizes essentialism and categorical thinking, she realizes that some categorization is necessary for social change. She states:

Even a jurisprudence based on multiple consciousness must categorize . . . [or] there can be no moral responsibility or social change. My suggestion is only that we make our categories explicitly tentative, relational, and unstable, and that to do so is

Id. at 222. According to Nussbaum, "[t]he Aristotelian essentialist claims that a life that lacks any one of these, no matter what else it has, will be lacking in humanness. So it would be reasonable to take these things as a focus for concern, in asking how public policy can promote the good of human beings." Id.

⁶⁴ Id. at 225.

⁶⁵ Id. at 239.

⁶⁶ Id. at 232.

⁶⁷ Harris, *supra* note 24, at 608.

⁶⁸ Id. at 615.

all the more important in a discipline like law, where abstraction and "frozen" categories are the norm. Avoiding gender essentialism need not mean that the Holocaust and a corn cob are the same.⁶⁹

mm: Sometimes our inculcation in essentialistic thinking reveals itself in unpredictable ways. When I was completing undergraduate studies at San Diego State University and applying to law school, I was required to get the signature of my department chair on one of the applications. I had an interdisciplinary major in History, Economics and Political Science and approached the chair of one of the departments for his signature. I didn't know him and he didn't know me. I stood before him as he sat behind his desk. I handed him my application as I asked for his signature. "I won't do anything to help a Mexican get into law school," he said to me. Confused by the ambiguity of categorizations, I corrected him, "Oh, I'm an American citizen." You see, I thought he was concerned with my citizenship status. "I don't care what kind of a Mexican you are." The epithet was now crystal clear to both of us.

Kimberlé Crenshaw and Elizabeth Spelman also caution against essentialism because black women experience oppression in a different way than white women. Crenshaw claims black women sometimes experience discrimination in ways similar to Black men. Sometimes they experience discrimination not as the sum of race and sex, but as a different category, Black women.⁷⁰ Spelman emphasizes that black women are not black and women. They are "black women."⁷¹ Thus, according to Crenshaw and Spelman, women of color experience sex discrimination in a way that is qualitatively—and not just quantitatively—different.⁷²

The works of Katharine Bartlett and Joan Williams exhort us to be constantly aware of the shifting self, the different positions we all occupy. Bartlett addresses the essentialism paradox through the concept of "positionality," a "stance toward knowledge that takes into account the contingency of knowledge claims while allowing for a concept of truth or

⁶⁹ Id. at 586.

⁷⁰ Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. Chi. Legal F. 139, 149 (1989).

⁷¹ "You cannot separate the parts of women of color like they were pieces of a tootsie roll or colored beads." Spelman, *supra* note 23, at 15.

⁷² Spelman recognizes the need for some type of categorization. Spelman says: "I am not saying that we ought never to think about or refer to women 'as women' or to men 'as men.' I am only insisting that whenever we do that we remember which women and which men we are thinking about." Id. at 186.

objectivity that can sustain an agenda for meaningful reform."⁷³ According to Bartlett, "[t]he positional stance acknowledges the existence of empirical truths, values and knowledge, and also their contingency. It thereby provides a basis for feminist commitment and political action, but views these commitments as provisional and subject to further critical evaluation"⁷⁴ For Bartlett, truth is determined by one's position in particular involvements and relationships. She states, "[t]hese relationships, not some essential or innate characteristics of the individual, define the individual's perspective and provide the location for meaning, identity, and political commitment."⁷⁵

Williams explicitly uses the insights of postmodernism to argue for the importance of context. Williams' theory is similar to Bartlett's in that she uses "context" in much the same way as Bartlett uses "positionality." According to Williams, a post-modern approach focuses on the fact that an individual can have multiple viewpoints.⁷⁶ She says that:

race and gender may prove determinative *in some particular context*, . . . [but there are no essential characteristics which] determine how a given individual will react in every situation.

This post-modern approach starts from the notion of a fragmented and shifting self A post-modern approach to difference highlights that each person is embedded in a matrix of social and psychological factors that interact in different contexts. Essentialism dissolves before the notion of a shifting, constantly reconfigured self, shaped but not determined by membership in sets of social categories that crystallize power relations in America.⁷⁷

Both Williams and Bartlett locate descriptions of the self in the particularity of peoples' lives. The self is not a category that is always the same, but adapts and changes according to the "context" or "position" at a given time and place. The combination of these insights, we believe, offers feminists a way to critique social institutions with an awareness of difference that matters.

We agree with Martha Nussbaum that there is a baseline commonality, and we also agree with Martha Fineman on the necessity of collaboration for social change. Fineman believes that the feminist task is to find

⁷³ Bartlett, *supra* note 33, at 879.

⁷⁴ *Id.* at 880.

⁷⁵ *Id.*

⁷⁶ Joan C. Williams, *Dissolving the Sameness/Difference Debate: A Post-Modern Path Beyond Essentialism in Feminist and Critical Race Theory*, 1991 Duke L.J. 296, 299 (1991).

⁷⁷ *Id.* at 307-08.

common ground and work together "to challenge male-defined and [male-] controlled gendered notions of law that systematically disadvantage women."⁷⁸ Fineman uses the concept "gendered lives" to distinguish women's lives from men's lives in our culture. She states that

many women experience society in ways significantly different from the ways that men experience society. I believe certain real or potential experiences can be described as constituting the basis for a feminist development of the concept of "gendered life." These experiences lead many women to develop a perspective qualitatively different from what is reflected in dominant legal ideology. This is *not* to assert that all women think alike or have identical experiences. My position is based on experiential, not essential differences.⁷⁹

Fineman believes that women can discover enough in common through this concept of gendered lives to work together. She acknowledges that there are differences among women and she sees those differences as positive.⁸⁰ She cautions that such differences must not divide women.⁸¹ For Fineman, the dominant goal is to change male-defined notions of law—a goal she thinks all women can share. Fineman's conception of gendered lives identifies an "essence" that is socially, rather than biologically constructed. Because the goal is to change male-dominated and -defined legal institutions, the differences between women should be sublimated in some contexts, even if they objectively exist, in order that the movement will not be diluted. Social change is the objective, so emphasizing differences between women threatens to hinder the work.

B. Collaborating in the Borderlands.

Richard Delgado challenges the notion that difference from men is the dominant paradigm and that women can have the same goals. In *Rodrigo's Sixth Chronicle*, he posits this as relational essentialism, which he defines as:

the idea that Black women, for example, must join white women, but not because both groups have the very same experience, perspective, needs, and agendas, . . . [but] because they stand on

⁷⁸ Martha Albertson Fineman, *Feminist Theory in Law: The Difference It Makes*, 2 Colum. J. Gender & L. 1, 23 (1992).

⁷⁹ Martha Albertson Fineman, *Challenging Law, Establishing Differences: The Future of Feminist Legal Scholarship*, 42 Fla. L. Rev. 25, 37 (1990).

⁸⁰ Id. at 38–39.

⁸¹ Id. at 40–41.

the same footing with respect to patriarchy. In this respect, they are essentially the same, that is, oppressed and in need of relief.⁸²

Rodrigo (or actually his partner Giannina) argues against "relational essentialism."

[I]t is always a . . . mistake . . . [for the outsider to join with the] more empowered group, even for strategic reasons.

[T]he price of strategic essentialism is not only that you get away from your agenda and your heart-of-hearts goals. You'll develop what Antonio Gramsci calls false consciousness. You'll forget who you are and what your original goals and commitments were. Goals, personal identities, and loyalties are socially constructed. If we work and struggle with people—no matter how well-intentioned—whose perspectives, culture, and agenda are different from ours, we will eventually change.⁸³

mm: A collaboration between Melissa and myself raises questions about whether women of color should collaborate with their white female colleagues. Richard Delgado has warned that such efforts may result in the dilution of multiple consciousness.⁸⁴ Strategic alliances, he cautions, can make us lose our direction, veering off from where we want to go, and worse yet, lead to false consciousness.⁸⁵

What am I to do? For some fifteen years I have been involved in an interracial and interethnic intellectual alliance. I am married to a man who is bilingual (English and Spanish) and bicultural ("American" and Mexican) and he is white. While my marriage has many other dimensions, there is no question that it is a principal site for the development of my multiple identities; it is where I try out ideas, explore tactics, and mend my soul after skirmishes with racism, sexism, and every Otherism. And so, am I more at risk in collaborating with him over decades than with Melissa over months?

But let us look at Rodrigo's background. He is described as "African-American by birth and [by] ancestry"⁸⁶ yet he is more than that as the child of an African-American father and an Italian-national mother.⁸⁷ Arguably, his mixed racial heritage

⁸² Richard Delgado, *Rodrigo's Sixth Chronicle: Intersections, Essences, and the Dilemma of Social Reform*, 68 N.Y.U. L. Rev. 639, 649 (1993).

⁸³ Id. at 652-53.

⁸⁴ Id. at 660-61.

⁸⁵ Id. at 652-53.

⁸⁶ Id. at 639-40.

⁸⁷ Id. at 640 n.2.

evidences itself in his choice of a partner, Giannina, an Italian woman.⁸⁸

How are we to understand Rodrigo's appeals to a type of Outsider solidarity that is inconsistent with his ancestral realities as well as his own personal behavior? Isn't our task to claim our mixed ancestry—both chromosomal and intellectual? That is, many of us who self-identify as people of color are mestizas or mestizos, people of mixed racial backgrounds.⁸⁹

Moreover, all of us are intellectual mestizas or mestizos.⁹⁰ My ideas, as those of other scholars engaged in critical legal analysis, have been spawned by Karl Marx, Antonio Gramsci, Martin Luther King Jr., Malcolm X, Paolo Freire, Albert Memmi, Catherine MacKinnon, Gloria Steinem, Derrick Bell, Richard Delgado, bell hooks, Patricia Williams, Mari Matsuda, Gloria Anzaldúa, Angela Harris, and Peter McLaren. And this necessarily compacted list doesn't begin to include those novelists, artists, or musicians of every hue and of both genders who also have, to varying degrees, birthed my identities.

Originally, those whose ideas had most salience for me were white men, then black men, white women, women of color, and most recently, I have learned much from gays and lesbians. From my perspective, there has been a temporal progression as different groups have broken into public discourse. Today, I find compelling arguments from critical scholars, writers, and commentators who self-identify with a variety of names and emphasize differing characteristics. This is one of the lessons I choose to draw from the essentialism/anti-essentialism debates.

But it all becomes very circular because my conclusions may be the product of false consciousness. By this I mean that I take Professor Delgado's warnings very seriously. Perhaps the only way I can guard against the pitfalls of engaging in crosscultural activities is to engage with those who are willing to invest the time and to take the psychic risks required for the inter-reflexivity that we try to illustrate in this Article.

mh: How do white, Anglo women attempt to step out of that emotionally secure space where we believe that everyone is just like us? First of all, is it possible? While it may not be possible to become the Other or even to understand the Other, we can attempt to know the lives of Others; we can acquire knowledge that helps us to see multiplicity.

⁸⁸ Id. at 640 n.3. Although Delgado never clarifies Giannina's ethnicity, based on Rodrigo's background and travels, we assume she is Italian. Also, we presume that Delgado is encoding ethnic information in his choice of a name for his character.

