

1-1-2005

Latinas in Legal Education- Through the Doors of Opportunity: Assimilation, Marginalization, Cooptation or Transformation?

Antoinette M. Sedillo Lopez
University of New Mexico - School of Law

Follow this and additional works at: https://digitalrepository.unm.edu/law_facultyscholarship



Part of the [Law and Gender Commons](#), and the [Law and Race Commons](#)

Recommended Citation

Antoinette M. Sedillo Lopez, *Latinas in Legal Education- Through the Doors of Opportunity: Assimilation, Marginalization, Cooptation or Transformation?*, 13 American University Journal of Gender, Social Policy & the Law 109 (2005).

Available at: https://digitalrepository.unm.edu/law_facultyscholarship/17

This Article is brought to you for free and open access by the UNM School of Law at UNM Digital Repository. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of UNM Digital Repository. For more information, please contact amywinter@unm.edu, lsloane@salud.unm.edu, sarahrk@unm.edu.

LATINAS IN LEGAL EDUCATION

THROUGH THE DOORS OF OPPORTUNITY: ASSIMILATION, MARGINALIZATION, COOPTATION OR TRANSFORMATION?

ANTOINETTE SEDILLO LOPEZ*

Introduction	110
I. The Personal Costs: How a Woman of Color Could Perceive the Path to Success Differently from a Man of Color.....	112
A. Assimilation—Changing to Suit the Larger Dominant Society	112
B. Marginalization—Remaining Outside: Being a Member but Having No Voice in the Professional Community	116
C. Cooptation—Losing Self, Erasing Past, Identifying with Values at Odds with Community Interest	118
D. Transformation—Changing Paradigms, Growing, Change, and Fusion	118
II. What Comes After “Transformation”?.....	121
Conclusion	122

* Professor of Law and Associate Dean for Clinical Affairs, *University of New Mexico School of Law*. J.D., *University of California, Los Angeles*, 1982; B.U.S., *University of New Mexico*, 1979. I would like to thank Rachel Moran and the other conference organizers for their hard work and for inviting me to present these ideas at the Joint Association of American Law Schools (“AALS”), American Bar Association (“ABA”) Commission on Women in the Profession, and ABA Section of Legal Education and Admission to the Bar Workshop, *Taking Stock: Women of All Colors in Legal Education*. I would also like to thank the students and faculty members who attended my presentation at the University of Houston Law Center as part of Lonny Hoffman’s legal scholarship course. Their responses helped develop my thinking on these issues. My thanks also to the organizers of the *Feminism and Legal Theory Project* for inviting me to present at the conference held at American University Washington College of Law on March 18-19, 2004.

INTRODUCTION

The organizers of the Association of American Law Schools/American Bar Association symposium, "Taking Stock: Women of All Colors in Legal Education," entitled the first plenary panel, "Getting in the Door: Assimilation, Marginalization, Transformation or Cooptation."¹ The organizers of the conference invited speakers to link the concepts of assimilation, cooptation, marginalization, and transformation with the objective of opening doors of opportunity. In preparing for that speech, I realized that these concepts and issues are very complicated and that I can only speak from my perspective. I do not pretend to have answers, nor do I purport to speak for all women of color or even for all Latinas.

The doors of opportunity that I will address are the doors at the end of the pathway that leaves poverty behind. I could spend a lot of time talking about the meaning of success,² but I will arbitrarily define "success" for this essay as "achieving a satisfying professional life," although I believe there are many other definitions.³ The pathway from poverty to this type of success is elusive for people of color.⁴ This pathway has great benefits, of course, but is not without its costs.

This essay will present my thoughts and some of my poetry about the costs and benefits along the pathway of success. In describing personal stories and scholarship written by men and women of color

1. See generally Rachel F. Moran, *Taking Stock: Women of All Colors in Legal Education*, 53 J. LEGAL EDUC. 467, 467 (2003) (explaining that the symposium aimed to discuss the substantial increase in minority women in legal education and in the legal profession).

2. See TAMIS HOOVER RENTERIA, CHICANO PROFESSIONALS: CULTURE, CONFLICT AND IDENTITY 101 (1998) (recounting the success stories of Chicano professionals in relation to the racism faced in achieving success). One story is the rags to riches bootstrap story, the "classic American success story" of making it through the education system by their own effort. *Id.* The second contradictory story is viewed through the culture of "Chicanismo" in which the Chicano professional has broken through the barriers of racism and discrimination. *Id.*

3. I recognize that this is a very privileged definition of success. For many people around the world, simply having enough food to eat could constitute success.

