

# BREEDER AT LAW

*KARLA MOMBERGER*

## I. INTRODUCTION

You have to stop being what you were when you start paying attention to the work it takes to maintain your clear distinctions.

—Xerox Palo Alto Research Center computer scientist and philosopher Brian Smith, discussing maintaining the identity of a microprocessor, quoted by Donna Haraway in Modest Witness@Second Millenium.FemaleMan8 Meets OncoMouseJ, 1997.

I realized soon into this project that the most difficult part might be identifying what, exactly, this paper is about. It's not that easy to do, especially when everything seems so connected. But you should be aware that I am writing from an extremely confident perspective; today I got a fortune in a cookie that says: Everyone agrees you are the best. Well, if everyone agrees, it must be true—isn't my existence a series of reflections off other people?

This paper is about an embodied law school experience, and what that experience indicates about corporeality in the legal system in general. It's about paying for school with my body. What price is exacted is uncertain. It's about existing in a body that is out of bounds, and about becoming the multiple reflections of how others perceive my embodiedness. It's about the bizarre realm of biotechnology, infertility, and reproduction. It's about the ways that gender, race, class, and sexuality interplay in this arena. It's about learning to negotiate your value in the very specific terms of the dollar amount your genetic inheritance is worth. It's about how the dollar value changes based on who you are, and who you are perceived to be.

This paper is also about fighting with your Mom. It's about knowing you have a steep hill to climb in order to gain legitimacy in traditional ways, and what it means to try to go around that hill. This story is about learning to police yourself, about living in a modern, technologically-dependent society. It's about what it means to be a polluter in such a society, and how pollution rituals weave the fabric of society. It's about why the law echoes, creates, and recreates that fabric of pollution and purity.

How strange that I began my feminist/activist career trying to escape the confines of my body, and that now I take refuge in the solid reality of me-ness that my body brings. I remember going through the stages of awakening, of forming what I guess you'd call political consciousness. For me, the thing that started me on the social justice path was women's studies and feminism. I was able to get angry about your basic white, middle class feminist issues like abortion access and equal pay, and that opened the floodgate.

It made me want to reject anything that placed any importance on bodies. It made me say, again and again until I believed it, "My physical body has nothing to do with anything."

But there was always an underlying disquiet for me; I felt that I was missing something.

It's all strange, because now, when I am quoted and re-quoted and misquoted and misperceived I can look at myself and notice the same features, new imperfections in my skin, the same headache that comes from clenching my jaw, all things that remind me of my day to day life that is independent of the weirdness that can go on around me. Maybe that's part of why the permanence of tattoos does not bother me. It's very comforting and reliable to see the same pattern, a pattern I wanted to be created, existing on the unique contours of my body, in the same way it always did. I can retreat to being my physical self when I can't find any other self to speak of.

More practically, here is a preview of what is to come. I have to give you a preview, because I grew up a TV and movie kid, and now am a multi-media adult. It is extremely unfortunate that this paper cannot be accompanied by a soundtrack, because I have always thought of my life as having one, and this paper is in part autobiographical—or at least shaped by the forces in my life, like anything I create. I've always had a soundtrack, and never much of anything else. I think I've had a soundtrack because it seems too difficult to decide how I'd portray myself, how I'd depict the stor(y)(ies) of my life. Think of the editing, what an impossible task. Rather, it is easier to think of some moment in my life and say: this is exactly the song that would have to be playing; it expresses my mental image exactly. It's a way to escape the precision of a visual medium; for me, music comes much more easily.

So in the way of a preview, imagine you're hearing Tricky's "Blowback" because that's what I'm hearing now, and read on. I plan to begin with the pollution ritual and Mary Douglas. I will discuss what exactly a pollution ritual is, and why I think the law is a complex set of rituals that defines and is defined by pollution beliefs. I will look at the nature of pollution in our society using a few current examples.

I will then move on to a discussion of Panopticism as expressed by Foucault. The idea of policing the self is, in the context of pollution behavior, a compelling one. Power is diffuse, and is reinforced in multiple

layers of policing in society. Next I will address a cyborg reality as discussed by Donna Haraway. This is particularly important in the context of law as pollution ritual because the purpose of the ritual is to eliminate ambiguity. In contrast, the cyborg is lived ambiguity, seized multiplicity.

I will discuss my own embodied law school experience. The schooling of future lawyers is located in a place where these power relationships and endless classifications come into sharp focus. The terrain is contested, the boundaries uncertain. One's status as polluter is sometimes a desired "diversity" commodity. What does it mean when to better your mind you corrupt your body? When the process of learning the law, of transformation into an entity called "lawyer," is mistakenly inscribed on the body, as if pressed through carbon paper by accident? When, for example, you pay for your new identity as lawyer with high blood pressure, TMJ, alcoholism, or, as with me, your genes? At the end of this piece there is something called Origin Myth, and the soundtrack is "Rosa Parks" by Outkast.

Throughout this piece there will be comments, interspersed, italicized. These will perhaps provide more insight into where I am coming from, if not where I am going. Why evade? Writing is a painfully personal process. In writing you set yourself out in print, an imperfect medium for expression, and ask to be viewed and digested and ultimately misunderstood at least as often as understood. These personal comments are to remind you that there is a person writing this piece, and to remind myself that who I am matters in my analysis of the law. They are necessary because connections signify.

## II. LAW AS POLLUTION RITUAL

Have you ever retired a human by mistake?

—Rachel, from *Bladerunner*, directed by Ridley Scott, 1983.

I remain a child of the Scientific Revolution, the Enlightenment, and technoscience. My modest witness cannot ever be simply oppositional. Rather, s/he is suspicious, implicated, knowing, ignorant, worried, and hopeful.

—Donna Haraway,  
Modest Witness@Second Millenium.FemaleMan8  
Meets OncoMouseJ, 1997.

It is my belief that the law as we know it here in the United States is a kind of pollution ritual. It is a way of making sense of the world, of deciding right and wrong. Mary Douglas writes:

As we know it, dirt is essentially disorder. There is no such thing as absolute dirt: it exists in the eye of the beholder . . . [N]or do our ideas about disease account for the range of our behaviour in cleaning or avoiding dirt. Dirt offends against order. Eliminating it is not a negative movement, but a positive effort to organise the environment . . . In chasing dirt, in papering, decorating, tidying we are not governed by anxiety to escape disease, but are positively re-ordering our environment, making it conform to an idea. There is nothing fearful or unreasoning in our dirt-avoidance: it is a creative movement, an attempt to relate form to function, to make unity of experience.<sup>1</sup>

Dirt, then, in our society is disorder, entirely context-dependent. The law itself is an attempt to organize the environment, and wrong and right as decided in any legal system are shaped by societal order. "Good law" is simple and fits easily into accepted categories. "Bad law," though, is harder to place. It makes it harder for us to see our environment as conforming to an idea. "Danger-beliefs" are social constructs which coerce others, as well as the self, from straying from accepted ideals. "Thus we find that certain moral values are upheld and certain social rules defined by beliefs in dangerous contagion, as when the glance of the adulterer is held to bring illness to his neighbors or his children."<sup>2</sup> Clearly, the laws of our society are attempts to force each person into "good citizenship." The danger-beliefs at issue here are the insider/outsider identities of good citizen and criminal. It is not coincidental that much discourse on crime and crime prevention uses the language of disease, infection, and pathology. "There goes the neighborhood" is really a reaction to the dangerous invasion of outsiders into a formerly safe space. To adhere to the law—or in the case of many kinds of polluter status based on who one is, to be *able* to adhere to the law—keeps one away from being dangerous, and contagious. Liminality/criminality, like other kinds of outsider status, is a lasting stigma:

Social workers in our society, concerned with the after-care of ex-prisoners, report a difficulty on resettling them in steady jobs, a difficulty which comes from the attitude of society at large. A man who has spent any time "inside" is put permanently

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<sup>1</sup> Mary Douglas, *Purity and Danger: An Analysis of the Concepts of Pollution and Taboo* (1966), at 2.

<sup>2</sup> *Id.* at 3.

“outside” the ordinary social system . . . . A report on a Canadian project in 1951 to change the attitude to mental ill-health suggests that there is a threshold of tolerance marked by entry to a mental hospital. If a person has never moved out of society into this marginal state, any of his eccentricities is comfortably tolerated . . . . But once a patient is admitted to a mental hospital, tolerance is withdrawn . . . . It is . . . interesting to know that marginal status produces the same reactions the world over, and that these are deliberately represented in marginal rites.<sup>3</sup>

It is this kind of lasting danger stigma that causes officials in Phoenix, Arizona, for example, to place homeless children in their own school—adjacent to a better public school—for their own good. The drive is to classify and separate. That Black and Latino men, as another example, could have their polluter status elevated to such a level in the New York City of the moment that they are everywhere polluters, nowhere safe or acceptable, and always potential targets for police violence reflects not only a change in what it means to be a young, non-white male but even more so a change in the degree of hierarchy under which we are now functioning. In fact, part of what betrays this pollution behavior toward various out groups as irrational is the fact that it is based not on physical necessity but rather on understandings and reflections of the social order in U.S. society.

In fact, it is not necessity at all which governs danger-beliefs. Rather, “dangers are better interpreted as symbols of the relation between parts of society, as mirroring designs of hierarchy or symmetry which apply in the larger social system.”<sup>4</sup>

Who is the polluter, and why? Douglas discusses the beliefs in some societies that contact with menstruating women causes pollution. These beliefs are not based on actual, physical consequences, she argues; instead, they express hierarchy and subordination of women in these societies. What is the danger feared by the white woman passenger described by Audre Lorde:

The AA subway train to Harlem . . . . My mother spots an almost seat, pushes my little snowsuited body down. On one side of me a man reading a paper. On the other, a woman in a fur hat staring at me. Her mouth twitches as she stares and then her gaze drops down, pulling mine with it. Her leather-gloved hand plucks at the line where my new blue snowpants and her sleek fur coat meet. She jerks her coat closer to her. I look. I do not see whatever terrible thing she is seeing on the seat between us—probably a roach. But she has communicated her horror to me. It must be something very bad from the way she’s looking, so I pull my snowsuit closer to me away from it, too. When I look up the

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<sup>3</sup> *Id.* at 98-9.

<sup>4</sup> *Id.* at 4.

woman is still staring at me, her nose holes and eyes huge. And suddenly I realize there is nothing crawling up the seat between us; it is me she doesn't want her coat to touch.<sup>5</sup>

The contagion is invisible, imperceptible except through a certain set of pollution beliefs that are toxic with hatred. Douglas continues, "It is only by exaggerating the difference between within and without, about and below, male and female, with and against, that a semblance of order is created."<sup>6</sup>

To understand the way pollution beliefs and their corresponding rituals work, we must understand what it is to be dirty. Dirt is matter out of place:<sup>7</sup>

It implies two conditions: a set of ordered relations and a contravention of that order . . . . [It] is the by-product of a systematic ordering and classification of matter, in so far as ordering involved rejecting inappropriate elements . . . . Shoes are not dirty in themselves, but it is dirty to place them on the dining-table . . . . In short, our pollution behavior is the reaction which condemns any object or idea likely to confuse cherished classifications.<sup>8</sup>

Take, for a first example, the homeless in New York City. Since the homeless confuse cherished classifications of U.S. society, we react with pollution behavior. Our behavior is, at best, to place them entirely at the mercy of other people for their basic survival needs. At worst, our pollution behavior is to criminalize homelessness. Since the American Dream is real, the homeless must not exist. Perhaps most significant (and certainly most frightening), there is no longer any place in society for a homeless person to be anything but a polluter. There is no way for the homeless, then, to fit within U.S. society.

If dirtiness is constructed by context, what does it mean that it is no longer possible to "Drive While Black" in any context without police surveillance and intervention? It is common for Black individuals in predominantly white, wealthy neighborhoods to be stopped by police; in theory, this indicates that the status of polluter is revoked once s/he is back in his/her "own neighborhood." However, as events like the murder of Amadou Diallo and conventional wisdom that informs instructing children of color not to run down the street attest, there is no longer any place in the city where people of color seem to lose this polluter status—was there ever?

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<sup>5</sup> Audre Lorde, *Sister Outsider* (1984) at 147.

<sup>6</sup> Douglas *supra* note 1, at 4.