⁸⁹ See Montoya, *supra* note 36, at 216.

⁹⁰ Id.

Elizabeth Spelman argues that:

[T]he acquisition of such knowledge requires a kind of apprenticeship; and making oneself an apprentice to someone is at odds with having political, social, and economic power over them.

[W]e must come to know women from whom we differ But . . . our recognition of this need must be matched by an awareness of how the legacies of our privilege appear in the ways we may try to satisfy that need⁹¹

mh: In other words, for a white, privileged woman to acquire knowledge about others so as not to essentialize, we (the "we" I use here refers to other white or Anglo women) must constantly interrogate ourselves, examine our motives, and deconstruct our relationships with those who agree to allow us to apprentice ourselves to them. We must examine whether our motive is a desire for internal growth.

Maria Lugones doubts that self-growth will be the result of this work. She says, "The severe self-disruption that the task entails should place a doubt in anyone who takes the task seriously about her possibilities of coming out of the task whole, with a self that is not as fragile as the selves of those who have been the victims of racism."⁹²

The white, Anglo woman must examine whether she undertakes this work out of a sense of obligation or "white guilt." Lugones condemns this motive because it puts the "white/Anglo in a morally self-righteous position that is inappropriate. You are active, we are passive. We become the vehicles of your own redemption."⁹³ This motive is patronizing as it focuses on the self-growth of the white or Anglo. The white or Anglo woman must question whether she does this out of a desire to make herself relevant, i.e., to grab center stage. "The centerstage problem occurs because dominant group members are already accustomed to being on centerstage."⁹⁴ Lugones has said that the white or Anglo should become "unintrusive, unimportant, patient to the point of tears, while at the same

⁹¹ Spelman, *supra* note 23, at 178, 185.

⁹² Maria C. Lugones & Elizabeth V. Spelman, Have We Got a Theory for You! Feminist Theory, Cultural Imperialism and the Demand for "The Woman's Voice," in *Women and Values: Readings in Recent Feminist Philosophy* 19, 29 (Marilyn Pearsall ed., 2d ed. 1993).

⁹³ *Id.*

⁹⁴ Trina Grillo & Stephanie M. Wildman, Obscuring the Importance of Race: The Implication of Making Comparisons Between Racism and Sexism (or Other-isms), 1991 *Duke L.J.* 397, 401 (1991).

time open to learning any possible lessons."⁹⁵ Grillo and Wildman have suggested that there is a place for whites to speak. "Part of the privilege of whiteness is the freedom not to think about race. Whites need to reject this privilege and to recognize and speak about their role in the racial hierarchy. Yet whites cannot speak validly for people of color, but only about their own experiences as whites."⁹⁶ Gloria Anzaldúa believes that there must be a role for whites or Anglos in this work. She acknowledges that some of her Latina/o colleagues don't want to work with whites but she believes that whites must be allowed to be the allies of people of color.⁹⁷ I think that the appropriate role is as listener to and learner "in a respectful way"⁹⁸ from men and women of color and as speakers to other whites.⁹⁹

mh: My effort in this collaboration is to attempt to acquire knowledge of the perspective of others, even if that is only partially possible, and to speak out about my own role in the struggle, being careful not to speak for my collaborators and friends. Nor can I speak to them about how they must live their own lives. Doris Lessing recounts an experience which I view as a cautionary tale to Western women of privilege. She recalls a "very dramatic little scene" during one of her visits back to Zimbabwe after 25 years of banishment as a "prohibited immigrant" for her criticism of apartheid: "There were a couple of American feminists, expertly dressed, lecturing a bunch of women who were raising kids on a level of about \$70 to \$80 a month in American money, about their sex lives, how to raise their children, how to treat their husbands." The feminists struck her as latter-day ideological imperialists, liberated most of all, she says, from "a sense of the ridiculous."¹⁰⁰

I hope I still have a sense of the ridiculous which will keep me in a listening rather than a preaching mode. Of course, the act of writing about my experience involves a paradox. I am here taking center stage talking about not taking center stage.

⁹⁵ Lugones & Spelman, *supra* note 92, at 29.

⁹⁶ Grillo & Wildman, *supra* note 94, at 405. See also Margery Wolf, *A Thrice-Told Tale: Feminism, Postmodernism, and Ethnographic Responsibility* 122 (1992) ("To be suspicious [of one's position as a member of the dominant group] is good. To allow it to silence one is something else.").

⁹⁷ Anzaldúa, *supra* note 42, at 85.

⁹⁸ Gloria Anzaldúa says that "whites could allow themselves to . . . learn from us in a respectful way." *Id.* at 68.

⁹⁹ For an example of a white, Anglo woman listening to learn and learning to listen, see Frances L. Ansley, *A Civil Rights Agenda for the Year 2000: Confessions of an Identity Politician*, 59 *Tenn. L. Rev.* 593 (1992).

¹⁰⁰ Diana J. Schemo, *At the Guggenheim With Doris Lessing: A Portrait Unwinds, As in Life*, *N.Y. Times*, Nov. 2, 1994, at C1, C10.

Recognizing that paradox, I can only constantly interrogate myself as I try to do the work.

When the first draft of this Article was done, it was glaringly apparent that there was more narrative from Margaret than from myself. This imbalance seemed wrong to both of us. At first, I explained to Margaret, and to myself, that my lack of self-disclosure was because I thought no one was interested in hearing what I termed my "white or Anglo angst." In fact, I had written narrative and discarded it because it felt so self-absorbed and full of "white guilt." I was forced to realize, however, that this explanation was only partially true. I now realize that silence is full of power. The right to silence is the right of the privileged. Part of white privilege is about not having to notice or write about the story of one's whiteness as whiteness—as race.

In addition, by only seeing myself as white and privileged and Margaret as an oppressed person of color, I essentialized her and forced her to do most of the work. The work of transforming power structures is my work too, and it will not get done if I am silent.

Margaret and I have disclosed to each other our "fears of being found out." Margaret's fear is that she will be found out as "not belonging in the white world."

mm: Belonging is such an ambiguous word. I have elsewhere written about the psychic risk of the Outsider, the dramaturgical strategies for staying in role when one is bridging cultures.¹⁰¹ I have a strong reaction against the notion that I "belong" in the white world in the sense that it's my proper place. In a real way, I am not at home in either culture, the white culture of the U.S. or that of Mexico.¹⁰²

mh: My fear is of being found out as racist. My fear is that my image of myself as an enlightened liberal will be destroyed. I am greatly indebted to Sharon Rush and to Margaret for their insights on this matter. I confided this fear of being racist which had me stymied in work on this Article. I remember Sharon saying to me, "well, you are racist—now what do you do about it?"

So, what do I do about it? I seek to acquire knowledge of the lives of other people, people from whom I am different, people whose lives I do not know. When I was an Assistant District Attorney in Brooklyn, the stories I heard were from the victims of crime. The victims of crime in Brooklyn, as elsewhere, are primarily poor people of color. I remember two women in particular. Both were the victims of domestic violence. The first

¹⁰¹ See Montoya, *supra* note 36, at 197–98.

¹⁰² *Id.* at 217–19.

had been stabbed in the lung by her partner. It was the second time he had stabbed her. She refused to voluntarily appear before the grand jury so that he could be indicted for aggravated assault. Finally, I had her forcibly brought into my office. My job was to convince her that her partner should be indicted and should go to jail. I was 29 years old and had been a practicing lawyer for one year. I remember saying to her, "Look, I'm not trying to tell you how to live your life—but being stabbed is so serious, how can you stay?" She looked at me and said, "I have no place else to go. He supports me and my children. He is good to my children. I went with him in the first place to get away from my father who was worse."

I have told that story for several years when I lecture on domestic violence to show why I no longer ask, "Why didn't you leave?" But recently, I have realized what I didn't ask about, what I didn't hear in her story. I have always thought of this woman's life as a paradigm of unremitting misery and victimhood. But that is not all there is to her story. I did not ask her about her children and her love for them. Nor did I hear her story of courage and love. Her love for her children could have been something which sustained her, which was important enough to even sacrifice her physical integrity. Wouldn't I have been a better lawyer if I had listened in a way that she became a real person to me?

The other story is of another woman of color who had been attacked with an ice pick by her partner. He had not injured her. She had fought him off. She wanted him prosecuted. She said to me, "You know he's beat me up before, I can handle that, I just hit him back. But an ice pick, I can't handle that, he's got to go." Her life was grim. She was poor. She had a partner who beat her. In many ways, she could be seen as a victim of life. But she was one of the strongest, bravest women I have ever met. I still remember how she radiated strength.

No one is just a victim and no two victims are just the same. Everyone moves in and out of selves which are reconfigured and repositioned every day. I can use the insights of postmodernism and anti-essentialism to really hear about the lives of others—to practice slow-motion listening, to seek out the opportunity to know—to teach my students how to do the same.

Why do we seek to do this work? The answer is that we believe it to be the right thing to do. Claiming both that we share enough in common to work together, and that we can claim the rightness of the goal is, in itself, essentializing.¹⁰³ However, we should not, and cannot, speak of an "'essential' wom[a]n's experience . . . isolated and described independently of race, class, sexual orientation, and other realities of

¹⁰³ Delgado, *supra* note 82, at 647.

experience."¹⁰⁴ We believe that the tendency toward gender essentialism has privileged the voices of white, middle-class women and silenced the voices of women of color, lesbians, differently-abled, and poor women.¹⁰⁵ We find in postmodernism a useful way to describe the constructedness of women's lives and the shifting of the subject, the life on the border, the abyss at the edge that is a necessary result of seeing in a multiplicitous way. We believe that it is possible to see, teach, and learn in a multicultural way. We also believe that it will be hard work, both for ourselves and our students. "It takes practice to make a habit of glimpsing the perspectives of others."¹⁰⁶

mh: One day Margaret and I were looking at a list of past recipients of a particular award. Our eyes slowly moved down the list together. Finally, I say, "Only one woman." Margaret says "Only one Latino or Latina." I admit that I don't look for Latinos or Latinas. I look for women. Margaret says, "I look for both." Two days later, she hands me a list of participants for a symposium. I see plenty of women's names. I nod. She looks at me and says "Only one Latina." I hadn't looked for Latinas again. It takes practice. "[T]he mind knowing doesn't always make a difference that matters."¹⁰⁷

Awareness of the borderlands can help students interact with a wide range of clients; some of whom may be very different from the students themselves. The concept of borderlands is useful because it challenges the idea of a single perspective. Students can resist essentialism by being constantly aware of different cultures, classes, genders, races, and sexual orientations inhabiting the same space. The borderlands exhort students to be constantly aware of difference. It promotes better lawyering by encouraging "empathy for others by means of a passionate connection through difference."¹⁰⁸ It enables students and lawyers to make "critical linkages" between their "stories and the stories of cultural others."¹⁰⁹ After proposing the borderlands as a construct to enable one to resist essentialism, the next task is to fashion specific techniques which can help students to bring the borderlands into their lawyering.

¹⁰⁴ Harris, *supra* note 24, at 585.