4. See U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, OCCUPATIONAL EMPLOYMENT IN PRIVATE INDUSTRY BY RACE/ETHNIC GROUP/SEX AND BY INDUSTRY (2002) (providing statistics which show that in private industry employment, whites hold more high paying jobs than Latinos or African Americans), at <http://www.eeoc.gov/stats/jobpat/2002/us.html> (last visited Jan. 30, 2005); see also Trina Grillo, *Tenure and Minority Women Law Professors: Separating the Strands*, 31 U.S.F. L. REV. 747, 748 (1997) (arguing that minority female professors face overt and covert sexism and racism which negatively impacts their ability to attain tenure); Miguel Mendez and Leo Martinez, *Toward a Statistical Profile of Latina/os in the Legal Profession*, 13 BERKELEY LA RAZA L.J. 59 (2002) (describing the low numbers of Latino and Latina attorneys relative to their percentage in the population); Deborah Jones Merritt & Barbara F. Reskin, *Sex, Race and Credentials: The Truth About Affirmative Action in Law Faculty Hiring*, 97 COLUM. L. REV. 199, 274 (1997) (finding that white women and men of color benefit from affirmative action in law school hiring more than women of color). Despite this disparity, Merritt and Reskin found that neither sex nor race increased a professor's chances of appointment at a top sixteen law school. *Id.*

involving assimilation, marginalization, cooptation, and transformation issues, this essay will first show that a woman of color's perspective on achieving success differs from a man of color's perspective.⁵ Second, it will explain why women of color have a different perspective from white women. Finally, the essay will discuss the challenges posed by a post—"transformation" world.

*Crack'd Mask*⁶

his mask cracked
I saw his shame/pain

raw, red and black and purple
poking through cracks in the smooth brown
face mask

well-toned muscles, slim
spa membership, well earned

elegant attire
clashes with the purple shame/pain

extravagant home
spa bathroom
no more outhouse with the crooked door

gourmet meals
no more beans fried in lard
served on tortillas with rice

the perfect wife
the perfect children
the perfect martini

dry with a twist of lemon
no olive
Why the shame/pain
at the odd moment?

shame/pain
anger/hurt
race/hate
privilege/lost
success/cost

What price are you willing to pay?
With an extra charge for the color of skin?

5. I want to emphasize that these thoughts are my own. I do not suggest that I speak for all women of color or even all Chicana professionals. For many different perspectives by women of color who are attorneys, see generally DEAR SISTERS, DEAR DAUGHTERS: WORDS OF WISDOM FROM MULTICULTURAL WOMEN ATTORNEYS WHO HAVE BEEN THERE AND DONE THAT (Karen Clanton ed., 2000).

6. Antoinette Sedillo Lopez, *Crack'd Mask* (2003) (unpublished poem, on file with author).

I. THE PERSONAL COSTS: HOW A WOMAN OF COLOR COULD PERCEIVE THE PATH TO SUCCESS DIFFERENTLY FROM A MAN OF COLOR

A. Assimilation—Changing to Suit the Larger Dominant Society

In 1991, Richard Delgado published an essay that was difficult for me to understand as a young, eager, Chicana law professor who was quite proud of my accomplishments.⁷ I think my difficulty in understanding the essay is related to my naiveté in some ways, but also to my gender.⁸ The essay was based on a speech I heard him deliver at a Hispanic National Bar Association luncheon. Delgado argues that one justification for affirmative action is for successful professionals of color to serve as role models for their communities.⁹ He concludes that “role models” ultimately further a majoritarian agenda, and do not further the interests of people of color.¹⁰ Delgado cites five reasons that law teachers of color should not serve as “role models.”¹¹

7. See Richard Delgado, *Affirmative Action as a Majoritarian Device: Or, Do You Really Want To Be a Role Model?*, 89 MICH. L. REV. 1222, 1226 (1991) (arguing that to be a good role model, one must assimilate to society by conforming to societal standards of beauty, politeness, grooming, and responsibility); see also Roy L. Brooks, *Life After Tenure: Can Minority Law Professors Avoid the Clyde Ferguson Syndrome?*, 20 U.S.F. L. REV. 419, 423 (1986) (explaining that although black Americans are not responsible for the development of the “black underclass,” black law professors are often placed in the position of speaking on behalf of the black underclass and black problems); Rennard Strickland, *Scholarship in the Academic Circus or the Balancing Act at the Minority Side Show*, 20 U.S.F. L. REV. 491, 494 (1986) (stating that in the “academic circus,” minority law school professors must wear their ethnic masks in order to participate in the legal culture).