<sup>7</sup> *Id.* at 36.

<sup>8</sup> *Id.* at 36-7, paragraphing altered.

Like children trying to fit square and round pegs into corresponding holes, we seek familiarity to understand the world. As we are able to classify most objects, people, and experiences in ways that are familiar to us, we stockpile our own system of labels. “[W]e may have to modify our structure of assumptions to accommodate new experience, but the more consistent experience is with the past, the more confidence we can have in our assumptions. Uncomfortable facts which refuse to be fitted in, we ignor[e] or distort so that they do not disturb these established assumptions.”<sup>9</sup>

The uncomfortable fact or person threatens the entire structure. In a “rich” country, a beggar on the street is an anomaly, when we remember that anomaly does not equal rarity. An anomaly is a deviation or departure from the normal or common order, form, or rule, or something that is peculiar, irregular, abnormal, or difficult to classify. In a nation that believes that anyone can succeed through effort and desire, a beggar is certainly a departure from the norm. In a Christian Nation, two queer men holding hands are an anomaly. An anomaly is disquieting in its challenge to “cherished classifications”:

There are several ways of treating anomalies. Negatively, we can ignore, just not perceive them, or perceiving we can condemn. Positively we can deliberately confront the anomaly and try to create a new pattern or reality in which it has a place. It is not impossible for an individual to revise his own personal scheme of classifications . . . . Culture, in the sense of the public, standardised values of a community, mediates the experience of individuals . . . . But its public character makes its categories more rigid . . . . Every culture has] various provisions for dealing with ambiguous or anomalous events . . . . [T]he existence of anomaly can be physically controlled . . . [, and the rule] of avoiding anomalous things affirms and strengthens the definitions to which they do not conform . . . . [A]nomalous events may be labeled dangerous . . . which] helps to enforce conformity.<sup>10</sup>

We can look through beggars as if they are not there, or blame their own frailties for their condition, or “sweep” them off the streets—how clean-sounding!—into jail cells. For a woman in a law school, we can pretend she is a man, and encourage her to overcome her female weaknesses that make the Socratic method a less than ideal pedagogical strategy. We can blame her lack of progress on her gender. After all, if you can’t hack it, you shouldn’t be in law school. And while we’re along these lines, we can simply admit people of color and hope they behave according to white standards, and then complain bitterly about the “lowered standards” that

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<sup>9</sup> Douglas *supra* note 1, at 37-38.

<sup>10</sup> *Id.* at 40-1, paragraphing altered.

were supposedly a necessary precondition to their appearance at the school. The rigidity of the system makes more fundamental changes in the structure of either law school or capitalist society seem impossible. When the polluter is impossible to ignore, "good" society is forced to react with sticky, uncomfortable embarrassment.

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*The bus halts at a certain stop. About three or four passengers pile on hastily, nodding to a man who is yelling after them. He is an older Black man, and he is yelling: "The white man is the Devil! The white man is the Devil! He is the Devil!" I think to myself, you're not wrong! The bus pulls away, and I notice first that people around me look uncomfortable, and second that I am the only white person on the bus. I feel bad, I want them to know that they shouldn't EVER feel bad about something like that. The older Black woman sitting just in front of me soothingly says, "No man is the Devil, honey. Everyone knows that." What's really interesting about this is that we can't do the usual homeless person maneuver: ignore them entirely, looking straight ahead and through them, as though they simply do not exist.*

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In any case, it remains simple and desirable, in terms of reinforcing dominant cultural norms, to label the outsiders as dangerous. Does a well-meaning, middle of the road white woman cross the street when she sees young Black teenagers, only moments after smiling at an adorable brown-skinned baby? Does a white male law student resent that "His" jobs are being taken away? Do riders on the subway shrink from the homeless man, barely able to stand, let alone harm anyone, with an urgency that is something more than repulsion and something closer to fear?

Having established, believed in, been shaped by, and created danger in polluting individuals, ritual follows. What, then, is ritual in this context? For Douglas,

[R]itual focuses attention by framing; it enlivens the memory and links the present with the relevant past . . . . [I]t changes perception because it changes the selective principles . . . . [Ritual] does not merely externalize [sic] experience, bringing it out into the light of day, but it modifies experience in so expressing it. This is true of language. There can be thoughts which have never been put into words. Once words have been framed the thought is changed and limited by the very words



selected. So the speech has created something, a thought which might not have been the same.<sup>11</sup>

So our legal pollution behavior towards the outsider(s) shapes the ways in which they are seen as polluters. The young Black man is not allowed on "our" streets because he is dangerous, but his dangerous state is proven by the illegality of his actions. "Streets are not for sleeping," but that is because we have decreed it; so the homeless woman asleep, exhausted, over a vent is an outlaw. "[P]ollution is a matter of aesthetics, hygiene or etiquette, which only becomes grave in so far as it may create social sanctions, contempt, ostracism, gossip, perhaps even police action."<sup>12</sup> The outsider pollutes because s/he offends social sensibilities. Hygiene, aesthetics, and etiquette are commodities that the homeless cannot afford; hygiene, aesthetics, and etiquette are also out of reach for young Audre Lorde, because her skin marks her as polluted; and despite the best efforts of the female law professor of color to adhere to the hygiene, aesthetic, and etiquette of the law school, her hair is a topic of interest and a point of removal from acceptability.<sup>13</sup> As such, hygiene, aesthetics, and etiquette must be seen as rituals that exclude and categorize:

Finally we find ourselves in the modern world where economic interdependence is carried to the highest pitch reached by mankind so far. One inevitable by-product of social differentiation is social awareness, self-consciousness about the processes of communal life. And with differentiation go special forms of social coercion, special monetary incentives to conform, special types of punitive sanctions, specialised police and overseers and progress men scanning our performance, and so on, a whole paraphernalia of social control which would never be conceivable in small-scale undifferentiated economic conditions.<sup>14</sup>

It sounds very much like life as we know it here in New York City, more specifically, life at Columbia Law. We are so self-contained here at the law school. We can all live in our own little neighborhood, carved out of a larger neighborhood (whisper 'Harlem' softly to avoid panicking the students) through a process of economic domination and exploitation. You don't have to go down to the street to get away from Columbia Law School, either; you can just use the bridge (in the sky) and get to the rest of the gated community which is the campus. If you pause on the bridge and look

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<sup>11</sup> *Id.* at 65.

<sup>12</sup> *Id.* at 74.

<sup>13</sup> As in Paulette Caldwell's *A Hair Piece: Perspectives on the Intersection of Race and Gender* 1991 Duke L.J. 365 (1991).

<sup>14</sup> Douglas *supra* note 1 at 63.

North, you will see the dangerous evils that the sky bridge saves you from: housing projects, teeming masses of people waiting for the bus, “gypsy cabs,” and hair braiding salons at Amsterdam and 125<sup>th</sup>. If you look out the fourth floor windows of The Faculty Club—open to students in the summer time to have wine on the terrace, I’m told—you will see a strip of park that separates Harlem from Columbia. You will be told not to go in the park at all, and you probably won’t; why bother? Nothing is over there, after all.

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*Back on the M11, I always get depressed as we get below 125<sup>th</sup>. Rapidly, we enter Columbioland—very much like Disneyland, it is homogenous, unthreatening, and sterile. I start to feel the shame creeping up on me—I feel it each time I get off at the Columbia stop. Up until then, sometimes folks look at me curiously, as if trying to place me in the schema. I sometimes enjoy that dissonance that can be created by just being somewhere. But when I get off at that stop, all is revealed. The gig is up, as they say. No more mystery.*

*When telemarketers call my apartment, they almost always call in Spanish. Though I am learning Spanish, I never try to talk to them. It’s the one time I find it appropriate to use that dumb, loud, “I’m American, no esspanyole!” voice. I just relish the idea that they targeted their audience so carefully and then missed so broadly. When I get off the bus at 116<sup>th</sup>, it’s like they called in English, and not even in New York English; it’s as if a woman with a flat, Phoenix accent just like mine called and used even my slang, like they targeted me perfectly.*

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At this point in the discussion it is useful to ask why: why is someone condemned to polluter status? “[C]onsider beliefs about persons in a marginal state. These are people who are somehow left out in the patterning of society, who are placeless. They may be doing nothing morally wrong, but their status is indefinable.”<sup>15</sup> They are in between, in that they force us to consider new ways of relating to each other; none of the standard scripts apply to someone who is in between—at least not before we better ascertain who and what they are. If I walk into a Men’s Club as a patron and not a topless waitress, my presence is palpably uncomfortable. What jokes are appropriate? Should they pretend I am not there?

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<sup>15</sup> *Id.* at 96.

Van Gennep...saw society as a house with rooms and corridors in which passage from one to another is dangerous. Danger lies in transitional states, simply because transition is neither one state nor the next, it is undefinable. The person who must pass from one to another is himself in danger and emanates danger to others. The danger is controlled by ritual which precisely separates him from his old status, segregates him for a time and then publicly declares his entry to his new status. Not only is transition itself dangerous, but also the rituals of segregation are the most dangerous phase of the rites.<sup>16</sup>

Even listing his or her various, recognizable identities, behind one's name like a string of degrees, leaves the polluter helpless and impotent. The polluter is not within, but in between.

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*"Why so hostile?" asked my high school Chemistry teacher, smirk shaping his expression, after I complained about his behavior in class. He'd announced on the first day: "You girls in this class are going to have to tie back your hair and work like everyone else." Was it a sign of progress that I was instantly enraged, rather than chagrined into silence? I could hack AP Chemistry; after all, I couldn't help being a girl. As it turns out, I didn't hack it. I dropped down to CP Chemistry, much easier, because I didn't want to deal with him—a personal failure that stung me for a while with the recognition of my own laziness. But just claiming proud identity, as a female student, not just a student, didn't make me any less in between and ultimately out of place.*

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But what about sympathy? The polluter who pollutes sheerly by existing is not at fault; is intent irrelevant? Blame and responsibility are not necessary for a person to be a polluter: "It seems that if a person has no place in the social system and is therefore a marginal being, all precaution against danger must come from others. He cannot help his abnormal situation."<sup>17</sup> That a person cannot necessarily be held responsible for his/her condition does not alleviate the danger:

Beliefs that attribute spiritual power to individuals are never neutral or free of the dominant patterns of social structure. If some beliefs seem to attribute free-floating spiritual powers in a haphazard manner, closer inspection shows consistency . . . .

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<sup>16</sup> *Id.* at 97.

<sup>17</sup> Douglas, *supra* note 1, at 96.

These are pollution powers which inhere in the structure of ideas itself and which punish a symbolic breaking of that which should be joined or joining of that which should be separate. It follows from this that pollution is a type of danger that is not likely to occur except where the lines of structure, cosmic or social, are clearly defined. A polluting person is always in the wrong. He has developed some wrong condition or simply crossed the line which should not have been crossed and this displacement unleashes danger for someone . . . . Pollution can be committed intentionally, but intention is irrelevant to its effect—it is more likely to happen inadvertently.<sup>18</sup>

The crime Amadou Diallo committed the night he was shot forty-one times by the New York Police Department in February of 1999 was making “furtive movements” that are illegal only for people of color, particularly those who have the audacity to live and work in “certain” neighborhoods. The crime of the law student of color is that s/he has joined that which should not be joined—law school and people of color—and in this way “lowers standards”. The crime of the Welfare Queen is that she offends the American Dream and the comfortable, vague mysticism that surrounds it in which there is enough money for everyone who is willing to work hard enough to get it. Her crime is that she offends our deeply held notions of public and private. She is one of the “lazy poor,” but even if she wasn’t, she is offensive to traditional “bootstrapping” notions of U.S. society:

The idea of society is a powerful image. It is potent in its own right to control or stir men to action. This image has form; it has external boundaries, margins, internal structure. Its outlines contain power to reward conformity and repulse attack. There is energy in its margins and unstructured areas. For symbols of society, any human experience of structures, margins or boundaries is ready to hand.<sup>19</sup>

The hysteria of reactions to the brick man is the unleashing of years of “I told you so.”<sup>20</sup> It was proof of the danger that the homeless present to society. Finally, a tangible ill, a real target.

But, the anxious law student protests, where is the law in all of this? There are no cases to cite here, I’m afraid, but I think this can be brought into sharper focus. Douglas writes that pollution beliefs uphold the moral code of a society in these ways:

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<sup>18</sup> *Id.* at 113-4.