¹⁰⁵ We wish to acknowledge that all such lists usually leave someone out and do not recognize the multiplicity of people's lives. For example, some women are both poor and differently-abled while others are both lesbian and women of color.

¹⁰⁶ Martha Minow, The Supreme Court, 1986 Term, Forward: Justice Engendered, 101 Harv. L. Rev. 10, 79 (1987).

¹⁰⁷ Williams, *supra* note 31, at 74.

¹⁰⁸ McLaren, *supra* note 44, at 106.

¹⁰⁹ *Id.*

III. Interdisciplinary Discourses on Anti-Essentialism

A. Can We Speak for / Represent AnOther?

While the lawyer speaks for the client, the goal of translation is not for lawyer and client to "speak with one voice." Rather, the goal is for the lawyer to position the client's voice within the legal proceeding, to evoke rather than re-present the client's narratives.¹¹⁰

Speaking on behalf of another is an important aspect of lawyering. In a variety of venues, lawyers are expected to speak for their clients. In adversarial dispute resolution, for example, the lawyer's speaking for the client is at the heart of the advocacy. But, can we successfully speak for another? Or, more importantly for purposes of this Article, can we speak for an Other while being mindful of the lessons of the essentialism debates?

In this section we examine questions being raised within other disciplines about essentialism and anti-essentialism. To do so, we begin by examining the legal scholarship that integrates translation and ethnographic techniques into lawyering practices. Then, we listen to feminists, phenomenologists, ethnographers, and translators who have questioned the ability of one person to speak for another, particularly when the speaker is situated within the hierarchical structures of the academy or the legal system, and is speaking about persons who do not share the speaker's characteristics of race, class, sexual orientation, gender, language, or nationality. To reiterate, we are using these characteristics as proxies for certain life experiences that result in some loosely defined collective perspective, as markers of positionality.¹¹¹

The role of the translator offers insights into the lawyer/client relationship and into the lawyer's task of translating the client's story into legal parlance.¹¹² In 1990, James Boyd White¹¹³ wrote his much

¹¹⁰ Christopher P. Gilkerson, *Poverty Law Narratives: The Critical Practice and Theory of Receiving and Translating Client Stories*, 43 *Hastings L.J.* 861, 916-17 (1992).

¹¹¹ See *supra* note 33.

¹¹² See Margaret E. Montoya, *Law and Language: Image, Integration and Innovation*, 7 *Berkeley La Raza L.J.* 1 (1994).

¹¹³ White is Hart Wright Professor of Law, Professor of English Language and Literature and Adjunct Professor of Classical Studies at The University of Michigan. See James Boyd White, *Translation as a Mode of Thought*, 77 *Cornell L. Rev.* 1388 (1992).

acclaimed book, *Justice as Translation*, in which, in exhorting lawyers to employ the practice of translation, he challenged them/us:

to be a certain sort of person, with a certain attitude, ready to act out of fidelity to the text in constantly new contexts . . . challeng[ing] the formulations by which the power of one person (or a group) over the lives of another in the private sphere is justified or made to seem natural, by languages that assert their own unquestioned validity. It is the genius of the law to provide a place in which unheard voices can be heard and responded to; it is our task as lawyers to realize this possibility.¹¹⁴

Given White's interdisciplinary orientation, his book undertakes to correlate a certain view of language with a corresponding view of the law. He begins by describing two views of language, one that is "transparent or neutral, merely a way of pointing to something outside of itself."¹¹⁵ An alternative mode of thinking about language is:

as a repertoire of forms of action and of life. Every utterance has meanings beyond the purely intellectual—meanings that are, just to begin the list of possibilities, political, ethical, cultural, aesthetic, social, and psychological in character—for, whether we know it or not, our every utterance is a way of being and acting in the world.¹¹⁶

White then links this 'integrative'¹¹⁷ approach towards language with a view of law "as a 'culture of argument'"¹¹⁸ and,

as a branch of rhetoric . . . for through its forms of language and of life the law constitutes a world of meaning and action: it creates a set of actors and speakers and offers them possibilities for meaningful speech and action that would not otherwise exist; in so doing it establishes and maintains a community, defined by its practices of language. At every stage the law is in this sense an ethical and political activity and should be understood and judged as such.¹¹⁹

¹¹⁴ White, *supra* note 25, at 267.

¹¹⁵ *Id.* at ix; see also Flax, *supra* note 19.

¹¹⁶ White, *supra* note 25, at xi.

¹¹⁷ White describes the theme of the book as "'intellectual integration': the heart of it lies in making texts (and communities) in which place is given not merely to one, but to a variety of languages and voices." *Id.* at xiv.

¹¹⁸ *Id.* at xiii.

¹¹⁹ *Id.* at xiv.

Translation, according to White, is a "useful way of thinking and talking about excellence in law,"¹²⁰ a way "forcing us to respect the other—the other language, the other person, the other text."¹²¹ But even as Professor White recognizes the potential that translation practices have for reframing the relationship between the lawyer and her client, he describes the difficulty of "carrying over" the meaning from one text to a new one articulated in the language of the translator/lawyer. White's book elucidates why it isn't possible to "say" in one language what has been "said" in another.¹²² He explains,

our languages shape what we say and what we mean, what we see and what we experience; we are always talking in inner or outer speech; there can be no "content" without language; and language is neither a "code" nor a system of signification that points to things external to it.¹²³

The lawyer in pursuit of techniques to enhance communications with clients can learn from White's descriptions of language as well as from the process of translation.¹²⁴ White also appropriately focuses us on the potential of translation practices for helping lawyers to "provide a place in which unheard voices can be heard and responded to."¹²⁵ White beckons lawyers to hear the voices of the dispossessed, the subordinated.

Professor Clark Cunningham,¹²⁶ responds to White by seeking to bring cultural differences to bear on the translation undertaking. Cunningham provides an expanded example of translation and ethnographic practices as applied to the representation of an African-American client. Cunningham, in the role of clinical teacher, supervises two white male

¹²⁰ Id. at xvii.

¹²¹ Id.

¹²² Id. at 253.

¹²³ Id. at 254.

¹²⁴ See Lawrence Lessig, *Fidelity in Translation*, 71 Tex. L. Rev. 1165 (1993). Drawing on the work of White, Professor Lawrence Lessig provides an extensive analysis of the practice of translation in constitutional interpretation and the search for "fidelity" of interpretation. He describes the translator's craft as the "result of two distinct processes (two steps): first, the understanding of the material to be translated (a process of finding *familiarity*), and second, the process under which sameness in meaning is found (a process of finding *equivalence*)." Id. at 1194 (emphasis in text). Opining that our understanding of textual interpretation will be enhanced with a greater understanding of translation, Professor Lessig applies his construct to ten constitutional issues, only to conclude pessimistically that finding fidelity in the interpretation of the Constitution is no longer possible because of our lack of familiarity with the society that created the document. Id. at 1263–68.

¹²⁵ White, *supra* note 25, at 267.

¹²⁶ Cunningham, *supra* note 26.

students in their representation of a client charged with disorderly conduct.¹²⁷

In framing his analysis, Cunningham proposes to expand the ethic of translation developed by White by engrafting ethnographic techniques onto it, further enhancing potential communication with the client. These techniques involve recording what takes place during the representation of a client and "treating these records as texts to be given close and repeated reading with the goal of evoking the significance of what was said and done . . . especially from the viewpoint of the client."¹²⁸ Cunningham is in search of a methodology that "can be an effective way of recognizing the difference of 'the other' and expanding imagination sufficiently to have some understanding of the other's story."¹²⁹ But he is in search of more than a linguistic device or a trope to enhance our understanding of another's experiences; his search is also epistemological, a way of knowing by using one's experience to understand another's experiences. These two objectives are separable for purposes of our analysis of how translation and ethnographic techniques assist lawyers in understanding the stories of others and in speaking on their behalf.

Early in his article,¹³⁰ Cunningham refers to the concept of "multiple consciousness" as developed by Mari Matsuda¹³¹ and Richard Delgado¹³² and by the Delgado/Stefancic "empathic fallacy" critique.¹³³ Multiple consciousness is explained by Professor Matsuda as "bifurcated thinking, . . . [a] shifting back and forth between her consciousness as a Third World person and the white consciousness required for survival in elite educational institutions."¹³⁴ Matsuda states that multiple consciousness is "a deliberate choice to see the world from the standpoint of the oppressed."¹³⁵ She does not confine the experience of multiple consciousness to Outsiders: "That world is accessible to all of us."¹³⁶

¹²⁷ Id. at 1303-10.

¹²⁸ Id. at 1301-02.

¹²⁹ Id. at 1299.

¹³⁰ Id. at 1302 n.14.

¹³¹ Mari Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 *Women's Rts. L. Rep.* 7 (1989).

¹³² Richard Delgado, *When a Story Is Just a Story: Does Voice Really Matter?*, 76 *Va. L. Rev.* 95 (1990); Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 *Mich. L. Rev.* 2411, 2414 (1989)[hereinafter *Storytelling*].

¹³³ Richard Delgado & Jean Stefancic, *Failed Revolutions: Social Reform and the Limits of Legal Imagination* 4 (1994).

¹³⁴ Matsuda, *supra* note 131, at 8.

¹³⁵ Id. at 9.

¹³⁶ Id.

Empathic fallacy is the belief that:

we can enlarge our sympathies through linguistic means alone. By exposing ourselves to ennobling narratives, we tell ourselves, we can broaden our experience, deepen our empathy, and achieve new levels of sensitivity and fellow feeling. We can, in short, think, talk, read, and write our way out of bigotry and narrow-mindedness, out of our limitations of experience and perspective.¹³⁷

Combining these two observations, if this world of the oppressed is to be made accessible, we must rely on more than our cognition.

Cunningham posits that "the ethnographic method may provide a similar insight into the worldview of those situated very differently, a way of responding to the postmodern concern without being trapped within one's subjectivity."¹³⁸ Cunningham is searching for a method that will provide insight similar to that provided by the multiple consciousness of the Outsider as well as for a method to overcome the empathic fallacy. He seeks a method, as Delgado and Stefancic have written, "to surmount our limitations of time, place, and culture, [to] transcend our own situatedness,"¹³⁹ and to be able to see the world at once through the eyes of the dominated and through those of the subordinated.

But does ethnography, coupled with White's ethic of translation, provide insight like that claimed by Outsiders, those who deploy multiple consciousness? Does legal ethnography support Cunningham's claims or hopes?¹⁴⁰

We believe that the answer is both yes and no. Cunningham, like White before him, interjects ethnographic techniques into legal practice. We are persuaded that close and careful listening, coupled with scrutinized and repeated readings of the client's story, can assist one in better understanding the nuances of another's experience. On the other hand, we think that Cunningham has not attended to his own situatedness or to the role that experiential differences play in understanding another's stories and in collaborating with the client about how to re-tell the story. He neglects to consider that the reactions and the tasks for the Insider lawyer may be different than those for the Outsider lawyer.

mm: Some cultural and historical context would make this point from a different perspective. In the early sixteenth century,

¹³⁷ Delgado & Stefancic, *supra* note 133, at 4-5.

¹³⁸ Cunningham, *supra* note 26, at 1302 n.14.

¹³⁹ Delgado & Stefancic, *supra* note 133, at 16.

¹⁴⁰ White, *supra* note 25, at 1388. Interestingly, when James Boyd White identifies the six things he admires about Cunningham's article, this outcome is not among them.

Hernan Cortés landed in the americas. He was met by Maya and Tlazcala Peoples (known today because of a curious misnaming as "Indians"). Cortés was presented with many gifts including a group of young women. Before being given to Cortés and his men, the women were baptized. One of the young women, given the name Marina, knew at least two indigenous languages (Nahuatl and Maya). Her value was quickly recognized by Cortés and she was taken as his translator. Because of her language ability, she quickly learned Spanish and thus eliminated the need for multiple translators. She was known as Doña Marina to the Spaniards, which was then translated as Malintzin in Nahuatl and then mispronounced in Spanish as Malinche.

In a painting done contemporaneously with the events, Marina is shown translating for Cortés and a group of Tlaxcalan nobles. The chronicler, Bernal Díaz, writes that "the Indians called Cortés "Malinche" because of the inseparableness of the capitán and his Nahuatl interpreter."¹⁴¹

Let us think about her for a moment. At the time she was given to Cortés, she had already been given away on two other occasions.¹⁴² After Marina bore Cortés a son, he gave her to one of his lieutenants with whom she had several children. She was repeatedly treated as property, as chattel to be disposed of at the whim of her owners. Nonetheless, it appears that she had considerable latitude in her translation activities and provided Cortés with information to allow the Spaniards to quell counter-rebellions at great suffering to the Indians.

Today, La Malinche maintains a place of ambiguous prominence in Mexico, revered by some but reviled by many.¹⁴³ Her name, which once included titles of respect in two languages (Doña and -tzin), is now used by some as an epithet. Many Mexicans see her as the betrayer of a hemisphere, a traitor to her people and a collaborator with the conquistadores. Without her or someone who served as language and cultural translator for the Spaniards, Montezuma and the Aztecs could not have been conquered.

Dicen que los españoles no hubieran conquistado América sin la Malinche. Traducción y traición estan enredados en la mentalidad mexicana. Translation from the point of view of the Mexican is embedded with betrayal. So, is la Malinche an archetype or an historical antecedent? Are lawyers only modern-day Cortés/Malinches subordinating the client/indigene? Is she

¹⁴¹ Frances Karttunen, *Between Worlds: Interpreters, Guides and Survivors* 9 (1994).

¹⁴² *Id.* at 4-5.

¹⁴³ See generally Sandra Messinger Cypess, *La Malinche in Mexican Literature: From History to Myth* (1991).

godmother to those of us in the academy tentatively and ambivalently engaged in language and cultural translations? Does she peer over my shoulder with a knowing half-smile on her face? How are we to understand her agency or lack of agency? What does our understanding of her actions say to us about our subjectification/subjugation and about how we participate in the subjectification/subjugation of others?

According to his own analysis, Cunningham erred in his representation¹⁴⁴ of Dujon Johnson by disregarding information provided by his client by conceptualizing the matter as a Fourth Amendment issue (a "Terry-stop") rather than as a racial incident.¹⁴⁵ The client was repeatedly denied respect—by the police troopers, by the judge who characterized the charge of disturbing the peace as "an attitude ticket," and by his lawyers who violated his story.¹⁴⁶ Cunningham explains his rejection of the racial aspects of the case in this manner:

The translation metaphor does, however, suggest why we were so easily distracted. While one is speaking a language, its limitations seem so natural that they are invisible. At the outset of our representation, I seized upon the details of the frisk in the police report in large part because I could talk about them easily in legal language.¹⁴⁷

Cunningham seems to be indicating that legal language, unlike other languages, is unitary and singular. But, like other languages, "legal language" constitutes even while it is constituted of, contingent upon, and imbedded with the speaker's perspectives, biases, values, and experiences—and is therefore as plural as all other languages.

How does the "native" lawyer come to the undertaking of legal ethnography?¹⁴⁸ The Trobriander identity—at least the identity/ies known

¹⁴⁴ Cunningham is evidently more directive in his supervision of clinical students than most of us at the University of New Mexico. We believe it is critical to allow the students to assume professional responsibility for their cases. As difficult as it is, we, the clinical supervisors, try not to directly interact with clients, opposing counsel, or judges.

¹⁴⁵ Cunningham, *supra* note 26, at 1370–71.

¹⁴⁶ *Id.*, *passim*.

¹⁴⁷ *Id.* at 1377.

¹⁴⁸ The anthropologist Sarah Williams has written an ethnographic representation which she calls "silhouettes, not representations of objective reality." The story involves an academic meeting at which postmodern anthropological practice is being discussed. At one point, a question is asked about who will read the paper being presented:

[T]he moderator interrupts and jokes about more Trobriand Islanders reading Malinowski to determine who they are.

through anthropological texts—is named into existence, is constructed by Malinowski, the ethnographer extraordinaire. In much the same way, the client's identity *qua* client emerges as the lawyer's construction. How many of our clients would recognize their stories in the legal narratives we construct for them? How many of our clients would recognize themselves as we construct them as clients?

"Would" an African-American (or another person of color) have listened to the client from a different perspective than that of Cunningham and deployed legal languages differently? "Would" an African-American (or other person of color) have constructed an identity more consistent with Dujon Johnson's views of himself? "Would" an African-American (or other person of color) have recognized a different narrative in Johnson's story, a narrative grounded in the police brutality and other policing excesses that form the collective experience of communities of color? "Could" an African-American (or other person of color) have heard and thus accorded greater importance to Dujon Johnson's goals of vindicating his name, honor, reputation, and dignity? But *can* we pose such questions without finding ourselves in the analytical cul-de-sac of essentialism, backed into a corner in which we are connecting cognitive and affective functions with such fictions as "race?" But, in the final analysis, don't we have to acknowledge that many African-Americans and other persons of color, admittedly not all, would have heard resonances in Johnson's story that were lost to Cunningham and even more likely lost to other, less multiculturally competent, White persons? Isn't that the richest meaning of diversity and the most persuasive justification for diversifying the profession along racial and ethnic lines—that the collective life experiences that grow out of "race" and skin color (or language or gender or sexual orientation or physical and mental dis/abilities) are the wellspring for more nuanced legal analyses, discourses and skills.

Anthony V. Alfieri has severely criticized Cunningham for "ignoring the fact that discourse is intimately bound up in the negations of interpretive violence: marginalization, subordination, and discipline . . . and

. . . Sitting in the seminar room, I see the student who is a Trobriand Islander. Am I to envision this Trobriand Islander dangling another anthropological simulacrum . . . ? Or is the moderator being dangled by Malinowski, who from his grave literally (that is, textually) does dangle 'the Trobriand Islander?' . . . The department is supposedly proud to be training the first native Trobriand Islander anthropologist. Furthermore, this student's principal adviser is a Malinowski expert. Is this would-be native anthropologist of the Trobriand Islands reading the texts of Malinowski to determine his identity? Or is he reading Malinowski to learn how anthropologists have represented his culture? Is there a difference? Does it matter?

Williams, *supra* note 31, at 71-72.

overlook[ing] the tie connecting interpretive and material violence."¹⁴⁹ Alfieri chides Cunningham for failing to speak of "violence—the violence of language, of translation, of representation, or of state agents."¹⁵⁰

mm: I consider Cunningham's article a crucial addition to our understanding of how lawyering replicates the subordination experienced by clients, especially Outsider clients whose experiences are likely to be disbelieved by Insider lawyers. Cunningham's contribution is especially useful for those of us who struggle to show students how privilege both masks and manifests itself.

Cunningham has failed, in my opinion, to account for the situatedness of the Outsider lawyer. His analysis essentializes not only the client, through his own admission, but also the potential readers of his article. My relation to the undertaking of translation is considerably different from that of the white male who fully participates in, and is privileged by, the majoritarian culture.

The translation of the story of an Outsider client by an Outsider lawyer represents a complex inter- and intra-personal negotiation between personal and universalized narratives. The translation may be deemed successful or faithful when it connects imbedded information about the client with that of the Outsider lawyer.

Silencing of the Other is one of the ways in which subordination is reproduced. Although an Outsider in multiple ways, I too participate in subordinating clients by silencing or failing to understand their experiences. The Outsider lawyer is often painfully aware of her own silence, of its connections to the silences of her clients, and of her complicity in the silencing of others in ways that are known and unknown to her.

I am calling this "La Malinche Paradox"—the impulse to collaborate with the dominant culture, to use in Audre Lorde's words "the Master's tools," to learn the oppressor's languages out of a desire, at once, to rescue one's community, to save oneself, to subvert the colonizer. Translation practices, legal and cultural, can be a form of resistance, but they are fraught with pitfalls. La Malinche succeeded in her objective of safeguarding her Tlaxcala/Maya tribes from the imperialism of the Aztecs, only to have the españoles emerge as victorious with all indigenous people in the hemisphere falling prey to them. Talk about wildly chaotic results.

Any comparison between the translation activities of la Malinche and those of the Outsider lawyer is bound to sound hyperbolic. Nonetheless, the Outsider lawyer who is, at times, at

¹⁴⁹ Anthony V. Alfieri, *Stances*, 77 Cornell L. Rev. 1233, 1240 (1992).

¹⁵⁰ *Id.*

the periphery of the dominant culture can learn from the story of la Malinche. Her story is a cautionary tale about deploying the oppressor's discursive tools with their epistemological frames because doing so is likely to result in unpredictable and often unfortunate outcomes. Such practices are complex and chaotic, but this does not mean that they are not orderly, understandable, and highly useful. The juxtaposition of the concept of chaos with that of order is deliberate. The Outsider lawyer, mindful of la Malinche Paradox, must negotiate this ambiguity and contradictoriness, looking for "local" order, some micro-orderliness to ethnographic, translation, and lawyering practices even though, at the "global" level, such practices may be chaotic, nonlinear, and capable of producing unpredictable results.¹⁵¹

Cunningham writes that Derrick Bell characterized the "'problem' [faced by Dujon Johnson] as a very familiar one: [the] client got in trouble simply because he was viewed as 'an uppity n-----.'" ¹⁵² However, the fact that the Outsider lawyer recognizes the situation for what it is doesn't necessarily mean that she can suitably translate this into *legal language*. The "deference" that Cunningham writes about ¹⁵³ operates to silence the Outsider lawyer in unpredictable ways even as she undertakes to give voice to her silenced clients. The silencing can be strategic, like when the Outsider knows it's best to hold her tongue so that she too isn't thought uppity to the disadvantage of the client. The silencing can also be enforced from outside and be out of her control, as when silenced by prosecutors who dismiss charges, thereby thwarting the opportunity for the uppity client and her uppity lawyer to be heard. ¹⁵⁴

A different aspect of forced silencing and its companion loss of words has been described by Claudine Herrmann. In her now-classic book *Les Voleuses de Langue* [The Tongue Snatchers] published in 1976, she states that women are oppressed through language and that those women who desire to free themselves must "steal (or snatch)" language. She contends that the

¹⁵¹ See Ilya Prigogine, *Order Out of Chaos* (1984); see generally Paul D. Carrington, *Butterfly Effects: The Possibilities of Law Teaching in a Democracy*, 41 Duke L.J. 741 (1992); Andrew W. Hayes, *An Introduction to Chaos and Law*, 60 Univ. Mo. Kan. City L. Rev. 751 (1992).