<sup>19</sup> *Id.* at 115.

<sup>20</sup> A mentally ill man who assaulted a woman with a brick on the street in New York in November 1999 caused a city-wide panic that led to sweeping arrests of many homeless people, even before it was confirmed that the man was homeless.

(i) When a situation is morally ill-defined, a pollution belief can provide a rule for determining *post hoc* whether infraction has taken place, or not.

(ii) When moral principles come into conflict, a pollution rule can reduce confusion by giving a simple focus for concern.

(iii) When action that is held to be morally wrong does not provoke moral indignation, belief in the harmful consequences of a pollution can have the effect of aggravating the seriousness of the offence, and so of marshalling public opinion on the side of the right.

(iv) When moral indignation is not reinforced by practical sanctions, pollution beliefs can provide a deterrent to wrongdoers.<sup>21</sup>

These principles she gleaned from years of study in many cultures, but they apply quite comfortably to the U.S. legal system. Legal disputes are messy, inherently untidy experiences. They are filled with gray areas, but the pollution belief as ritualized through the law provides rules that determine *post hoc* whether there has been an infraction. This determination, though shaped by rules, is processed by agents, the lawyers who make the case and especially the judge, who have stakes in the status quo. (After all, if law is an expression of the status quo and established norms, we'd all be out of jobs, wouldn't we, if it turned out that none of that stuff mattered?)

The law functions to reduce confusion when moral principles come into conflict, and as Douglas suggests, it does this by giving a simple focus for concern. If we focus on simple, numbered elements of a crime like theft or prostitution, there is no need to examine the circumstances of the starving man stealing bread or the woman who turns to prostitution out of desperate need. In the case of abortion, questions of patriarchy, poverty, and race can be ignored in favor of imaginary or, at best, nebulous categories like trimesters, unique legal creations so embedded in our culture that they have become medical.

When an action that is held to be morally wrong by those in power, such as using drugs in the seventies and early eighties, does not provoke widespread moral indignation, "belief in the harmful consequences of a pollution can have the effect of aggravating the seriousness of the offense." Our war on drugs has certainly made drug use a serious offense, although practical constraints (like the fact that most folks who smoke marijuana are actually white and middle class) force legal agents to aggravate offenses

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<sup>21</sup> Douglas, *supra* note 1, at 134.

selectively. And sometimes, through years of effort, these legal assignments of pollution do have the effect of "marshalling public opinion on the side of the right." We now see fervent belief in the devastating harm wreaked by the tiniest molecule of drug or alcohol in the pregnant woman—because we have created it as a socio-political myth—and now we see food servers refusing to serve even one glass of wine to very pregnant women in a huff of moral indignation.<sup>22</sup>

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*Riding the M11 downtown, it starts to fill up at Amsterdam and 135<sup>th</sup>. You almost always have to stop at that corner, which means we are subject to the Public Service Announcements that are pasted there. Recently there was a Public Service Announcement that had a wooden school desk surface with four items on it. The first was a paper airplane, labeled Second grade. Fourth grade and Sixth grade were a folded note and a cootie catcher/fortune teller, respectively. Last, Eighth grade, was a doob. The message is: "Get to your kids before marijuana does." I am thinking to myself that the grades are off kilter, that they were right to start and end as they did, but that cootie catchers come before notes. I then realize that, aesthetically, that wouldn't work. Then I stop to notice that I am being distracted.*

*The real point is where the billboard is and why.*

*This is Harlem, and that's why. Just another aspect of the "Drug War" that includes the "acceptable losses" that are the disenfranchised, poor, minority population. I almost—almost, I said!—yearn for the day that anti-marijuana sweeps of Columbia result in hordes of young, white frat boys in Riker's.*

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Power is never unidirectional, and legal behavior creates and reinforces social behavior, which then bounces back into the legal arena. The pollution beliefs of dominant culture shape the law, but once put into law, the idea is permanently transformed in that it is no longer fluid and able to change as the culture that produced it does. Trapped inside bodies as we are, I am extremely interested in the idea of moving toward an embodied perspective within the law. Karpin writes, "[s]uch a development

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<sup>22</sup> I have seen this myself, actually. When I worked at the Solarium in Tucson, Arizona as a bartender, one of our servers refused to serve a glass of wine to a woman who must have been due within weeks of the incident. This server also confronted the woman about her "lack of scruples."

will require an attention to particularity and situated knowledges.”<sup>23</sup> The idea that the body can be separated or be incidental to some legal harm is extraordinary. For example, is it really possible to have a reasonable man? Isn’t the reasonable man standard actually shaped by race, class, gender, etc? I am particularly intrigued by the experiential narrative form of testimony. I know that the testimony rules as we know them are gendered, and produce distorted evidence. How can testimony be meaningfully plucked from its context/embodiment?

The difficulty our legal system has with something like multiple personality disorder (MPD)—for example, the inability to categorize testimony from a person with MPD—is really just symptomatic of the problems with the system as a whole, because it is one clear example of our system’s inability to handle anything outside the “norm.” If MPD presents such a problem for the legal system, what makes us think that the same system is any better equipped to handle cases involving other somehow disenfranchised people? If women tend to give a certain kind of testimony, or tend to see things in a certain light that differs from the “norm” of the system, how can they be seen as competent witnesses? As victims, yet people with some agency? The concern that forced the prosecution to avoid revealing Hood’s voluntary sexual conduct springs from the same problem that hurts women trying to prosecute any sexual misconduct case; a victim as our system defines it, especially a female victim of sexual misconduct, cannot have any agency or power and retain any credibility.

Because the law seeks disembodied subjects, a subject that forces the law to view its body is an anomaly. It is not coincidence that an out of control female body presents such a problem for the court. We see this in so many ways, from the extra harsh treatment afforded women who violently act out against abusive lovers to the cross examination of rape victims. It gives new meaning to the old phrase: “your body is a battleground.”

The pollution ritual lens reveals that the anomalous female subject with mental illness described by Karpin is an anomaly that must be resolved for the law to work. Rather than change the “cherished classifications” threatened by a mentally disabled woman’s existence as an entity within the legal system, she is reshaped and ultimately silenced within existing norms.

### III PANOPTICISM

Monsters have always defined the limits of community in Western imaginations.

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<sup>23</sup> Isabel Karpin, *Peeking Through the Eyes of the Body: Regulating the Bodies of Women With Disabilities*, Chapter 18 in *Disability Diversity and Legal Change* Melinda Jones and Lee Ann Bassar Marks, eds., (1998) at 2.

—Donna Haraway, Simians, Cyborgs and Women (1991).

If only you could see what I've seen with your eyes.

—Replicant Roy Batty confronts the maker of his cyborg eyes; from Bladerunner, directed by Ridley Scott, 1983.

The perfect prison needs no chains, no dungeons, no bloody, beaten masses. The perfect prison needs a populace that has inscribed the discipline of the unequal power relations of the smaller prison society (and the larger society) on its collective soul.

Hence the major effect of the Panopticon: to induce in the inmate a state of conscious and permanent visibility that assures the automatic functioning of power. So to arrange things that the surveillance is permanent in its effects, even if it is discontinuous in its action; that the perfection of power should tend to render its actual exercise unnecessary . . . [I]n short, that the inmates should be caught up in a power situation of which they themselves are the bearers.<sup>24</sup>

The surveilled are in perfect light. Lit up, their actions are all observable. Their forced visibility is what makes the Panopticon work.

In the modern Panopticon of certain U.S. neighborhoods, police and even helicopters patrol constantly, flashing beams of light everywhere, blinding whoever is being surveilled. In my Tucson neighborhood, the sound of helicopter blades chopping above the apartment building was so commonplace that we ceased to hear it until reminded of it by an incredulous outsider to the area. "Do those helicopters fly over *all the time?*!" she asked. "Well, yeah, sure they do," we responded, thoroughly unimpressed.

"The Panopticon is a privileged place for experiments on men, and for analysing with complete certainty the transformations that may be obtained from them."<sup>25</sup> Interestingly, this recalls the commentary on housing projects by Public Enemy's Chuck D: "And let's look at that word, 'project'; another word for experiment."<sup>26</sup>

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<sup>24</sup> Michel Foucault, Discipline and Punish: The Birth of the Prison 201 (1975).

<sup>25</sup> *Id.* at 204.

<sup>26</sup> Public Enemy, *AI Don't Wanna Be Called Yo Niga*, Apocalypse 91. . . The Enemy Strikes Black, 3:47-3:51, 1991 Sony Music Entertainment, Inc.



The Panopticon . . . must be understood as a generalizable model of functioning; a way of defining power relations in terms of the everyday life of men . . . . T]he Panopticon must not be understood as a dream building; it is the diagram of a mechanism of power reduced to its ideal form; its functioning, abstracted from any obstacle, resistance, or friction, must be represented as a pure architectural and optical system: it is in fact a figure of political technology that may and must be detached from any specific use. It is polyvalent in its applications; it serves to reform prisoners, but also to treat patients, to instruct schoolchildren, to confine the insane, to supervise workers, to put beggars and idlers to work. It is a type of location of bodies of space, of distribution of individuals in relation to one another, of hierarchical organization, of disposition of centres and channels of power . . . . [W]henver one is dealing with a multiplicity of individuals on whom a task or a particular form of behavior must be imposed, the panoptic schema may be used.<sup>27</sup>

It works on many levels. Women in our society function as a prison population in the sense that we have inscribed notions of beauty and self worth deeply into our souls. We do not need individual men to chastise us; instead, we police each other via everything from beauty magazines to making sure our daughters look feminine to picking on “ugly” girls in our high school cliques. Should any individual woman step out of the beauty line she will receive various sanctions from parts of our society. She may lose her job, or be unable to find one in the first place. She may have trouble socially. She may even be physically attacked. It’s no secret that beauty means very different things to women of different races. Only mentioning “hair” in many circles can start a verbal battle that will involve bloodletting.

There are two images...of discipline. At one extreme, the discipline-blockade, the enclosed institution, established on the edges of society, turned inwards towards negative functions: arresting evil, breaking communications, suspending time. At the other extreme, with panopticism, is the discipline-mechanism: a functional mechanism that must improve the exercise of power by making it lighter, more rapid, more effective, a design of subtle coercion for a society to come. The movement from one project to the other, from a schema of exceptional discipline to one of a generalized surveillance, rests on a historical transformation: the gradual extension of the mechanisms of discipline . . . [,] their spread throughout the whole social body,

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<sup>27</sup> Foucault *supra* note 26, at 204, paragraphing altered.

the formation of what might be called in general the disciplinary society.<sup>28</sup>

Two examples of the shift are immediately obvious. The first concerns race: the discipline-blockade of slavery in the United States gave way to the discipline-mechanism, the panopticism, that is our current state of variously enforced white supremacy. In the slave-holding world, the enclosed institution, established on the edges of society, was the slave plantation, the guarded quarters. The rape that functioned as a means of accumulating human capital. Arresting evil in the form of rebellion, or practice of culture-sustaining religion. Breaking communications, including family ties, meetings of slaves, and even penalizing drumming with loss of hands or worse. Suspension of time, a static reality, for the slave in captivity, denied even identity. The shift comes to discipline-mechanism gradually, despite the common misperception that the Civil War actually changed power relations considerably in one fell swoop. The power of white supremacy is improved, made lighter, more rapid, more effective and efficient; in fact, the shift to panopticism, in the case of white supremacy, is what has allowed it to survive (that, and the deep-rooted fear and hatred that nurture it). The middle ground of coercion, segregation, finally giving way to the current state of affairs—the “subtle” coercion of the police state ghetto, the glass ceiling, the drug war, and the welfare system.

The next example concerns gender: the discipline-blockade of woman as property of men gave way to the discipline-mechanism, the panopticism, that is our current state of variously enforced male supremacy. For a moment, consider the only female subject to “just” one form of panopticism: the white woman in early U.S. society. The enclosed institution was her place within the home, as property of father and then husband. Her “edges” of society were actually the innermost attics, kept inside, without any meaningful access to basic fruits of society such as education and politics. Arresting evil, by preventing her from holding property or exercising civil rights—even, in some cases, by bridling her sexuality via mutilation of her genitals. Breaking communications by severing ties to female kin, and networks of other women. Again, the suspension of time. This shift, too, comes gradually. We have traded inability to own property with inability to accumulate as much property, thanks to wage and education gaps. The brutal cult of beauty, in all of its multiple-raced forms, functions so well that women become their own worst enemies. Of course, all women are subject to some form or forms of violence. Their sometime randomness does not make the expressions of such violence any less instructive to the tuned-in student.