¹⁵² Cunningham, *supra* note 26, at 1368.

¹⁵³ Id. at 1379. "[T]he most potent form of microaggression is the long-established American color-caste behavior described as 'deference', . . . the respectful yielding exhibited by the Negroes in their contacts with whites." Id.

¹⁵⁴ The reference is to the outcome in the Cunningham case in which the prosecutor dismissed the case. Id. at 1328.

woman who wants to become educated is forced to let a little man grow inside of her But it takes enormous energy to let a man who reasons as a man in the world of men cohabit, in the depths of one's self, with a woman who refuses to abjure her own judgments and uses them to gauge the alternatives proposed to her.

The woman who makes this effort is necessarily schizoid She knows how wide the gap is between what is lived and what is expressed; she soon understands that the whole culture has been colonized.

However, there is no choice; it is necessary to learn, and with the tools at our disposal: a colonized body of language and an adulterated language.¹⁵⁵

Herrmann's metaphor of the little man inside the educated woman is essentialist, i.e., written from the point of view of a white woman as though it encompasses the experience of all women; it thus fails to consider characteristics other than gender with respect to both her educated woman and her little man.¹⁵⁶ Such analyses can be criticized for being at best only partially accurate because they ascribe excessive importance to language of the dominant culture, while ignoring the power that resides in the discourses of the subordinated, including their silences.

We should not, however, quickly discount the power of Herrmann's metaphor and her point that public language has been created within a context that excluded, devalued, and oppressed women of all backgrounds, classes and colors.¹⁵⁷ Her observation about the colonized quality of

¹⁵⁵ Herrmann, *supra* note 28, at 6-7.

¹⁵⁶ Herrmann's schizoid (but, we'd like to think, hermaphroditic) caricature is consistent with the way some female legal scholars feel and with the pain women students experience as they learn to think like lawyers. Female legal academics are at times pressured to focus on "traditional" research topics using "conventional" discourse or to teach "typical" classes or seminars with "tried and proven" pedagogy. Female students can feel alien and alienated, unable to give voice in the classroom to the issues of pressing concern to them and unwilling to engage in formulaic repartee about decontextualized fact patterns that portray women and other Outsiders in uni-dimensional and bigoted stereotypes. See Taunya L. Banks, *Gender Bias in the Classroom*, 38 J. Legal Educ. 137 (1988); see also Harrison, *supra* note 35.

¹⁵⁷ A different and more recent analysis of the gendered nature of encoded meaning can be found in the work of sociolinguists who have demonstrated how conversational styles characterized as primarily male or primarily female frequently result in misread cues. Deborah Tannen and others have studied verbal and nonverbal aspects of language and provided explanation for how dominance is actually created in interaction.

Tannen provides the following as specific examples of the way gender domination is constructed through communication: women take the role of listener while men assume the role of lecturer; women are inclined to avoid conflict and those who are incapable of angry outbursts lose this aspect of power-wielding; and men interrupt women expecting women to mount resistance. Deborah Tannen, *Gender and Discourse*

language has validity with respect to how we speak about gender relations and how we speak for ourselves.¹⁵⁸ It has even greater force when we think about speaking for others. "You are led to reflect on how particular translations become constructed. What gets lost, what is gained, what and how altered, in the passage from one language to the next?"¹⁵⁹

What is of salience as we consider the colonization of language is that the client's story passes through a series of adulterated languages: from the language of the story's origin to the lawyer's language to legal parlance. Concepts such as the borderlands can help us as we speak for clients who are situated differently than we are. The borderlands are where common parlances and legal languages can be examined for their contamination by subordinating influences.

Another progressive legal scholar, Christopher Gilkerson, employs translation as a metaphor for lawyering, and specifically for receiving and recomposing client stories in the context of a poverty law practice.¹⁶⁰ Gilkerson rejects both that the lawyer and client "speak with one voice" and that the lawyer as translator acts as a "mere intermediary" between the client and the legal system.¹⁶¹ "Instead," posits Gilkerson, "the lawyer acts as facilitator, one who enables dialogue across lines of social difference between the client, law, and legal decisionmaker . . . [by abandoning] her formal role at strategic moments in order to establish connection and understanding between clients and decisionmakers."¹⁶²

Using a critical storytelling approach, Gilkerson writes with the objective of weaving critical scholarship with poverty practice.¹⁶³ In analyzing universalized legal narratives which mask the voices and

(1994).

In developing this analysis, Tannen takes issue with the idea that identifying differences between women's and men's conversation styles "is synonymous with ascribing those difference to women's 'essential' nature." *Id.* at 12. See also Anthony Grey, *Speaking of Sex: The Limits of Language* (1993).

¹⁵⁸ See Flax, *supra* note 19 at 632 ("[Texts] take on a life of their own or become the world . . . as if the model human activity is literary criticism (or writing)."); see also Delgado, *Storytelling*, *supra* note 132, at 2416-2435 (discussing the meaning of stories); *infra* text accompanying note 205.

¹⁵⁹ Nicole Ward Jouve, *White Woman Speaks with Forked Tongue* 47 (1991).

¹⁶⁰ Gilkerson, *supra* note 102. In acknowledging that his article is written with the purpose of "engag[ing] and integrat[ing] various strands of critical literature in the application of the translation concept," Gilkerson notes that "White has been criticized for failing to account for and engage critical scholars who are currently writing about and exploring perspectivity and contextualization." *Id.* at 915 n.220 (citing Sanford Levinson, *Conversing about Justice*, 100 *Yale L.J.* 1855, 1873-75 (1991)).

¹⁶¹ *Id.* at 916-17.

¹⁶² *Id.* at 917.

¹⁶³ *Id.* at 864-65.

narratives of poor clients, Gilkerson focuses on how "legal narratives control the 'storylines' of poor people, regulating their lives in contradictory ways."¹⁶⁴ He examines how poor clients frame their stories in order to win favor with lawyers. He asserts that their attempts are weakened by the "lawyer's previously formed understanding of the client and her world" which "acts as a cognitive and social barrier to receiving the client's story."¹⁶⁵ However, "[b]y adopt[ing] the client's perspective when interpreting her story and by engaging the client in dialectical interaction,"¹⁶⁶ the lawyer can create discursive space for the client's story. Gilkerson then posits two storytelling approaches: the traditional lawyer fits the client's story into "whichever universalized legal narrative the lawyer believes is advantageous for winning the case."¹⁶⁷ Conversely, the lawyer/translator is simultaneously "guided and constrained by the client's narrative perspective."¹⁶⁸

The ethic of storytelling proposed by Gilkerson "uphold[s] client integrity . . . [by] fitting the client's story and legal claim into her ongoing life narratives consistent with her normative history and present identity."¹⁶⁹ The goal of linking the client's integrity to legal theories addresses both the instrumentalist goals of the legal system and the client's narrative purpose.¹⁷⁰

Clients' stories have the potential for destabilizing universalized legal narratives, creating fissures in "preconceived explanations of experience based on cultural stereotypes and assumptions and can begin to supplant them with authentic accounts."¹⁷¹

White, Cunningham, and Gilkerson collectively make a compelling case that the crafts of translation and ethnography have promise for sensitizing lawyers in their relations with clients. We agree with this aspect of their claim. Yet legal scholars employing interdisciplinary techniques taken from literary translation and ethnography fail to cite, and one must conclude, to read, the feminist and subaltern literature critiquing and problematizing ethnography and translation. A notable exception to this pattern is Professor Naomi R. Cahn who has written about feminist

¹⁶⁴ Id. at 868.

¹⁶⁵ Id.

¹⁶⁶ Id.

¹⁶⁷ Id. at 869.

¹⁶⁸ Id.

¹⁶⁹ Id. at 919.

¹⁷⁰ Id.

¹⁷¹ Id. at 921.

ethnographers' challenges to the traditional practices of the discipline.¹⁷² "Feminist ethnographers have challenged the neutrality of the researcher . . . becom[ing] more aware of where they are located in their research and of the 'cultural baggage' that conditions their study of 'others.'"¹⁷³ Cahn draws connections between this situation and that of lawyers

[who] only see, and present as legal claims, a limited portion of their lives Moreover, inherent in listening to the stories of others . . . is our own 'cultural baggage' that affects how we listen, what we hear, who we believe, and what is told to us. Some of us may be 'fluent' in several different cultures, but that may only make the conflict more difficult. With which of our cultural consciousnesses do we respond? And how do we know when to become a participant, rather than an observer?¹⁷⁴

Cahn's review of feminist scholarship focuses on issues of hierarchy between ethnographers and their informants. "[I]nformants may be at risk of 'manipulation and betrayal' by the ethnographer who has intruded into their lives."¹⁷⁵ Nevertheless, Cahn notes, "some anthropologists believe that true cooperation, overcoming of different power relationships and distancing mechanisms, is possible . . . as long as the anthropologist situates herself and confronts that situation with her 'subjects.'"¹⁷⁶ The same can be achieved by lawyers, she asserts, who try to explore the power relationships with their clients.¹⁷⁷

There is now, however, a substantial body of scholarship examining the role of the translator and that of the ethnographer in the process of colonization.¹⁷⁸ The quandary can be articulated as follows:

Since the practices of subjection/subjectification implicit in the colonial enterprise operate not merely through the coercive machinery of the imperial state but also through the discourses of philosophy, history, anthropology, philology, linguistics, and literary interpretation, the colonial "subject"—constructed through technologies or practices of power/knowledge—is brought into

¹⁷² Naomi R. Cahn, *Inconsistent Stories*, 81 *Georgetown L.J.* 2475, 2515 (1993).

¹⁷³ *Id.* at 2512-13.

¹⁷⁴ *Id.* at 2514.

¹⁷⁵ *Id.* at 2513.

¹⁷⁶ *Id.* at 2514.

¹⁷⁷ *Id.*

¹⁷⁸ Eric Cheyfitz, *The Poetics of Imperialism: Translation and Colonization from the Tempest to Tarzan* (1991); Niranjana, *supra* note 19; Karttunen, *supra* note 140; *Translating Slavery: Gender and Race in French Women's Writing, 1783-1823* (Doris Y. Kasish & Francoise Massardier-Kenney eds., 1994).

being within multiple discourses and on multiple sites. One such site is translation.¹⁷⁹

For women, especially women of color in the legal academy, scholarship from disciplines other than law poses difficult questions because we are forced to acknowledge the close similarity between progressive lawyering and translation as both exhibit potential for reproducing subordination.

Concerns about the interrelationship of power and knowledge and about asymmetries in power between the translator and the translated and between the researcher and the subject, have been appearing with increasing frequency in ethnographic literature.¹⁸⁰ Feminist anthropologists involved in fieldwork and others¹⁸¹ have problematized not only ethnographic scholarship and its privileging of written over oral texts, but have focused also on the luxury and privilege associated with the production of such academic work in a context of global colonialism and political hegemony maintained through racist and sexist violence.¹⁸²

Like the lawyer who relies on the client, the ethnographer depends on disclosures from the research subject. But, as we borrow from anthropological discourses, we should be mindful of categories such as the "primitive," an analytical device that pervaded ethnography through the colonial period into "decolonization."¹⁸³ Anthropology's links to colonialism have been debated from the early 1960's until the present.¹⁸⁴ These intra-disciplinary concerns about the subordinating effects of ethnography are not settled questions of the past. What is at stake here is

¹⁷⁹ Niranjana, *supra* note 20, at 1-2 (footnote omitted).

¹⁸⁰ Ruth Behar, *Translated Woman: Crossing the Border with Esperanza's Story* (1993); Wolf, *supra* note 95, at 118-23; Lila Abu-Lughod, *Can There Be a Feminist Ethnography?*, 5 *Women and Performance: A Journal of Feminist Theory* 7, 25 (1990); Isabel Dyck, *Ethnography: A Feminist Method?*, 37 *Canadian Geographer* 52 (1993); Kim V.L. England, *Getting Personal: Reflexivity, Positionality, and Feminist Research*, 46 *Prof. Geographer* 80 (1994); Deborah Gordon, *Writing Culture, Writing Feminism: The Poetics and Politics of Experimental Ethnography*, *Inscriptions*, nos. 3/4 1988, at 7; Judith Stacey, *Imagining Feminist Ethnography: A Response to Elizabeth E. Wheatley*, 17 *Women's Stud. Int'l Forum* 417 (1994); Kamala Visweswaran, *Defining Feminist Ethnography*, *Inscriptions* Nos. 3/4 1988, at 27; Elizabeth E. Wheatley, *How Can We Engender Ethnography with a Feminist Imagination?: A Rejoinder to Judith Stacey*, 17 *Women's Stud. Int'l Forum* 403 (1994); Elizabeth E. Wheatley, *Dances with Feminists: Truths, Dares, and Ethnographic Stares*, 17 *Women's Stud. Int'l Forum* 421 (1994).

¹⁸¹ See Rosaldo, *supra* note 21.

¹⁸² Deborah Gordon, *The Unhappy Relationship of Feminism and Postmodernism in Anthropology*, 66 *Anthropological Q.* 109 (1993).

¹⁸³ *Beyond Boundaries*, *supra* note 27, at 8-9.

¹⁸⁴ See Talal Asad, *Anthropology and the Colonial Encounter* (1973).

the representation¹⁸⁵ of the colonized, who need to be produced in such a manner as to justify neocolonial domination.¹⁸⁶

Like ethnography, translation is imbedded with invisible power relations. As has been noted by Lefevere and Bassnett,

in practice translation takes place on a vertical axis rather than a horizontal one. In other words, either the translator regards the task at hand as rising to the level of the source text and its author or . . . the translator regards the target culture as greater and effectively colonizes the source text.¹⁸⁷

Some translation critics have also used gender relations to describe the relationship between the translator and the translated person and text (or, for lawyering purposes, the client as text). Some use rape imagery, while others use notions of "chastity" and "fidelity" to denote the patriarchal character of the work.¹⁸⁸

Concerns expressed from within various disciplines about the asymmetries and the historicity of the practices of translation and ethnography should force us to confront our participation as lawyers in the normalization of neocolonial practices. When you/we set out to borrow insights and methodologies from other disciplines in order to increase your/our understanding of Outsiders, it is incumbent upon you/us to seek out the literature written from the Outsider perspective critiquing such insights and methodologies. Are we likely to hear the occluded voices of clients if we don't hear the voices of those speaking from inside the academy saying that ethnography, translation, and law, perforce, are all discourses and sites through which the neocolonial subject (as represented by our clients) is constructed?

mm: I have been using translation theory¹⁸⁹ as well as insights from complexity theories¹⁹⁰ to increase my own and the students' comfort level with notions of nonlinearity, turbulence,

¹⁸⁵ For our purposes in thinking about how we speak for others, the feminist analyses of ethnography and translation are joined by the problematic of representation identified in critiques by Derrida and others. See Flax, *supra* note 19.

¹⁸⁶ See Niranjana, *supra* note 20, *passim*.

¹⁸⁷ Pålsson, *supra* note 27, at 15-16 (citing Andre Lefevere & Susan Bassnett, Introduction: Proust's Grandmother and the Thousand and One Nights: The "Cultural" Turn in Translation Studies, in *Translation, History and Culture* 11 (1990)).

¹⁸⁸ *Id.* at 16-17.

¹⁸⁹ *The Craft of Translation* (Rainer Schulte & John Biguenet eds., 1992); *Theories of Translation: An Anthology of Essays from Dryden to Derrida* (Rainer Schulte & John Biguenet eds., 1992).

¹⁹⁰ See N. Katherine Hayles, *Chaos and Order* (1991) and J. Richard Eiser, *Attitudes, Chaos & the Connectionist Mind* (1994).

ambiguity, and unpredictability. Stories can have these attributes.

During the fall 1993 semester we invited Tara Ford, an attorney with Protection and Advocacy,¹⁹¹ to come to our clinic class to lead a discussion on problem solving. She told us about Frank Baca,¹⁹² an institutionalized client who was developmentally dis/abled, wheelchair bound, and almost completely non-verbal. Tara described Frank as communicating through gestures that she interpreted to mean yes and no.

The immediate problem that Tara brought to the class's attention was his desire to move out of his current group placement with an older, non-ambulatory population and into another facility with a younger, ambulatory, but potentially unruly group of residents. Frank had lived in this facility at a time when he had more mobility, and Tara speculated that perhaps his desire to return was motivated in part by his memories of that time. Such a move, however, would put him into an environment where he might be in some significant danger. Tara emphasized that making this move was a preference that Frank had been expressing over a long period of time and that he had persisted in doing so despite strong opposition from his caretakers.

There was, in actuality, a third option. Frank was potentially eligible to move out of the institution. A class action had been filed by Protection and Advocacy lawyers arguing that the residents were best served by being "de-institutionalized." In acting on Frank's expressed wishes, Tara was resisting both her agency and Frank's caretakers. She worried that she might be playing God in some way.

Tara posed this ethical predicament to the class: should she act on his desire to move and possibly place him in danger or should she thwart his desire to move and keep him from physical danger? We explored different strategies for achieving his objective and yet preserving his safety, such as adding a buzzer to his wheelchair so that he could summon help when necessary.

¹⁹¹ Protection and Advocacy projects are federally funded to provide legal services to the physically and mentally dis/abled.

¹⁹² Frank Baca is the client's real name. I have used his name and his story with his permission and after consulting with Tara Ford. Tara and I also conferred with his legal guardian who provided us with verbal and telephonic permission to use Frank's story in this Article after reading a draft of the portion of the paper dealing with Frank. I also read this portion of the article to Frank who responded with attention and smiles which I interpreted to mean that he "approved" the version as written. For an innovative approach to telling the stories of adults with dis/abilities, an approach that involved dis/abled persons in the analysis of successive drafts of their stories and included their comments and reactions to the authors' construction of their stories, see David M. Engel and Frank W. Munger, Rights, Remembrance, and the Reconciliation of Difference, 30 Law & Soc. Rev. 7 (1996).

Towards the end of the class, Tara explained that her understanding of personal autonomy and decision-making includes the right to put oneself at risk. She noted that, despite considerable limitations, Frank was, nonetheless, entitled to make decisions for and about himself. As his lawyer, she saw herself as protecting this right. Her role included explaining options to him as well as she could and then helping him implement his choice. I admired her ability to interpret this problem in a way that emphasized the client's prerogatives without taking herself off the hook. If she acted on Frank's wishes and he was injured, it was clear that she would be, or at least would feel, to some extent, responsible.

This case raised the difficult problem of understanding and interpreting the client's story when the client does not share the lawyer's communication system. One of the principles of interviewing we had stressed with the class was that leading questions are ineffective in eliciting the client's story. We had emphasized the importance of open-ended questions. Yet here was a client who communicated through subtle facial cues, grimaces for no and half-smiles for yes, a client who could only communicate by responding to leading questions. Adroit interviewing involved asking and re-asking questions that could be answered by gestures "meaning" yes or no.

What does it mean to be true to the client's story when the story is largely the lawyer's construction? How do we represent the minimally communicative client? Tara Ford used Frank's profound silence and his ambiguous nonverbal cues to help us think rigorously about her representation of him.

After class, I asked Tara about the cultural and linguistic contexts of the representation. I wanted to know whether the client was interviewed only in English. Given that the interview employed leading questions, were those questions in English? Did he in fact speak Spanish? What language or languages did his family use in speaking with him? Tara, intrigued through training¹⁹³ and experience with this aspect of the representation, invited me to assist her.

At least that's the way I interpreted our relationships at the beginning. Being a Latina lawyer with years of experience involving issues of cultural difference, I thought I brought some expertise on the representation of Outsider clients. Little did I

¹⁹³ Tara studied at Stanford Law School with Gerald López who developed a model of "rebellious" lawyering that draws heavily on translation practices. See generally, Gerald P. López, *Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice* (1992). According to López, rebellious lawyers engage in "bicultural and bilingual translation" moving "in two directions, creating both a meaning for the legal culture out of the situations that people are living and a meaning for people's practices out of the legal culture." López exhorts progressive lawyers to engage in translation practices that "transgress" established practices and power relations. *Id.* at 43-44.

realize that I was entering the borderlands where identities are fluid, meanings are contingent, and theories, methodologies, and techniques are, at worst, irrelevant and at best, remolded.

In early April 1994, I accompanied Tara to meet Frank. The institution is located some forty-five minutes from the law school. The drives there and back allowed Tara and me to talk about the "facts" of Frank's case as well as his options. But there is something about talking in a car, a private and enclosed space, in which the two people are facing forward, avoiding eye contact. Car talk can allow more immediate and greater intimacy. And so it was that we were able to talk about our personal lives as well as about race and racism, about our successes and our qualms.

To arrive at the buildings that are Frank's world, we had to enter through a guard station. Tara, and I as her guest, would be logged in and later, logged out. As we waited at the receptionist's desk while Frank's whereabouts were confirmed, our nostrils were filled with the odors of institutionalization, a formaldehyde-like smell that reminded both of us of the specimen jars found in high school biology classes. The walls were, of course, green, painted at a time when psychological theories about the placating effect of wall color on emotions had come into vogue.

Frank is in his mid-40s, balding slightly with graying hair. He sports a baseball cap. He has little use of his hands which he holds in loose fists on the blue vinyl tray of his wheel chair. He has a strong gaze and an infectious smile. The staff members frequently greet him with hugs and other gestures of affection.

On that first visit, it was clear that Tara and he had a strong bond. I observed Tara asking questions which Frank responded to with subtle but, from my perspective, consistent facial expressions. Tara introduced me and I explained that, like Tara, I too was a lawyer. I asked him if he wanted me to talk to him in Spanish. He turned and looked at me. His face smiled.

On our next visit we met with his legal guardian. We explained that I was a law professor and that we were trying to add a cultural and linguistic dimension to Frank's representation. Frank had been cared for at home through his late teens, and it was clear that his ability to make and maintain friendships had been nurtured by his family. We spent time trying to find information about his family, about his likes and dislikes, and about his preferences.