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<sup>28</sup> *Id.* at 209.

'Discipline' may be identified neither with an institution nor with an apparatus; it is a type of power, a modality for its exercise, comprising a whole set of instruments, techniques, procedures, levels of application, targets; it is a 'physics' or an 'anatomy' of power, a technology. And it may be taken over either by 'specialized' institutions [like prisons, and, to a lesser extent, welfare complexes and "the ghetto"] . . . or by institutions that use it as an essential instrument for a particular end (schools, hospitals), or by pre-existing authorities that find in it a means of reinforcing or reorganizing their internal mechanisms of power [such as families in which current notions of power are reflected, and even old boy networks that keep certain folks out systematically] . . . or finally by state apparatuses whose major, if not exclusive, function is to assure that discipline reigns over society as a whole (the police) [and the legal system].<sup>29</sup>

The beauty of it is its transcendence of specific structures or belief systems. The Panopticon is a paradigm for power.

Panopticism and its maintenance of order relies upon the horizontal separation of individuals and groups of the same class; this kind of separation ensures that differences between people are noticeable and immediately understandable, that stereotypes will "work" and explain the Other. The disdain for and sometimes fear of things like communism, unionization, and interracial relationships of all kinds are all symptoms of this truth.

That is why discipline fixes; it arrests or regulates movements; it clears up confusion; it dissipates compact groupings of individuals wandering about the country in unpredictable ways; it establishes calculated distributions. It must also master all the forces that are formed from the very constitution of an organized multiplicity; it must neutralize the effects of counter-power that spring from them and which form a resistance to the power that wishes to dominate it: agitations, revolts, spontaneous organizations, coalitions—anything that could establish horizontal conjunctions.<sup>30</sup>

The discipline of modern New York, for example, arrests and regulates the movements of many groups of people. Homeless folks are rounded and up and even jailed to coincide with special events in the city. The movements of the poor are circumscribed by their income and even the public transit patterns which favor wealthy neighborhoods.<sup>31</sup> New York discipline clears

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<sup>29</sup> *Id.* at 215-16.

<sup>30</sup> *Id.* at 219.

<sup>31</sup> And not always in expected ways. For example, the Metro in the Washington, DC area does not stop in many wealthy areas, preventing anyone without a car from going to them.

up confusion. We “know,” as New Yorkers, which neighborhoods contain which people, and even why. We can glimpse at a person and, by his or her appearance, place them in the city’s and our world’s social scheme.

Organization between groups acts against this form of discipline. Coalition building is a direct violation.

The ideal point of penalty today would be an indefinite discipline; an interrogation without end, an investigation that would be extended without limit to a meticulous and ever more analytical observation, a judgment that would at the same time be the constitution of a file that was never closed, the calculated leniency of a penalty that would be interlaced with the ruthless curiosity of an examination, a procedure that would be at the same time the permanent measure of a gap in relation to an inaccessible norm and the asymptotic movement that strives to meet in infinity . . . . [T]he practice of placing individuals under “observation” is a natural extension of a justice imbued with disciplinary methods and examination procedures . . . . Is it surprising that prisons resemble factories, schools, barracks, hospitals, which all resemble prisons?<sup>32</sup>

I am again reminded of the position of society’s most vulnerable, the very poor, who are disproportionately non-white. The constant and relentless treadmill of proving that one is a legitimate recipient of aid; the ever-present examinations that are conducted with the presumption of guilt and deceit; the openness of your life, stretched out before a panel of judges, poorly represented on paper; the inadequacy of a verbal description of your child’s hunger irrelevant to the process; the constant limbo of knowing that your position and future is uncertain.

Visibility, and the panopticon. Contrast with the “invisibility,” as described by Ralph Ellison,<sup>33</sup> that afflicts people of color in U.S. society. What is the balance?

The “visibility” of the panopticon is specialized and limited, a careful construct. This is visibility from behind a thick wall of glass. This is the image that appears on the retina of the oppressive observer. It is a collage of reflections, the various images that societal and individual gazes fasten upon you in an attempt to make sense of a complicated world. As the panopticon simplifies, so do its images. You become nothing but a reflection of a distortion of an air-brushed image, an endless stream of simulacra without originals. This is the simultaneous visibility and invisibility that the white supremacist panopticon produces and reproduces.

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<sup>32</sup> Foucault *supra* note 26, at 227-8.

<sup>33</sup> Ellison, Ralph 1952.

*I went to a very white, privileged public high school. (Big shocker there, right?) It is not very wealthy compared to many of the private schools I have seen, but better off than most public schools. Not surprisingly, because the Phoenix metro area is fairly well segregated by race and class, there were very few students of color at my high school. One boy, named Craig, was an African-American student at my school. Like many of the boys, he was also an athlete. However, Craig had somehow earned the title of the best athlete in the school. He could run faster, pass better, jump higher than every other boy. Only I'd seen that this wasn't always true in practice. It was a reputation, though, and he was disappointed when he couldn't live up to it. Clearly his status as Black Male elevated his athletic and other prowess to an almost mythical level. I don't know who his girlfriend/s was/were, but I do remember one afternoon coming upon a group of white girls watching him run track and field. He was doing the hurdles, and they were watching him very closely. One of them mused, "Look at his legs! His muscles are so different. His whole body is smooth. It runs perfect!"*

*I remember feeling a vague discomfort, but nothing more. Now, as I look back, I feel disgust, shame, and anger—and almost all directed back at a teenage reflection of myself. I always remember myself at the age I am now, which, I think, increases my feelings of accountability. I now see that, like the deception of a fisheye lens or kaleidoscope, what I saw was not Craig, but who and what I perceived him as within the discipline. Even though it is embarrassing to me to recount this past, and each segment is an itchy, bitter clump that sticks in my throat as I swallow it, I have to tell it. I know I can never imagine his own bitter pills from those days.*

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Why was just the idea of the presence of women at The Citadel<sup>34</sup> provoking such a "visceral disgust reaction," as my Mom might say? Was it a fear of surveillance? Is it enough that there *might* be a female presence there, a female watcher to witness the construction of the gender dynamics that oppress her? She doesn't have to watch all of the time; it's enough that she *could* be watching. Then she might see the little secret rituals.

What a bizarre reversal, considering the surveillance that women, people of color, and poor people are subject to every hour of their lives. It is no coincidence that, for example, when I lived in Section 8 housing the "officials" who worked there entered our apartment basically at will. They did this in order to count toothbrushes and check closets, looking for

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<sup>34</sup> As discussed by Susan Faludi in *The Naked Citadel*, *The New Yorker*, September 5, 1994, at 63-81. Reactions were almost uniformly negative, and even violent.

evidence of “illegal residents.” They also wanted to make sure we didn’t own anything really valuable, anything for which we, as welfare people, would then have to account.

It’s not usually the dominant class, then, that is subject to surveillance. So why were the cadets so afraid of being seen by women? Is it similar to the way I, as a singer and actor, don’t want to be heard until I have gotten my performance down so cold that it’s positively real?

What makes gender real, as Judith Butler explains, is the constant performance of it.<sup>35</sup> Each time I choose a grapefruit instead of a piece of chocolate cake, each time I end my statement like a question to make it seem more palatable, each time I wait for someone to open my door. It’s real, real, real . . . real to the performers and to the watchers. If gender wasn’t real, why would all of those people be playing?

So Panopticism, surveillance, and discipline function as a part of the legal and social systems of broader society. They are a part of the larger complex of pollution rituals. Just as the prisoner learns to police himself, pollution beliefs create moral laws for citizens to follow. And even in-between polluters can self police. A Black police officer is in some ways an anomaly; he can be accepted by ignoring his difference, which translates into whitewashing (or in this case, bluewashing) him. What does it mean, then, when 100 Black Men in Law Enforcement hold seminars that teach young men of color how to act in the presence of police? Does it matter that the required behavior involves acting submissive and surrendering without question immediately? Not making aggressive eye contact, but not refusing to make eye contact either? What does it mean that liminal subjects help reinforce pollution rituals of dominance in society?

#### IV CYBORG REALITIES, DIFFERENTLY PERMEABLE MEMBRANES

Monsters share more than the word’s root with the verb ‘to demonstrate’; monsters signify.

—Donna Haraway, *Simians, Cyborgs and Women*

At this point, it is useful to look to Donna Haraway’s conception of the cyborg, for several reasons. First, Haraway’s cyborg opens up new possibilities for those who are in between. Second, her cyborg throws the “cherished classifications” of pollution beliefs into doubt in multiple ways.

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<sup>35</sup> Butler, Judith *Gender Trouble* (1990). For Butler, gender is not a set masculine/feminine duality. Instead, Butler argues that gender should be seen as fluid and a product of the ways we behave at different times and in different situations rather than who we are.

If within a traditional belief system a person who crosses and exists within multiple categories is a polluter, and therefore bad, the celebration of the cyborg who is by definition a locus for multiplicity disrupts this belief system. What's more, the cyborg can be a powerful image for coalition.

A cyborg is a cybernetic organism, a hybrid of machine and organism, a creature of social reality as well as a creature of fiction. Social reality is lived social relations, our most important political construction, a world-changing fiction . . . . Liberation rests on the construction of the consciousness, the imaginative apprehension, of oppression, and so of possibility.<sup>36</sup>

The cyborg is by definition in between, a polluter because it exists. Reality and fiction meet in the cyborg, and also in the myth of the Other. Social reality is created by lived social relations, even though those relations change as actors perceive what they believe reality to be. Just as fiction can change the world, the fiction of the Welfare Queen can change social reality for millions of needy women and children as welfare is "reformed."

In the traditions of "Western" science and politics—the tradition of racist, male-dominated capitalism; the tradition of progress; the tradition of the appropriation of nature as resource for the productions of culture; the tradition of reproduction of the self from the reflections of the other—the relation between organism and machine has been a border war. The stakes in a border war have been the territories of production, reproduction, and imagination. This chapter is an argument for *pleasure* in the confusion of boundaries and for *responsibility* in their construction.<sup>37</sup>

The border war insists and relies upon clear distinctions between self and other, insider and outsider. In this way it is a part of the pollution behavior of our hierarchical society. As in the language of pathology, boundaries are crucial.

In the language of war, The Enemy must be defined before s/he can be decimated.<sup>38</sup> In the case of the literal border war in the U.S., the Enemy is the illegal alien. Ignoring the bitter irony implicit in such a scheme, agents of the U.S. guard the border in Arizona with weapons, and shoot interlopers on sight; this despite the fact that Arizona is actually Mexico, and Indian Country before that.

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<sup>36</sup> Haraway *supra* note 9, at 149.

<sup>37</sup> *Id.* at 150.

<sup>38</sup> For a fascinating discussion of why the language of war is so important in and of itself see Carol Cohn, *Sex and Death in the Rational World of Defense Intellectuals*, Signs, Summer 1987.

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*My Grandma used to say "wetbacks" all of the time. I would wince in pain and embarrassment each time. Once I made some soft, weak comment, and she explained her own mental border: "Honey, there are Mexicans and wetbacks. The wetbacks are the illegals, everyone knows not all Mexicans are wetbacks."*

*Or spics, or beaners, or cabbage pickers . . . this is the language I retain at some level of my person, having grown up white in Arizona. What a comfort, to know that "wetback" has meaning, meaning that supposedly expunges the term of any racism. Some of my best friends are \_\_\_\_\_ . . .*

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If patriarchal, colonial, capitalist society has named the world in the language of the border war, can a cyborg existence throw the border into question?