After the meeting we had some idea that Frank was responding enthusiastically to hearing both Spanish and English in our interactions with him. He liked country music as well as Mexican music. We urged the staff to make sure that his room featured family mementos, such as greeting cards, and to hang family pictures where he could see them. We also wanted to require the dietician to add fresh green chili to his diet. While

*Frank liked the canned variety, fresh green chili was a favorite dish.*¹⁹⁴

On one of our first visits, his guardian, Tara, Fank and I went to the snack bar. While preparing Frank a hot dog, we asked him if he wanted mustard. He grimaced. "Ketchup?" Again he grimaced. "Mayonaise?" Frank nodded. "You don't really want mayonaise, do you?" Again he nodded, able to express his preference even when resisted by the three of us with words and with our assumed norms about condiments.

We came to realize that he understood more than the staff gave him credit for. On one occasion, a family member interjected that Frank had learned his colors and numbers while living at home and that he probably still remembered them. He demonstrated by using M & M candies, helping Frank count and sort the colors. The bonds of love and understanding between the client and his family transcended words.

We brought a disposable camera to take pictures and to begin an album for him. As Frank left, he carefully vocalized a "ba." We were sure he was saying goodbye. We were, after all, competent translators. Weren't we?

In May 1994, Tara and I visited Frank again. We had developed the pictures we'd taken and we made an album for him to have in his room. We all had sodas, and Tara fed him a hot dog. I labelled the pictures in the album, talking all the while in English and Spanish. We discussed the upcoming staff meeting to decide when he would be moving to his preferred location, it now being a question of when and not if.

B. Speaking for and Re/Presenting AnOther

*I am suggesting that teachers and students learn to re-present themselves through a form of border writing in which the narratives they construct for themselves in relation to the Other are effectively deterritorialized politically, culturally, and linguistically, so that the meaning-tropes through which subjectivity becomes constructed fails to dominate the Other.*¹⁹⁵

Feminist and subaltern debates about translation studies and ethnography can have the effect of discouraging us, of making us wonder how we are to undertake our tasks, especially those that involve us with our students. What are we to teach them about speaking for Others, about re-presenting Others? In this section we respond to the rhetorical question we

¹⁹⁴ The truly postmodern lawyer/mother would provide a recipe for this dish at this juncture.

¹⁹⁵ McLaren, *supra* note 45, at 221.

have posed by examining two techniques, slow-motion reading/listening and resonance. We then return once more to the concept of the borderlands. We can find starting points in feminist and subaltern literature for re-directing our teaching by re-fashioning our languages, claiming our multiple selves, and engaging in critical and self-critical collaborations.

1. *Slow-Motion Reading / Listening*

In the mid-70s, Claudine Herrmann wrote an essay in which she decried Evelyn Wood-type techniques for speed reading.¹⁹⁶ She described speed reading as a *danse macabre*, a dance with the dead. What she saw as dead were the texts, the linguistic constructions vitiated by a reader intent on getting through and getting out of the text. Herrmann exhorted us to engage in what she called "slow-motion reading," listening to our inner voice enter into an interrogation of the text.¹⁹⁷ "Slow-motion reading" invites us to disrupt disciplinary boundaries, to weave together different languages, to look at Spiegel catalogs with the eye of the post-modern critic. "Slow-motion" interpretation can be deployed with oral texts as well. "Slow-motion listening" prompts us to listen on several levels to our clients, our friends, and our families.

mm: While we were writing this Article, Melissa and I were talking on the phone when I realized that she and I say "uh, huh" in different ways. When I first heard her "uh, huh," I heard it like the single "uh, huh" I use to show that I am occupied, don't want to be interrupted, and not really paying attention. I use a double "uh, huh; uh, huh" to show that I am engaged, listening and signaling the other person to continue.

Using slow motion techniques, especially when they involve non-verbal elements a person is likely to be unaware of, can be disconcerting and care must be taken not to offend. However, non-verbal communication is highly ambiguous and examining one's interpretation of paralanguage sounds and gestures can be instructive for both the sender and receiver of the encoded messages.

Slow-motion reading and slow-motion listening are techniques that we can teach and use with our students and our children. It is likely that they already have at least a nascent understanding of the multiple meanings of their language(s). Many students, especially the Outsiders—students of color, gays, lesbians, dis/abled, the different, and the alienated—are attuned

¹⁹⁶ Kline, *supra* note 28, at xii (citing Claudine Herrmann, *In Favor of Slow Motion Reading*, 20 *Boston Univ. J.* 2, 2 (Nancy Kline trans. 1972)).

¹⁹⁷ *Id.*

to the encoding of messages through the *métissage*¹⁹⁸ of rap music and the hybridity of slick advertising with all its dangers and allure. Students are thus likely to understand the stereographic and stereophonic nature of messages and may be using slow-motion listening to decode cultural messages. The transferability of this skill to the listening of their clients' stories, however, may not be obvious.

Slow-motion reading and listening are necessary because messages and stories are multi-layered. Literary critics, translators, ethnographers, artists, and writers have begun to examine the stereophonic and polyvalent quality to language, especially evident in autobiographical stories. Deleuze and Guattari write that the task of the translator is "to make use of the polylingualism of one's own language, to make a minor or intensive use of it, to oppose the oppressed quality of this language to its oppressive quality, [and] to find points of nonculture or underdevelopment, linguistic Third World zones by which a language can escape"199

mm: The polylingualism of one's own language can be revealed at unexpected moments. One day in early December my youngest daughter Alex and I were driving along together. She was about three years old. She confided that she was going to write a letter to Santa Claus, but that she was worried because she couldn't decide whether to write an "A" or a "B". For the moment I was perplexed, but then her meaning became apparent.

Writing a letter to me meant writing many letters in order to form words in a stylized format to a certain addressee. Not unreasonably, writing a letter to Alex meant writing exactly one letter, and she was puzzling over which letter it should be. I remember pulling off the road and stopping the car. Alex was in the rear seat strapped into the car seat. I kissed her, shaking my head in mute amazement at the complexity of language, and the polylingualism of writing a letter.

Slow-motion reading with an appreciation for the polylingualism of language is only one technique to attenuate our cultural dyslexia. This slow-motion interplay between our inner voice and the client's story can be informed by the work of Dan Sperber²⁰⁰ who draws a distinction between the translation or interpretation of, on the one hand, individual words and thoughts and, on the other hand, collective representations attributed to a

¹⁹⁸ See Lionnet, *supra* note 22, at 16.

¹⁹⁹ Gilles Deleuze & Félix Guattari, *Kafka: Toward a Minor Literature* (Dona Polan trans. 1986), as cited in D. Emily Hicks, *Border Writing: The Multidimensional Text* xxx (1991).

²⁰⁰ Dan Sperber, *Interpreting and Explaining Cultural Representations*, in *Beyond Boundaries*, *supra* note 27, at 162, 165.

whole social group ("The So-and-So believe that . . .").²⁰¹ This distinction between individual words and cultural facts can be employed with students in discussions about essentialism. The client's communication as collective representation or, conversely, the lawyer's framing of the client's individual experience in collective terms, can provide a moment for the lawyer and the client to decide together whether a re-communication, a re-presentation, of the cultural fact is strategic as well as consistent with the purposes of both the lawyer and the client.

2. *Resonance*

How can the lawyer speak for an/Other without constructing and re-presenting the client as alien and exotic? How can the lawyer employ the techniques of ethnography and translation without embracing the attitude implicit in the essentialistic and racist device of the "primitive"?

The Norwegian anthropologist Unni Wikan uses the term resonance to describe an approach to intercultural communication.

Resonance thus seems akin to an attitude which we might label sympathy, empathy or understanding. Whether it is 'the same' or 'different,' I cannot say. Balinese see as critical that it entails using one's feelings as well as and at once with one's thoughts. Only this enables appreciation—which is more than just understanding.²⁰²

Resonance, particularly in the context of anthropological fieldwork, requires both parties to "try to grasp, respectively convey, meanings that reside neither in words, 'facts,' nor text, but are evoked in the meeting of

²⁰¹ *Id.* at 165. These collective representations he calls "cultural" and asserts that some representations are more "contagious" than others, more successful in a given population, and therefore susceptible to an epidemiological analysis. *Id.* at 179. Linking his analysis to cognitive psychology, Sperber suggests that "the explanation of a cultural fact, that is, of a distribution of representations, is to be sought not in a global macro-mechanism, but in the combined effect of countless micro-mechanisms." *Id.* at 182. He then proposes a series of questions from an epidemiological perspective:

What are the factors that lead an individual to express a mental representation in the form of a public representation? What mental representations are the addressees of the public representation likely to construct? What transformation of content is this process likely to bring about? What factors and what conditions render probable the repeated communication of some representations? What properties, either general or contextual, does a representation need in order to maintain a relatively stable content in spite of such repeated communications?

Id. at 182-83.

²⁰² Wikan, *supra* note 29, at 194.

one experiencing subject with another."²⁰³ Relying on the work of Donald Davidson, Richard Rorty, and Balinese epistemologists, Wikan explains using the words of a Balinese colleague, that resonance "fosters empathy or compassion . . . by apply[ing] both feeling and thought."²⁰⁴ Resonance challenges anthropology's (and, by extension, the law's) "romance with words, concepts, symbols, text and discourse."²⁰⁵ The necessity of transcending words while attending to the speaker's intention is inherent in "the maxim of interpretive charity," which has also been called "the co-operative principle."²⁰⁶ Wikan writes that too often we come to our work with a critical frame of mind instead of a charitable one. Too much, she argues, has been made of *critical* thinking.

*mm: This Article required numerous versions. I found that as I wrote more about slow-motion reading and resonance, I needed to return to my references and sources. Original versions of this Article contained judgments of others' work that sounded harsh and seemed to lack depth. I don't know whether I have been successful but, as I wrote and thought about resonance, I repeatedly returned to the task of understanding others' writings and trying to substitute what I now think is over-used in academic writings, namely critical thinking for what Wikan has called "interpretive charity."*²⁰⁷

Wikan then asks, "How can we build an anthropology which enables us to heed better people's complaints, along with their joys?"²⁰⁸ Pleading for "a broader and simpler theory for seeing communication within social relationships, putting what is unspoken and self-evident to speakers into place before focussing on concepts and discourse," Wikan explains,

my plea that we attend to the concepts by which people feel and think about and handle the tasks and tribulations of their individual existences, is meant not as an invocation to attend to

²⁰³ Id. at 190.

²⁰⁴ Id. at 189.

²⁰⁵ Id. at 193.

²⁰⁶ Wikan credits Stanley Tambiah with the term "the maxim of interpretive charity," and Dan Sperber and Deidre Wilson with "the co-operative principle." Id. at 193 (citing Stanley J. Tambiah, *Magic, Science, Religion, and the Scope of Rationality* 122 (1990); Dan Sperber & Deirdre Wilson, *Relevance: Communication and Cognition* 32ff (1986)).

²⁰⁷ See id.

²⁰⁸ Wikan, *supra* note 29, at 202.

concepts *per se*, but to the shifting aspects of being in the world and acting on those by which concepts uniquely spring alive.²⁰⁹

Wikan cautions us that "*the quest for meaning blinds us to what life is all about*. It entices us to get lost in words, and lose sight of the larger issues."²¹⁰ Wikan admonishes her fellow anthropologists intent upon gathering, writing, and publishing their ethnographic texts. It is an undertaking that she describes as 'a "'freedom from urgency, from necessity'; our anthropological observation-point is 'founded upon the neutralisation of practical interests and practical stakes.'"²¹¹ How much more compelling is it for the poverty lawyer to learn to "attend" to people's complaints, joys, and tribulations? Such a lawyer, unlike the ethnographer in the safety of her academic department, usually can't neutralize the practical interests and practical stakes.

mm: Let's return to Frank Baca's story. In analyzing her role as his lawyer in order to resolve the ethical dilemma she found herself in, Tara Ford brought an appreciation²¹² of the situation in which Frank found himself. Tara was able to use resonance, to go beyond words, to transcend the void left by Frank's wordlessness, to attempt to vindicate what she concluded was at stake: namely, his right to make decisions for himself, even, and perhaps most importantly, when such decisions might put him in danger. His humanity, his personhood, and his selfhood were wrapped up in that decision-making right.

Frank is very adept at establishing relationships. He is well liked by his caretakers and by the other people living at the institution. Frank is also an able communicator. I observed him at meetings with many participants. His limitations, both mental and physical, are formidable and undeniable, but he can and does make his preferences known. He also knows how to persist, to wait and outwait those who would thwart his desires.

To an extent greater than other clients, Frank has imbedded himself in my consciousness and in my heart. He has affected the manner in which I relate to others. I would like to think that I listen better to others' words because of my short exposure to his valiant and successful attempts to communicate without words.

Frank has, from most people's perspectives, lived a stunted life, cabined by his limitations and isolated within the

²⁰⁹ Id.

²¹⁰ Id. at 207 (emphasis in text).

²¹¹ Id. at 206, (citing Pierre Bourdieu, *The Scholastic Point of View*, 5 *Cultural Anthropology* 380, 381, 383 (1990)).

²¹² Wikan, *supra* note 30, at 194 (quoting Richard Shweder, *Thinking Through Cultures: Expeditions in Cultural Psychology* 18 (1991)). Shweder defines "appreciation" as understanding linked with lived experience.

institutional setting in which he exists. He has, however, affected Tara, myself, and others in fundamental ways. I now see my role in Frank's re/presentation was that of observer and learner. He and Tara had much to teach me.

I have never had much contact with persons with extensive and obvious dis/abilities. I had never been in an institution such as the one in which this client resides. I came to understand only very recently that, for me, the institution was a borderland. I entered with all the trepidations of the clinical students who first visit the colonias along the Mexican border where our clinic provides legal services to a nonmigratory farmworker population. The institutional setting was alien to me and I entered feeling denuded of my usual defenses. It was unsettling and destabilizing.

Multicultural experiences are often accompanied by feelings of discomfort, of being at risk. If we can allow ourselves to remain or to return to whatever triggers this discomfort, we can begin to store the experiences that can help us understand Others. Melissa has quoted from the work of Elizabeth Spelman to the effect that "the acquisition of [cross-cultural] knowledge requires a kind of apprenticeship; and making oneself an apprentice to someone is at odds with having political, social, and economic power over them."²¹³ I didn't particularly like this idea and felt uncomfortable with including it in the Article. I was resisting because an apprenticeship seems hierarchical, someone is in the "know." Cultural knowledge to me is contingent, fluid, fleeting. An apprenticeship typically extends over time with one person mentoring the other. My experience is that relationships involved with multicultural learning have a flip-flop quality to them, at one time one person will be the teacher and at the next moment the teacher will be the learner. Because of the multivalent nature of power, our relations with others are not rigid and fixed. I can feel subordinated through language, color, ethnicity, gender, and in a curious way my economic deprivation as a child remains embedded in me even now that I am relatively affluent. But I recognize that I am in the dominant role with respect to sexual orientation, class, education, marital status, motherhood and able-bodiedness.

I have, however, revised my thinking to agree that the idea of apprenticeships is useful. Tara and Frank allowed me to witness and learn from their relationship. They were my guides into the borderlands. They taught me with their patient and gentle interactions. Tara taught me with her insightful observations about staff dynamics, legal strategies, and with her discussions about power, privilege and their evanescent presence. She was an adept interpreter of silence, of gesture. Frank taught

²¹³ Spelman, *supra* note 23, at 178.

me with his courage as manifested in his persistence. He taught me that the desire to communicate overcomes wordlessness. He taught me to "listen" to the expression of the face and the intensity of the eyes. He taught me that human bridges of appreciation are built with smiles, shrugs, and, at times, the tears of frustration. Tara and Frank took me into the borderlands and served as my translators. I am immensely richer for having gone.

CONCLUSION

We seek to develop and weave together three themes in this paper, one pedagogical, one substantive, and one discursive. First, we set out to ally ourselves with our students in creating pedagogical spaces where difference can be explored. To do so, we use popular culture to introduce the notion that messages are encoded with layered and ambiguous meanings. The pages of the Spiegel catalog cunningly lace together the imagery and verbal codes of neocolonialist liberalism with those of postmodern cultural hybridity as though the significations of the two are indistinguishable. "Plantation chairs" and "Rustic Cowboys and Indians" are juxtaposed with "Americana," "Freedom of expression" and "Home Country" where "mixing cultures is only natural" and one is free to "expand horizons with ethnic looks."²¹⁴ We can be, and are, co-opted through our consumption rituals into a silent complicity with racist commercialism. But how do we resist? We suggest that in learning to decode such messages, we begin to see the connections between "reading" pop culture and "reading" the culture of one's client. Understanding multivalent meanings and engaging in code-switching is a skill that is transferrable, a technique for the home, the classroom, and the courthouse.

The Dana Carvey/George Bush piece from "Saturday Night Live" uses yet another technique to layer messages. Dana Carvey fashions a phony and comedic identity, parodying the former President. Before our eyes George Bush fashions a "real" but now also comedic identity, only now the relationship has switched, the borrowed from is borrowing. Ingredients of identity—gestures, tone of voice, and word choices—are made fun of by the parodist and returned to their owner, subtly changed. This comedy routine previews the part of our paper that examines anti-essentialism and the postmodern notion that our identities are constructed, fluid, and malleable.

The substantive theme of the paper employs the concept of the borderlands to respond to the feminist scholarship on anti-essentialism and

²¹⁴ Spiegel Catalog, supra note 3, at 292, 336-37, 352.

the situatedness of the subject, what Katherine Bartlett has called "positionality"²¹⁵ and what Joan Williams refers to as "context."²¹⁶ We find the concept of the borderlands useful because it challenges the idea of a single perspective. The borderlands encourages us to experience a "bilingual, bicultural, biconceptual reality."²¹⁷ Awareness of the borderlands enables us to make critical linkages between our own stories and the stories of cultural others.²¹⁸ The work of Angela Harris, Kimberlé Crenshaw, Maria Lugones, and Elizabeth Spelman exhorts us to be constantly aware of difference and not to expropriate the stories of others in order to make those "critical linkages."

We also offer the borderlands as a trope for understanding the process of rendering oneself vulnerable but open to opposing perspectives, new voices, and different worlds. We have utilized the notion of the border to propose new ways of thinking about and teaching about a culturally diverse society where law students must be adept at interacting with a wide range of clients, peers, and present and future colleagues.

We have imported into lawyering the work of literary critics, anthropologists, sociologists, criticalists, and scientists and have focused on border techniques such as slow motion reading/listening and resonance borrowed from other contexts to be used in the re/presentation of clients and in the reframing of lawyering and professional values.

We have used scholarship from ethnography and translation studies to refine the metaphor of the lawyer as translator by importing into this analysis the concerns of postcolonialists. While we agree that ethnographic and translation techniques can improve the quality of lawyering especially when the client does not share the lawyer's race, gender, or other such characteristics, we caution that such techniques have the potential of obscuring the subtle workings of power, privilege, and bias. We further argue that Outsider and Insider lawyers are not situated equally with respect to such techniques. We offer la Malinche Paradox as a tentative analysis of the Outsider lawyer's interpenetrating perspectives, hybrid techniques and tools, and conflicting objectives.

mm: The Frank Baca story is intended to disrupt the usual categories of Outsider/Insider by exposing the fluctuating and contingent nature of the categories. The Outsider Latina law professor blinded by her Outsiderness collides with her Insiderness and her dis/abled client's Outsiderness: at once she

²¹⁵ Bartlett, *supra* note 33, at 879.

²¹⁶ Williams, *supra* note 76, at 299.

²¹⁷ Hicks, *supra* note 43, at 49.

²¹⁸ McLaren, *supra* note 44, at 106.

*is Trobriander and Malinowski, the borrowed from and the borrower.*²¹⁹

We offer the border as a place to re-territorialize and reframe ethnographic and translation practices.

We brought to this academic project the desire to suture together the public and private domains of our lives. In these pages we have embroidered analysis with personal anecdotes. Through our narratives and soliloquies, we have drawn connections between our lives in the academy and our lives at home.

mh: We have described the borderlands as a place of tension and anxiety but also as a place of exhilaration and creativity. My collaboration with Margaret introduced borderlands to my life. Anxiety came from making myself vulnerable, by revealing fears and weaknesses. Our discussions were often intense and exhausting. In fact, after one particularly intense period of hard work addressing these issues, I found I had to withdraw for a while. I could no longer do the difficult personal work which this Article demanded. Never before had the personal and the professional surged together so dramatically in my work as a law professor. But now as the Article is finished, I miss that heady time-- that time of intense collaborative work, that time of trust and creativity and I look forward to it again

Multivocal and polylingual narrative has been the discursive theme of the paper. We have tried to make audible the synergy of diverse perspectives, using our multiple voices.

Cross-cultural learning is possible only in tandem with others. It is a journey that cannot be taken alone. The borderlands are places of collaboration, of interactivity, of shared as well as opposing values, of exposed and juxtaposed weaknesses, and of ignorance, unmasked and remasked. Borderlands beckon to risk takers, meaning awakers, and vision makers.

While we believe that the work of healing our cultural dyslexia is partly cognitive, in and through this paper we have tried to enact the

²¹⁹ See supra note 148. Thinking of the Trobriander graduate student of ethnography, I long for the clients who will turn these ethnographic tools back on us. Clients who truly collaborate with us by breaking through the silences we impose on them in order to listen to our stories, re/construe them and, in doing so, construct new identities for us lawyers.

experiential aspect. We may approach the entrances of the borderlands through reading and thinking, however we believe that the borderlands is a phenomenon of living, a phenomenon of well-intentioned people interacting in deliberate and thoughtful ways with those who are simultaneously like and unlike us/them. The borderlands require that we bring our critical faculties to bear on life's experiences, but, more often than not, we must suspend them in favor of more charitable and affiliative impulses. In the borderlands we eschew "mind-knowing" for "feeling-thought"²²⁰ so that we can come to appreciate the joys and tribulations of those around us in a way that makes a difference that matters.²²¹

²²⁰ Wikan, *supra* note 29, at 189.

²²¹ See Williams, *supra* note 31 at 74.