Perhaps that is why I want to see if cyborgs can subvert the apocalypse of returning to nuclear dust in the manic compulsion to name the Enemy. Cyborgs are not reverent; they do not remember the cosmos. They are wary of holism, but needy for connection—they seem to have a natural feel for united front politics, but without the vanguard party. The main trouble with cyborgs, of course, is that they are the illegitimate offspring of militarism and patriarchal capitalism, not to mention state socialism. But illegitimate offspring are often exceedingly unfaithful to their origins. Their fathers, after all, are inessential.<sup>39</sup>

Is one possible version of the cyborg story that of a twisted prodigal son? The son who comes home, but to kill the father? Surely the "fatherless" cyborg strikes fear into the heart of a nation who pathologizes single motherhood, particularly when that motherhood is coded as Black. In acting, the cyborg refuses the role of passive acceptance of cultural material; "Our machines are disturbingly lively, and we ourselves frighteningly inert."<sup>40</sup> I rise after hours of typing, shooting pains in my wrist, sedentary lifestyle, no time for actual outdoor movement or exercise.

The lines between humans, machines, and animals are confounded in this, the twenty-first century, with both positive and negative results. I realize that enough of my soul has been etched into my computer that should it be lost or stolen I will feel incredibly violated, as if a piece of me

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<sup>39</sup> Haraway, *supra* note 9, at 151.

<sup>40</sup> *Id.* at 152.



is missing. I shudder when I see wealthy New Yorkers spend thousands of dollars treating their pets to visits to “pet ranches” outside the city and then become angered that their tax money goes to shelter the homeless.

We marvel at technological innovations that allow for a tiny, crystal-clear television image on a wristband, or a computer so slim as to seem an impossible site for storage of masses of information. The ideal machine is so small it is nearly invisible, and our dreams and nightmares are filled with human-seeming robots, body snatchers, invaders; the issue is the impossibility of detection, the difficulty in finding the enemy:

Our best machines are made of sunshine; they are all light and clean because they are nothing but signals, electromagnetic waves, a section of a spectrum . . . . People are nowhere near so fluid, being both material and opaque. Cyborgs are ether, quintessence. The ubiquity and invisibility of cyborgs is precisely why these sunshine machines are so deadly. They are as hard to see politically as materially. They are about consciousness—or its simulation.<sup>41</sup>

Political invisibility, like any other quality, cuts both ways.

Haraway’s cyborg urges us to see new possibilities for coalition, to seek affinity. “Affinity: related not by blood but by choice, the appeal of one chemical nuclear group for another, avidity.”<sup>42</sup> The consequences for activism are clear, but what are the consequences for the conservatively-biased pollution ritual that is the law?

From one perspective, a cyborg world is about the final imposition of a grid of control on the planet, about the final abstraction embodied in a Star Wars apocalypse waged in the name of defence, about the final appropriation of women’s bodies in a masculinist orgy of war (Sofia, 1980). From another perspective, a cyborg world might be about lived social and bodily realities in which people are not afraid of their joint kinship with animals and machines, not afraid of permanently partial identities and contradictory standpoints. The political struggle is to see from both perspectives at once because each reveals both dominations and possibilities unimaginable from the other vantage point . . . . Cyborg unities are monstrous and illegitimate; in our present political circumstances, we could hardly hope for more potent myths for resistance and recoupling.<sup>43</sup>

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<sup>41</sup> *Id.* at 153, paragraphing altered.

<sup>42</sup> *Id.* at 155.

<sup>43</sup> *Id.* at 154.

Adoption of the cyborg model destroys the law as we know it, because the law as a rigid pollution ritual depends utterly on differentiation and clear boundaries. Without right and wrong, what is the law?

But perhaps this is saying too much. Critical and reform theorists continue to attempt reformation, and we do it by etching new realities within old shapes of the law. We do it by re-visioning, by trying to include alternative viewpoints; is this activity not within the realm of the cyborg? Can the master's tools destroy the master's house? Will remodeling be enough?

At the level of ideology, we see translations of racism and colonialism into languages of development and under-development, rates and constraints of modernization . . . . The entire universe of objects that can be known scientifically must be formulated as problems in communications engineering (for the managers) or theories of the text (for those who would resist). Both are cyborg semiologies. One should expect control strategies to concentrate on boundary conditions and interfaces, on rates of flow across boundaries—and not on the integrity of natural objects . . . . For example, control strategies applied to women's capacities to give birth to new human beings will be developed in the languages of population control and maximization of goal achievement for individual decision-makers. Control strategies will be formulated in terms of rates, costs of constraints, degrees of freedom.<sup>44</sup>

The point, then, is that cyborg semiologies can always function both in support of and against hierarchy and oppression. In some way, the tools of the oppressor are more refined in the age of cyborgs: the IMF; the monopoly of scientific knowledge, research and money in the White West; attempts by First World powers to exploit the Third World in its "underdevelopment"; high tech police surveillance in cities involving record systems that encompass all *potential* offenders. Compare to the blunt instruments of colonialism. As in the Panopticon, the need for brute force lessens as sweeps of "suspect" neighborhoods yield record banks of all marginalized sub-citizens

In communications sciences, the translation of the world into a problem in coding can be illustrated by looking at cybernetic (feedback-controlled) systems theories applied to telephone technology, computer design, weapons deployment, or data base construction and maintenance. In each case, solution to the key questions rests on a theory of language and control; the key operation is determining the rates, directions, and probabilities of flow of a quantity called information. The world is subdivided

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<sup>44</sup> *Id.* at 162-3.

by boundaries differently permeable to information. Information is just that kind of quantifiable element (unit, basis of unity) which allows universal translation, and so unhindered instrumental power (called effective communication).<sup>45</sup>

Witness the amazing “R2K” rallies in Washington DC and the response of the authorities.<sup>46</sup> This was a mass uprising, carefully planned. Organizers were almost completely internet-based; groups across the East Coast kept in touch via email. All contingencies were planned for. Everyone present at the rallies (with the exception of a few passers by and anarchist groups) had been trained, been part of affinity groups, and planned for all possibilities. Up until the events in Washington, the leaders of the protests refused to talk to the mainstream press. Instead, they used public access stations and channels, and internet-based communications.

This course of events was exceedingly threatening to the power structure. “Effective communication” was made impossible by the activities of the organizers. Tables had been turned in that the flow of information was away from the official power structure.

Response was swift and harsh. Mainstream media were enlisted to aid the power structure’s goals, and the reports that immediately preceded and later covered the events were subject to elaborate spin doctoring in favor of the government and the IMF. Police presence in Washington was almost unbelievable. The events were not scheduled to begin until Sunday the 16<sup>th</sup>, but well before then the city was overrun with police and military forces. Streets were closed off in advance. Threats of arrest and detainment were made publicly.

When Sunday the 16<sup>th</sup> arrived, police actions were extreme and brutal. As I write this, almost a week later, more than 150 people remain in jail for non-violent offenses.<sup>47</sup> But the actions of the police state did not go undocumented. Legal observers watched events throughout most of the process. Various cameras and video equipment abounded, and images of the police repression appeared on the net *almost simultaneously*.<sup>48</sup> E-mails have been circulated this week with the cell phone numbers of many of the Washington DC police officers, asking that people call and demand the release of the “hostages”; I recirculated the list myself in my circles here. The grasp of and use of technology and information empowered the

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<sup>45</sup> *Id.* at 164.

<sup>46</sup> These were protest demonstrations at the 2000 Republican Convention in DC that took place in July 2000.

<sup>47</sup> Shortly thereafter, they were released, the charges reduced to jaywalking. The fine was \$5 per person.

<sup>48</sup> I know of one video that appeared online literally minutes after the incident it documented took place.

activists in many ways, making me feel like the entire event was a sort of dawning cyborg movement.

The protests called into question traditional notions of The Enemy. Were they outside invaders, imported agitators? Was the advance from outside the walls of the Great City?

The trope of space invaders evokes a particular question about directionality of travel: in which direction is there an invasion? From space to earth? From outside to inside? The reverse? Are boundaries defended symmetrically? Is inner/outer a hierarchicalized opposition?<sup>49</sup>

Or was the movement more insidious, from within? These were U.S. citizens, after all, in theory or in other circumstances law-abiding. How should they be coded?

Immunobiology and associated medical practices are rich exemplars of the privilege of coding and recognition systems as objects of knowledge, as constructions of bodily reality for us. Biology here is a kind of cryptography. Research is necessarily a kind of intelligence activity. Ironies abound. A stressed system goes awry; its communication processes break down; it fails to recognize the difference between self and other. Human babies with baboon hearts evoke national ethical perplexity—for animal rights activists at least as much as for the guardians of human purity. In the U.S. gay men and intravenous drug users are the 'privileged' victims of an awful immune system disease that marks (inscribes on the body) confusion of boundaries and moral pollution (Treichler, 1987).<sup>50</sup>

The body politic system of Washington D.C., stressed, went awry. Totality of repression of dissent by a strictly uniformed force was necessary to re/create the boundaries between criminal and police. The lack of ability to suppress the enemy's communications system, I think, signals the constructive breakdown of the state's communications system which, after all, relies upon suppression and carefully mediated and distributed information.

I am insisting on using the example of the protestors in D.C. because in many ways they exemplify the cyborg model in action:

Cyborg politics is the struggle for language and the struggle against perfect communication, against the one code that translates all meaning perfectly, the central dogma of phallogocentrism. That is why cyborg politics insist on noise and

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<sup>49</sup> Haraway *supra* note 9 at 223.

<sup>50</sup> *Id.* at 164-5.

advocate pollution, rejoicing in the illegitimate fusions of animal and machine . . . . From the perspective of cyborgs, freed of the need to ground politics in “our” privileged position of the oppression that incorporates all other dominations, the innocence of the merely violated, the ground of those closer to nature, we can see powerful possibilities . . . . Stripped of identity, the bastard race teaches about the power of margins and the importance of a mother like Malinche. Women of colour have transformed her from the evil mother of masculinist fear into the originally literate mother who teaches survival. This is not just literary deconstruction, but liminal transformation.<sup>51</sup>

Noise and pollution itself can shake the rigidity of ritual. Margins can be a locus for power. “These cyborgs are the people who refuse to disappear on cue, no matter how many times a ‘Western’ commentator remarks on the sad passing of another primitive, another organic group done in by ‘Western’ technology, by writing.”<sup>52</sup> Rather, we are using and reshaping the tools we have. If language changes ideas in expressing them and the converse is also true, actions change tools as well. The opposition of liberal and radical approaches to social justice, then, is another symptom of misunderstanding cyborg reality. Haraway gives her final cyborg admonition:

This is not a dream of a common language, but of a powerful infidel heteroglossia. It is an imagination of a feminist speaking in tongues to strike fear into the circuits of the supersavers of the new right. It means both building and destroying machines, identities, categories, relationships, space stories. Though both are bound in the spiral dance, I would rather be a cyborg than a goddess.<sup>53</sup>

For the law, traditional notions of right and wrong, of pollution and disease are confused by cyborg understandings. “Disease is a subspecies of information malfunction or communications pathology; disease is a process of misrecognition or transgression of the boundaries of a strategic assemblage called self.”<sup>54</sup> Social disease must be corrected through the information of law, which reacts to anomaly and thus defeats pollution within the system.

The law depends on perversions of meaning, the shaping of reality such that it fits into the same “cherished classifications.”

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<sup>51</sup> *Id.* at 176-7.

<sup>52</sup> *Id.* at 177.

<sup>53</sup> *Id.* at 181.

<sup>54</sup> *Id.* at 212.

Expansionist Western medical discourse in colonizing contexts has been obsessed with the notion of contagion and hostile penetration of the healthy body, as well as of terrorism and mutiny from within. This approach to disease involved a stunning reversal: the colonized was perceived as the invader. In the face of the disease genocides accompanying European “penetration” of the globe, the “coloured” body of the colonized was constructed as the dark source of infection, pollution, disorder, and so on, that threatened to overwhelm white manhood (cities, civilization, the family, the white personal body) with its decadent emanations. In establishing the game parks of Africa, European law turned indigenous human inhabitants of the “nature reserves” into poachers, invaders in their own terrain, or into part of the wildlife. The residue of the history of colonial tropical medicine and natural history in late twentieth-century immune discourse should not be underestimated.<sup>55</sup>

This is reminiscent of the ways European/U.S. law turned indigenous Americans into invaders in their own terrain, and of the way contracts law turned Mary Beth Whitehead<sup>56</sup> into a poacher of the contents of her own womb based on contract law. The law as pollution ritual relies upon this sort of bastardization, but as we have seen, bastardization can also be used to subvert the law. This is exactly why I have no compunctions whatsoever about reading what I see as freedom into the Constitution, into Human Rights law, wherever I need to see it. This is my trickster approach to the law.

## V. AN EMBODIED LAW SCHOOL EXPERIENCE

A few months into your first year, when you pause to reflect on your legal education, you may feel cheated. You have been. Think about it—social conflict (as seen through the lens of legal disputes) is about real people facing real problems with real consequences awaiting them depending on the resolution of the dispute. Legal education (as presented through the study of appellate cases) is about the manipulation of abstract principles to maintain the status quo.

—Michael Friedman, from *The National Lawyers Guild  
Disorientation Handbook*

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<sup>55</sup> *Id.* at 223.

<sup>56</sup> Whitehead was a traditional surrogate mother, which means that it was her genetic child. She was commissioned to have the child for the Sterns, and then changed her mind during the pregnancy and tried to keep the baby. One of the central philosophical issues surrounding this case was the idea of contracting “fertility services” and the uneasiness of using property notions to discuss human beings.

The fantastic and the ordinary commingle promiscuously.  
Boundary lines and rosters of actors—human and nonhuman—  
remain permanently contingent, full of history, open to change.

—Donna Haraway,  
Modest Witness@Second Millenium.FemaleMan8  
Meets OncoMouseJ, 1997.

\* \* \* \* \*

*My mother and I don't fight that often, but when we do, it's ugly. The latest blow up came when I visited her house for the first time after having pierced my lip. She really, really hates all of my mods. I mean hates them, as if they are separate evil forces that somehow surround me, but are not part of me.*

*She said, "Don't you understand that when I look at you, I have a visceral disgust reaction?!"*

*I said, "Well, that's awful. I'm sorry. Can you understand why that's hurtful to me?"*

*"Of course not!" She replied. "It's not you! It's that thing!"*

*It's not you. Why don't these victim groups understand? It's not them, it's something else. It's not you specifically, only everything about you.*

*What bothers my Mom about it, I think, is the real fear that the child for whom she wants everything positive to happen has scuttled her own ship, that she won't be accepted in society, and that, therefore, success will elude her. What bothers most people, I think, is the intentionality of such moves—that you've done something "unprofessional," "unorthodox," or just "unacceptable," and you did it on purpose. You have shown agency, and used that agency not to achieve some sought after thing or quality in society, but to "reject" those norms. If I had a huge, ugly scar on my face, people would pity me and then subconsciously reject me for certain things on the basis of my ugliness. But the fact that I've intentionally done something to myself is something else again. That agency deserves not only contempt or disgust, but also discipline and sanctions.*

*Hair is one thing. Purple hair is quite another. And locked hair, my friends, is altogether unacceptable. After all, the purple-haired girl may just grow out of it. The woman with locked hair will never shed what her locks scream to a white community that lives in fear of losing its privilege:*

*just Blackness, that's enough. She could have straightened her hair, but she chose not to! Discipline. Sanctions.*

*Let's be practical; she's worried about my not getting a job, and why not?! She's right. Such a silly thing, after all, I could, if I wanted to, be so much closer to acceptability! The thing is, Mom, no matter how hard I try, and what great strides of conformity I make, I will still be a woman. I will still not have that oily money sheen. And that's the worst part about the treadmill we are all on. Even if your privilege puts you way ahead of most other folks, you still can't reach the finish line.*

*Perhaps what most disturbs folks in the realm of body modifications is that the mods make it much more difficult to approach things in a disembodied way. If the goal of "professionalism," for example, is to eliminate all embodied contexts, then it makes it harder to achieve that goal if one is constantly jarred into noticing bodily things. Maybe this, coupled with non-traditional agency, is what the nexus of "visceral disgust" is for things like locked hair and pierced body parts.*

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I donated ova to pay for law school. That's what I did. I am the mythical \$50,000 woman. My finishing law school and becoming a lawyer depends, quite literally, on my body and how much it is worth. But to better understand this, here is the story.

### **A. The Mechanics of Egg Donation**

It all started in 1994 in Tucson, Arizona. I saw an advertisement in the Arizona Daily Wildcat<sup>57</sup> for an egg donation program through the University Medical Center. At this time I lived with my godson and his Mom, my close friend. I needed the money, so I went to UMC to check it out. I was screened and accepted, but when I found that I'd be required to give *myself* shots and that someone else couldn't give them to me, I chickened out.

Flash forward to 1996. I saw an advertisement in my school paper that called for college women to donate their eggs at a clinic in Scottsdale—a very wealthy part of the Metro Phoenix area. Again, I needed the money—only \$1500 at that time—so I went to the clinic. I needed that \$1500 because I was about to move to Alabama to do graduate work, and although I had a job, I needed an extra chunk of money to make the move possible. This time I followed through, and became an ova donor for the first time in July and August of 1996.

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<sup>57</sup> The school newspaper for the University of Arizona.



It works like this. You are screened extensively. You are physically examined by doctors, and your blood is screened in many ways (enough to require a solid ten to thirteen tubes of blood the first time you visit the clinic and several more each of the following times you go in). You are psychologically evaluated, and you take the Minnesota Multi-Phasic Personality Index (MMPI). The evaluating psychologist said that I am an extrovert and that I have Attention Deficit Hyperactivity Disorder. (She even offered me Ritalin, which I declined.) The MMPI consists of hundreds of questions hoping to trap you in your bizarre little human quirks, be they obsessive counting or psychotic behavior. True or false: I never get angry with my parents. False. I always tell the truth. Well, usually. . . false, I guess. My soul sometimes leaves my body. Gosh, this is a sensitively crafted instrument.

I saw a geneticist who determined that my family is free of “inheritable.” I was interviewed by the Nurse Coordinator in charge of donors, who seemed to be gauging my flakiness factor, for lack of a term of art. I was interviewed by the head doctor. My test scores were noted for the record, as were my grades, my career designs, the vocations of my family members, and a photograph.

Once a family picks you, you start on a drug called Lupron. Lupron shuts down your reproductive cycle, preventing you from ovulating on your own. (Rather, you are permitted to ovulate only at the behest of and in the fashion ordered by the clinic, which in and of itself is a bizarre little feat.) Lupron is administered daily via subcutaneous shots. They are little, you just give them right around your navel. They don’t hurt very much, although they might cause bruising when you give them day after day.

Because it shuts down your system to a certain extent, Lupron causes you to have menopause-like side effects. How interesting it was to be 23 years old and having hot flashes. Lupron also caused me severe migraine headaches and constant fatigue—but hey, it’s only four weeks, right? Four solid weeks.

Finally, your cycle is in sync with that of the woman who will be receiving your eggs. That means you start the stimulation cycle. At that time, this hormonal drug was called Humegon, and it was administered via intramuscular injection. These are the bigger ones that you get in your rear at the doctor’s office, only as a donor you have to administer them yourself (unless you have a very understanding friend who happens to be at your house every day at 6 a.m.).

These stimulation shots last about twelve days. The menopause symptoms go away, and instead you get the “emotional rollercoaster” effects you hear about. Also, because you are producing a whole batch of eggs instead of one, you swell and get very tender. That’s why they give healthy, fertile women like me fertility drugs, by the way: to maximize the harvest. (Yes, that’s really what it’s called.)

Then you get the last shot—called a trigger shot. 35 hours later, the eggs are “retrieved” in a minor surgical procedure. The day of the surgery, I received from the clinic a thick envelope full of twenties and fifties—my “donation” fee. I felt like a bank robber, carrying an envelope of worn, unmarked bills to my credit union to deposit. Much different from the cool, impersonal professionalism of a check, these faded bills made me wonder if someone painstakingly counted out their money just like I used to grudgingly count out the ones and fives that were my tips, each bill precious. It felt so bizarre to take the envelope, wanting to count it but not daring to in the office, and then rushing out to the car to count it there. The money came with a card. It said something about angels, which made me slightly nervous as I am not a Christian, and the crux of the message was “Thank you.” I still have it in a scrapbook somewhere.

I donated a second time through the same clinic in 1998, to fund my move to New York, this time. That was for \$2000—the raise was because as a repeat donor, they save money on screening and such. It was to the same couple; I know because I recognized the handwriting on the card. I actually saw them that time, in the hospital. As I lay on my hospital bed getting ready to go in, I overheard a conversation between a couple and a doctor. She was a school teacher. He was a firefighter. They seemed very nice. As I was wheeled away, I saw them, and recognized them from the clinic waiting room. They smiled broadly and she waved. It made me hope fervently that it would work again; their son was born in 1997, the coordinator told me.

After the surgery, I discovered that both times I had actually been donating to more than one couple. I make a *lot* of eggs each time I do it; 16 the first time, and 36 the second. Unfortunately for me, you only get paid per donation. So I got my \$2000 of moving money. But that was before I became more marketable.

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*When I took Property, I anxiously looked up in vitro fertilization, pregnancy, reproductive technology, and surrogacy in both my case book and my study aids, wondering what the law was in the area. I was aware, of course, of the Baby M case,<sup>58</sup> but I wondered what the overall state of the law was.*

*There was a one-line entry under surrogacy, and it read: “This area of the law is undecided.”*

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<sup>58</sup> *In Re Baby M*, 542 A.2d 52 (N.J. Super. Ch. Div. 1988).

### B. Ivy League Eggs

About the time I moved to New York to attend Columbia Law School, advertisements started appearing in Ivy League school papers looking for ova donors. But these advertisements were different than past versions because they were very specific:

Egg donor needed. Donor must be caucasian, 5'10" or taller, have proven Ivy League academic and athletic ability, blue eyes, and blonde or light brown hair. \$50,000.

Wasn't I disappointed; I am not tall enough, but otherwise fit the bill. Around that time I found a website online: [www.surrogacy.com](http://www.surrogacy.com). This site has a classified advertisement section, with spots for potential parents, potential surrogates, and potential egg donors. I went ahead and placed a detailed advertisement:

I am a graduate student at an Ivy League school. [I'd learned my lesson, you see, and I wondered exactly how much the Ivy had enhanced my value as a person.] I have blue eyes and straight, light brown hair. [I thought this avoided any racial ambiguity.] My skin is fair but tannable, without freckles. I have straight teeth and have never had orthodonture. I am attractive and fit, 5'7", about 135 pounds. I have very high standardized test and IQ scores. [All of these traits are things I saw people constantly concerned about, so I went with the flow. The 135 is fudged, I admit.]

The advertisement went on to promote my musical and artistic abilities, my athletic accomplishments, my publications, fluency in foreign languages, and so on. I waited to hear, still not aware of how much I was worth.

Another nationwide advertisement came out, and this time I fit the bill exactly, because it was just like the first one, only with a height requirement of 5'7" or taller. I answered it and entered a new level of screening. The entity at the other end of the advertisement was a law office in San Diego. Their specialty is surrogacy and egg donation; that's all they do there. In addition to providing all of my records, I filled out *lengthy* questionnaires that asked about my entire family in painful detail. For example, not knowing whether my grandparents had acne, I simply answered "no." I also provided approximately 30 pictures. They wanted facial close-ups at every age, profiles, photographs of my siblings, parents, and other family members at various ages.

I didn't try to hide my tattoos and piercings from them. I mean the doctors will see them eventually. In the photos, nothing is very visible. My nose nail is almost invisible, and nothing else shows. But I knew the "weirdness" factor would perhaps be an issue when competing for high fees.

As soon as the online advertisement went up, I received replies from almost every couple advertising on the site. They were on my e-mail account, and so I spent a lot of time answering messages, revealing and re-revealing myself, over and over again. I couldn't remember whom I'd told what, or how many times.

The advertisement was fruitful. I did several cycles for thousands of dollars—enough to pay off all my debt from undergraduate and graduate school. National protocol limits donors to three to five times over the course of a lifetime depending on the doctor, but I have actually done it more times than that. So I lie about it. I say I've done it twice everywhere I go. While I got a good offer from someone last summer, I couldn't take advantage—they use a clinic in New Jersey I've already been to. The reason they limit your donations is not genetic. Rather, there are connections between fertility drugs and cancer that are as yet not completely clear. They limit your donations for your own safety. Unfortunately, quitting school was not an option to me, so I risked my health, although I remain unconvinced that I am in any real danger—at least on an intellectual level. I guess we'll see.

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*I have dreams about ovarian cancer. Day dreams and night dreams. I know day dreams are supposed to be good, but they aren't always, and you definitely cannot control them—at least "I" can't.*

*The dream usually goes like this. It is right now, not in the future, and I find out that I have ovarian cancer, and that I have a few months to live. I am not sick, and have no pain—so I suppose my dreams are much nicer than the reality would be. The pain comes mentally, emotionally. Here's what always happens. I decide I have to go back to Arizona, to be near my family. Also, I have always felt I would die in Arizona, where I came from. Anyway, I then have to say goodbye to everyone I have here. Everyone. It is the hardest thing in the world. And then I just leave—to die. Sometimes my dream includes a trip back to Alabama to say goodbye to my peeps there, sometimes not. Finally, I am back in Arizona. My mom is who I remember the most. She is in every dream. She cries and rages, she is mad at me for doing it, and I am mad at myself. I miss my Mom a lot, and I always wake up crying, or, if already awake, feel very sad and teary for a minute.*

*Whenever I've been in a fertility clinic, they always have had magazine articles up on bulletin boards. They always have one about how fertility drugs are not actually linked to ovarian (or any other kind) of cancer. (Not the Journal of the American Medical Association, of course, but Mademoiselle . . . I wonder what audience that is supposed to appeal to! . .*

*. . . No, actually, I don't wonder.) But my best friend who is a pharmacist, says that Lupron, a drug I always have to use, is DEFINITELY linked to ovarian cancer.*

*I have visions of Gilda Radner dancing in my head.*

*I know, to some extent, what people think of me on this subject. It's weird. It's desperate. It's money—grubbing. (We have to remember the huge class divide that separates the donor class from the recipient class, and also that the folks here at Columbia are much more likely to fall into the latter. Their parents, their parents' friends, they themselves, after slaving away in firms, not knowing their "biological clocks" ticked out long ago. They'll remember me with bitterness as they go through IVF themselves. If that makes it easier, they are welcome to my image).*

*But you know what? I'm fucking tired of people judging me about it. If anyone understands issues like why we don't need any more white babies, why we need to debunk DNA myths, what the implications are, it's me. I think about it ALL OF THE TIME. I feel as though I am backed into an economic corner that only allows so many maneuvers. If one more person denies that reality to me by insisting that I should just make lots of money by working at a big law firm, I may smack them. Why is losing your mental health any less dangerous? I don't usually mind talking to people about it, I think the discussion needs to happen. What I don't like is people, rather than discussing it with me, telling me about their wise pronouncement on the whole matter.*

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After some time, I got a letter from that firm in San Diego asking me to contact them about my file. I did, and they said that the client for whom they ran the advertisement was no longer with them, and they wanted to know how to proceed with my file. I fished a little, playing dumb; well, just send it to me, I supposed. The woman on the phone then said, well, some of our donors are choosing to be a part of our online file system.

A-ha! I'd suspected as much. It is not even clear to me that there ever was a couple behind the advertisement, although there might have been. I remember commentators at the time the advertisements ran speculating that they were just trying to create a library of high profile donors across the country, and that they'd gradually screen us, and those who made the cut would be in their library. I think this is probably the case.

Anyway, she explained to me that this site was top secret, confidential—so much so that even I cannot see it. Only their paying clients, sworn to secrecy after taking a blood oath, I imagine, can see the

donor site. I guess I made the cut, part of a rogue's gallery of space age dimensions.

She then delicately broached the subject of fees. She wanted me to name a minimum price so that she can coordinate possible families. She reminded me that very few people can afford \$50,000. She suggested that it would be less trouble for me—fewer pointless contacts, I guess—if I named a minimum. I picked \$20,000 and decided to see what would happen. As our conversation ended, she intimated that she had a couple in mind for me, which, I suspect, was why they contacted me in the first place.

I wish I could see the rogue's gallery.

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*I have always found it very depressing that my fifteen minutes of fame seem to be arising from my fertility. There is something very insulting about your most famous feature being something that has nothing to do with your psyche, your mind, or your personal qualities. It's not that I'm embarrassed; I just wish I could be a famous writer or thinker or singer or even lawyer rather than a famous money-grubbing rabbit.*

*When the New Yorker did this article on IVF, I was featured prominently, only it wasn't really me. The author thought she was representing me, of course, but tattoos don't make the woman. It came out August 2, 1999, and every single person who knows or even has heard of me knew that this person, Cindy Schiller, was me. Those who actually know me well know that Cindy was just supposed to be me, and that she was a bad substitute.*

*A person from my class who is not a friend came up to me shortly after the article came out. He was visibly embarrassed for me. He kept repeating, "It was so intimate!" As far as I can tell, he was referring to her description of me as a person who has body piercings that only someone intimately acquainted with me would see. He seemed to miss entirely the intimacy of the violation; I don't mind someone describing my cookie nearly as much as someone equating me with it, even if they really mean my womb.*

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### C. Gene Magic Barbie

In our society of visibility and knowability, of examination and records, the unknowable has a mystical quality. Is this the magic appeal of DNA? Is this where it comes from? I have had to see several geneticists, my latest visit being the most bizarre. She said she had a surprise for me, and her excitement was almost tangible. She produced a print out that had

my very own chromosomes arranged, marked, and labeled. She explained what a few of the sets meant to my being, what aspects of me are coded therein. "And this set is where you got those beautiful blue eyes!" she gushed. She assured me, as I sat there gaping, struggling between insane laughter and tears, that I could have my very own copy. To do what with, I wondered? Make a little wallet-sized ID card so I can reassure folks on the street that I do in fact have grade AAA DNA? Just a super little genetic inheritance? The mysticism of my own DNA sequence, revealed, propelled by force into the realm of the seen and therefore understood. But even the DNA bar codes, even the beautiful, full-color illustration of the double helix and its little As, Gs, Ts, and Cs can't take away some feeling of magic. Isn't that what I'm selling, my own special brand of magic?

Upon entering a bar you might see a sign that says, "You must be 21 and prove it." You must be white and prove it?

One advertisement has been up on the site for months, since January 2000 as far as I know; it has also been renewed at least once, which is unusual. Here is an edited version of what it says:

We are a professional (lawyer and doctor) couple and were very successful in IVF. We still have eight embryos [sic] and are willing to donate them. The clinic where they are stored would charge the recipient \$6,000 but if we find the recipient, the recipient pays nothing. We also have difficulty with a policy of our not knowing who is the recipient in part because we don't want the children resulting from the embryos [sic] to meet twenty years later at Harvard and decide to get married. Our children are quite attractive (and, of course, smart).

This couple is incredibly giving. That is an amazing gift for someone to make. With the costs of IVF, it is amazing that this advertisement is still there. Why aren't people responding?<sup>59</sup> Here is the unedited version, italics mine:

We are a *bi-racial* professional (lawyer and doctor) couple and were very successful in IVF. We still have eight embryos and are willing to donate them. The clinic where they are stored would charge the recipient \$6,000 but if we find the recipient, the recipient pays nothing. We also have difficulty with a policy of our not knowing who is the recipient in part because we don't want the children resulting from the embryos to meet twenty years later at Harvard and decide to get married. Our children are quite attractive (and, of course, smart). *They look Latino or Israeli or simply mixed.*

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<sup>59</sup> It is certainly possible that people *are* responding, and that either the couple has not found someone they want to donate to yet, or they have simply not removed the advertisement. But since it was recently renewed, I doubt the latter possibility.

Before you can read any advertisement, you have to click on it. You decide whether or not you want to click on an advertisement based on its basics: hair color, eye color, race, and location. Interestingly, their race reads Caucasian. I think race is the reason this advertisement has been up for so long, another aspect of the pollution ritual. I want to think that people are responding, but I am not so sure. My close friend, who happens to be Black, placed an advertisement on the same site. It was basically the same as mine, as we have very similar educational backgrounds; the difference was that it indicated that she is Black. She received two responses, and one of them identified themselves as answering all advertisements they saw. (They answered mine too).

All of the national advertisements have specified that the donor must be Caucasian. I have only seen one advertisement that looked for a non-white donor, and it went something like this:

Wanted: Genius egg donor. Our ideal donor would be Asian/Oriental with 1500+ SATs at a top school with a 4.0 GPA.

Donna Haraway describes an advertisement for synthetic DNA:

The manifest content is that this company...will cheaply manufacture specific nucleic-acid sequences custom tailored for your lab. The latent content is that this product promises marvelous transformations . . . . Like a genie from *Arabian Nights*, Operon will grant your wishes; anything is possible. Synthetic DNA bears those kinds of promises. If DNA signifies "life itself" in the semiotic orders of biotechnology, synthetic DNA is especially open to realizing the future, and to realizing profit from your investment in the future.<sup>60</sup>

Does my advertisement do the same thing? Am I Gene (genie) Magic Barbie?

Body as indicator, not only of behavior, but of essence of being. Proof of the body, in the form of genetic bar codes blown up into visibility. Similar to the way children tend to rate attractive teachers as kinder, smarter, and more effective, you are what your body displays. Haraway describes this DNA mystification as fetishism:

But "corporeal fetishism," or more specifically gene fetishism, is about mistaking *heterogenous* relationality for a fixed, seemingly objective thing. Strong objectivity, in Sandra Harding's terms, and situated knowledge, in my terms, are lost in the pseudo-objectivity of gene fetishism, or any kind of corporeal fetishism that denies the ongoing work that it takes to sustain

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<sup>60</sup> Donna Haraway, *Modest Witness@Second Millenium.FemaleMan®*



technoscientific material-semiotic bodies in the world. The gene as fetish is a phantom object, like and unlike the commodity. Gene fetishism involves “forgetting” that bodies are nodes in webs of integrations, forgetting the tropic quality of all knowledge claims.<sup>61</sup>

Once in a fertility clinic, I sat there in line for the blood draw (as the wealthy white couples in the waiting room tried surreptitiously to examine my body art), reading a magazine article they had taped to the door. It was called, “Is There a Gene for Weirdness?” And I knew that must be on the minds of each couple in the waiting room as the nurse called me into the back as a donor. The article described that “they” had done a study, using various indicators of weirdness, including “Lack of respect for authority” and “Lack of patriotism.” Surely I am, indeed, quite weird on this scale, as would be predictable, I guess. Anyway, it concluded that there did seem to be some sort of link, without stating what that could possibly be, or how environmental factors could have been ruled out.

The advertisements march on:

We are a contented, stable, professional couple . . . . To create our family we need the help of a very special person. Ideally, our egg donor would be 21—30, have completed her family, be a non—smoker, non—drinker of alcohol or caffeine, healthy, athletic and intelligent. If you've been an egg donor before, that would be a welcome bonus . . . . If you would be talking to us, we'd like to receive a photo, family medical history, ancestry, IQ/educational background, and your reasons for being an egg donor . . . .<sup>62</sup>

We are looking for an undergraduate or graduate student to be our egg donor . . . . We would like to find a donor who is compassionate, intelligent, attractive and has an optimistic outlook on life. Our ideal donor is between 21—29, natural blonde or light brown hair, blue or green eyes, average height and weight. Previous donation a plus. Generous compensation + travel expenses.<sup>63</sup>

I could list other advertisements, but they're all basically the same. Not coincidentally, I fit almost all of them—on a superficial, physical level, anyway.

I am a negotiator, but what I must negotiate is my worth in dollars, the value of what I can or could be. If my SAT scores raise my price, my tattoos could lower it. I have to present myself in the best possible light,

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<sup>61</sup> *Id.* at 142.

<sup>62</sup> From [www.surrogacy.com](http://www.surrogacy.com).

<sup>63</sup> From [www.surrogacy.com](http://www.surrogacy.com).

maximizing my value. Is there something especially sad about placing yourself in this position? Or does my agency within the situation make it better? I am uncertain.

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*My complicity disgusts me sometimes. It makes me weary. More and more white babies in demand, and each time I participate, I help create the valued commodity.*

*I am in law school because I am an activist and a true believer. I am here to advocate for social change. I have not been sidetracked from my goals by the lure of money; I am not going to a firm, not going to sell out (in my case, that's exactly what it would mean).*

*What will I do in the world? Will it be worth it? What kind of damage have I contributed to by marketing Karla™? Why do I feel distinctly less special a person as a known, marketed commodity?*

*Somewhere in cyberspace there is an encrypted, top secret website. I am not authorized to access it, but I am on it, on display. I am a series of statistics and photographs, representations that are supposed to somehow capture my essence as a human being, and the potential within me for better things. My cyber self seems to be in direct opposition to my cyborg self; how ironic.*

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#### **D. Body Out of Bounds**

The final aspect of embodied law school experiences that bears mentioning is what my closest friend here and I have come to know as the hypervisibility/invisibility experience; I don't think there's a better title for it.

Since arriving at Columbia Law, I have felt hypervisible. This is a product of multiple factors interacting that end up making me feel superknown. If this is any indicator of what fame might be like, I am not interested. My friend has had the opposite experience: invisibility. She is Black and I am white, and while we do not think that this is the only key to the puzzle, we think it is certainly important. Another main aspect of our different experiences has to do with class issues, as I will explain. The point is that we are both polluters in the law school context, for various reasons. The reactions of our classmates are based on pollution beliefs apparent in larger society.

I do not deny that some of this may also be caused by our different personalities. I realize that she is a more soft-spoken person, and that I could be considered “loud” in more ways than one. Even so, I think that there is something more at work here.

My first personal example for your consideration is based on a chain of e-mails that I was a part of. A man who is on the Law Review and in the Society for Law and Ideas started the thread. He was upset by the creation of the Progressive Society. This Progressive Society was the brainchild of a few professors who were concerned that the Federalist Society had no liberal counterpart in law schools. But their distress was not with any lack of diverse voices. Instead, it springs from the “failure” of “the left” to use the organized, national structure that the Federalists use to get ahead; no progressive good ol’ boys network, you see. So a small group of students started the Progressive Society to fill this need.

I was not involved with this group, for two reasons. The first is that I was not asked to be. This could be for any number of reasons, including the fact that I am overcommitted as it is, or perhaps the idea some of the students may have had that I would not be interested in it. (They would be correct). It could also be that I am not in the “intellectual elite” of the school (as far as it is focused on the Law Review). This leads to the second reason I am not involved, which is simply that I don’t think mirroring the Federalist Society is progressive, nor do I appreciate what I perceive to be elitism. I am not interested in networking with judges, or networking with anyone, for that matter. The few times I have caved and done it made my sick with myself.

In any case, this man decided to set up an e mail discussion about the Progressive Society using a proposed debate about the propriety of the professorial conduct in setting up the group as a vehicle. He wanted the Law and Ideas folks to sponsor it.

At this point I think it is useful to note that this is the same person who, in another e-mail discussion among Law Review members, voted against a proposed Review issue focusing on female and minority voices. His idea was that the only reason we even *have* female voices at the law school is to teach family law and because they are married to famous male professors Columbia wanted to lure to the school.<sup>64</sup> His views on minority faculty were not expressed as far as I know, although I am sorely tempted to speculate about them based on his other comments. It is possible that his commentary was meant in a constructive way, but I remain unconvinced. In any case, it’s the same guy we’re talking about here.

His Progressive Society e-mail began like this. “Most people on this list are Law Review or Law and Ideas people; there are a few other

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<sup>64</sup> I was privy to the discussion from the outside, because of a few friends on the Review. I think it’s pretty clear that these events refer to recent hiring decisions here at the school.

people included for various reasons.” I was one of the “various reasons” people lucky enough to have been included, you see. His well-rehearsed and edited rant used more fifty cent words than you could shake a stick at, and was so thick with cultural references that reading it reminded me of trying to walk around in my room in high school. He accused the professors of hand-picking all Law Review people to start the group, and using the student group forum to promote their own ideas, all the while comparing the people involved to Bolsheviks smoking thin, black cigarettes. His point was that we should have a debate to explore the ethics of professors using student forums in this way.<sup>65</sup>

It was immediately apparent to me why I was included on the list. I was included because as a person who is heavily involved with student activities, and a person who is *not* on the Law Review, I was supposed to get mad. He figured I’d be upset at this elitist usurpation of the student group forum, and wanted to use my ire to his advantage, I think.

I did respond, trying to point out that he’d missed the boat on this one, and that I couldn’t possibly fight for him. I also made what I thought were a few choice remarks that pointed out why “progressive” activities did not necessarily look like what was at issue here. I signed the message “Karla ‘white trash diversity’ Momberger.” He responded that he’d not meant to call anyone names. Unfortunately, point missed again.

But what happened next was even more interesting. A woman who, as far as I could tell, was the only other “miscellaneous” person on the list and is active in student groups responded to the chain. She ignored all of what had been said, and instead ranted about what people should really be doing to help progressive causes at the school. In doing so, she used my name several times, like this: “Karla and I have often talked about . . .” or “I know Karla agrees with me when I say. . .” She also mentioned the name of a 1L who she described this way: “\_\_\_, for those of you who don’t know her, is the Karla of the 1L class.”<sup>66</sup> This was disturbing to me on several levels.

First of all, I felt uncomfortable with my name being used to legitimize something with which I was not actually involved. I felt she’d used what she had perceived to be my image to signify to her own

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<sup>65</sup> His full agenda is unclear to me, although I have my suspicions. One idea is that his libertarian ideals are offended by this kind of faculty involvement. Another is that he is against the idea of the Progressive Society *in toto*. Yet another is that it’s a personal spat between him and the founders of the society who are mostly Law Review folks. Or finally, as suggested by a friend, he could simply be evil.

<sup>66</sup> This is, by the way, a person who does this often. Recently, she went to a student senate meeting and accused it of corruption. When challenged, she said that I agreed with her; an argument then ensued between her and another woman who insisted she not speak for me. While I do agree that the senate is corrupt, I was disturbed about my unplanned injection into yet another debate.

advantage. Next, I was and am perplexed by the “Karla of the 1L year” comment.

Was *I* the Karla of the 1L year last year, or was I just Karla? Was I the someone else of the 1L year? Is this a pattern of mimicry? And what about the other girl? Is she not a real person until next year there is a 1L “just like” her?

Let me introduce an example of the difference between my experience here and my friend’s. Since I got here, it has felt like everyone knew who I was—or at least *had some image in their minds about who I am*. In contrast, even people who should know my friend can’t seem to place her.

For me, I found out from friends that as soon as I got to the school I was discussed widely based on my appearance. My friend Bill heard about me almost right away, in this manner: “There is this 1L girl who has tons of tattoos and piercings, and she’s even pierced *down there!*” Somehow, almost immediately after my arrival at law school, my most intimate parts—parts that remain to this day, mind you, unknown and unseen by almost any person at the school—were broadly discussed at some length, I’m told. Let me say that I not embarrassed about any aspect of my body, nor do I try to keep my body art a big secret. But even so, this was very disturbing.

For my friend, it’s been just the opposite, and, I think, considerably worse. She and I have been in the same sections since day one. We sat near each other at the front of the class in Legal Methods. But even so, many of our classmates always recognize me and never recognize her. I’ll give you an example that happens to us frequently. We were sitting in the lobby of the school. A man who was in all of our sections came to talk to me. He asked me a question about our class, ignoring her. He then said, “I don’t think we’ve met. I’m \_\_\_\_.” *He then did this again about two weeks later.* Each time I corrected him and pointed out that we were all in the same class.

Another time, she came to participate in the Housing Law Clinic that I helped run. This night I was running around doing errands, so I was not with her. She walked into the clinic and was greeted by two students from our section. One of them asked her, “Hi! Welcome to the clinic, I assume you’re here for housing help.” When she clarified that she was indeed a law student, he seemed uncomfortable but offered her a seat—next to the clients. She was also mistaken for a client when she went to the clinic office to apply for her clinic—*twice*.

Discussing these events at length, we think that these are all symptoms of our embodied law school experiences. Our bodies are ourselves to a fault. The impressions that our fellow students have received from our bodies have turned into our public identities.

Neither one of us looks like “A Law Student.” We are both female, for one thing, and although this is much more common now, it is still a

factor. Class is a major issue for both of us. I appear to many people here, I think, as “white trash”, or lower class somehow. This is not to say that people consciously think of me as trashy. Instead, because I have visible tattoos, strange clothes, and wild-looking hair, for example, I signal white trash within larger societal pollution beliefs. In addition, I behave in ways that support this image: I laugh out loud in inappropriate places and use profanity liberally and in class. I think if you asked someone directly, they might just call me eccentric. But I think the web of factors that can make me seem eccentric are based on class cues, pollution beliefs.

In my friend’s case, she is a Black woman in law school halls, which is still not as common as it should be. Her hair is braided or wrapped, not straightened. And, as she has pointed out, she does not dress up. She wears casual or sweat pants to school often, and tee shirts or old sweaters. That’s why, as she’s wryly commented, people think she just rolled in off the street.

It is extremely troubling that she can walk through the halls, day and in day out, attend classes, and otherwise interact with people, and still not be known to them. It is not a matter of forgetting a person’s name; it is a matter of not even having them within your field of perception. I can skip my entire first year of classes and still people know who I am, while she can be there every day and be ignored.

Someone once said to us, “You know, you two are the last two people I’d put together as friends!”

Our experiences in law school are shaped by our bodies. We are processed by our classmates in such different ways but for what are after all similar reasons. Just like our online ova donation advertisements, a lot comes down to our bodies, which signal what and who we are.

As humans, we classify. Law school and the resulting legal profession are not the only places dependent on such classifications. However, I think because the law pivots on the idea that there are discernable, oppositional categories like right and wrong, learning to “think like a lawyer” is learning to hone your categorization skills. Learning to be a lawyer means cutting to the heart of the issue, but what this ends up meaning in practice is ignoring all external factors in favor of a simplistic “yes or no,” “guilty or not guilty” answer.

That is why you are either a Law Student—a white guy in J. Crew—or a poor housing law client. That is why everyone knows who you are; to recognize self, there must be an other. Being widely recognized as a polluter, I am an anomaly that must somehow be resolved. I am, then, just Karla™, dismissible in my strangeness (after all, freaks or monsters may be born, but they cannot survive in the world). My friend can just be ignored, stared straight through, invisible; this too is a way of confronting the anomaly of the polluter.

What does it mean to be seen as included only by accident, only because of your body? How is my identity as a lawyer shaped by my embodied law school experience? Will these marks help us or hurt us?

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In the computer lab filled with law students, I am checking my e-mail and working on a flyer. I send it to print, and get up to get it. As I walk back to the computer, a few grade school girls from one of the tutorial projects confront me. The leader walks up to me looking horrified but curious. She wants to touch my face, and I realize she is reacting to my lip ring. She just gasps, "Why?! Why?!" Over and over again, still moving to touch my face. There is a heavy, tangibly forced silence in the lab; classmates seem to be embarrassed not only of me, but for me. One of the other girls says, "You're one of the shiniest white girls I ever seen!" Really, I kind of like that. I'm a shiny white girl, and a lot of the shine is just an optical illusion created by the interaction between my setting and my self.

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## VI. ORIGIN MYTH

She was born from nothing  
the center of her own universe  
until  
She learned that her goal must be toughness  
no how, contrariwise.

I knew a girl who swallowed and swallowed  
accepting the world,  
bloated and uncomfortable.

I knew a girl who knew she could take it  
Whatever it was.

She swallowed her rage and turned her belly into a furnace  
where she forged weapons of destruction  
just like her father after all

She swallowed her bitterness and made her liver  
a library of disappointment  
true blue

She swallowed the acid of rage  
jaws aching with a starchy smile  
half moons pressed into palms

sweaty.

She swallowed and swallowed until one day she refused it.

In rat studies, they say that intermittent rewards work best,  
mixed punishment and gratification.

She decided she didn't want rat expectations  
didn't want to push the buzzer again and again and again  
just like swallowing.

So she took the chalky, itchy lump to be swallowed  
"eat me," just like for Alice,  
and she ground it into the asphalt on the street  
palm bleeding and dirty.

Ground into dust  
rain and gutter water washed it away  
pseudo birth.

Patterns remained, printed in her soul  
maybe part of her genome  
hard wired  
maybe.

But the swelling has gone down now.

Smooth muscles and callous remain.

As she caught an accidental glimpse of her hand in sunlight,  
tiny lines,  
visible signs,  
buckled skin,  
ragged, dirty nails with gold polish chipped  
She realized this was her origin.

She is a hunter from within the margin.