8. I recognize that the feminist community is conflicted about whether women and men do have psychological gender differences, or “a different voice.” Compare Carrie Menkel-Meadow, *Portia in a Different Voice: Speculations on a Woman’s Lawyering Process*, 1 BERKELEY WOMEN’S L.J. 3 (1985), and Carrie Menkel-Meadow, *Portia Redux: Another Look at Gender, Feminism, and Legal Ethics*, 2 VA. J. SOC. POL’Y & L. 75 (1994) (describing ways in which women’s different perspective might change how law is practiced), with Margaret Radin, *Reply: Please be Careful with Cultural Feminism*, 45 STAN. L. REV. 1567 (1993) (expressing concern about how “differences” could be used to justify disparate treatment of women). I know the dangers of asserting that men and women may be wired differently, however, in my experience, I have found women law teachers to be more vulnerable to responding to demands placed on them, whether by conditioning or circumstances. See Ellen K. Solender, *The Story of a Self-Effacing Feminist Law Professor*, 4 AM. U. J. GENDER & L. 249 (1995) (describing a women law professor’s experience teaching overloads for lower pay than her colleagues).

9. See Delgado, *supra* note 7, at 1227 (claiming that “white-dominated institutions” hire minorities, not because a minority deserves the job, but because the institution believes that minorities serve as role models). But see Enrique R. Carrasco, *Collective Recognition as a Communitarian Device: Or, Of Course We Want To Be Role Models!*, 9 LA RAZA L. J. 81, 95 (1996) (believing that a role model is an individual who generates critical interpretation to social issues rather than conforming to social norms).

10. See Delgado, *supra* note 7, at 1224 (noting that although affirmative action aims to create role models, affirmative action only assures the promotion or hiring of a small number of people of color so as to avoid the destabilization of whites).

11. See *id.* at 1226-27 (arguing that serving as a role model 1) is a difficult job; 2) treats minority professors as a means to an end; 3) creates confusion as to the necessary responsibilities of a role model; 4) requires assimilation; and 5) forces role models to lie).

First, he joked that being a role model is “hard, sweaty work,” involving heavy lifting.¹² I, of course, loved my job, and saw many people with whom I went to grade school and high school cleaning houses, waiting on tables, ironing, digging ditches, laying bricks, fixing cars, picking up garbage, and doing piecework in factories. I did not think teaching law was hard work, the way I know hard, disheartening work can be.¹³

Second, the role model job treats you as a means to an end, and even your own “constituency” begins to see you as having a specific function within the institution. You are supposed to serve on committees, be a faculty advisor to certain groups, deliver a certain type of “role model” speech, and so on.¹⁴ I have been the faculty advisor to the Mexican American Law Student Association (“MALSA”) since I joined the faculty and I have found it rewarding, not without its stresses, but important and rewarding work. Again, maybe because of my female “helping” instincts and false consciousness,¹⁵ I cherished the responsibilities against which Professor Delgado cautioned.

Recently, however, I experienced how difficult this role can be. The state bar invited me to speak at a gathering of the leaders of “specialty bars” or organizations for lawyers of color. After my presentation, one member had some concerns about the law school, and in response to my suggestion about the dean’s agenda, said, “If the dean of the law school cares so much about our issues, why isn’t *she* here?” Subtext: “Why did she send her token minority representative?” Even though I am an associate dean, and even though I have served as president of the New Mexico Hispanic Bar Association, I was demeaned at a meeting where I would not have expected such treatment.¹⁶ I realized that in some positions, the path

12. See *id.* at 1227 (stating that a role model must “uplift your entire people”).

13. See, e.g., Mary Romero, *Day Work in the Suburbs: The Work Experience of Chicana Private Housekeepers*, in *LATINA ISSUES: FRAGMENTS OF HISTORIA (ELLA) (HERSTORY)* 147, 151-52 (Antoinette Sedillo Lopez ed., 1999) (describing the common Chicana experience of being unable to find work beyond domestic services). Although these Chicanas found domestic work, they only found low-paying and low-status jobs. *Id.*; see also Berta Esperanza Hernandez-Truyol, *Las Olvidadas—Gendered in Justice/Gendered Injustice: Latinas, Fronteras and the Law*, 1 J. GENDER RACE & JUST. 353, 358 (1998) (asserting that Latinas are the “lowest wage earners among all workers” and that Latinas are twice as likely as non-Latina white women to hold the lowest paying jobs).

14. See Delgado, *supra* note 7, at 1227 (suggesting that employer institutions view minority professors hired through affirmative action as being “a means to an end” who are there only to “serve” them).

15. See Leslie Espinoza Garvey, *Beyond the Matrix: The Psychological Cost of Fighting for Gender Justice in Law Teaching*, 11 S. CAL. REV. L. & WOMEN’S STUD. 305 (2002) (describing a Latina law professor’s psychological difficulties with trying to fit as a legal academic while simultaneously bringing her own values to the enterprise).

16. Alfred Mathewson, a colleague, pointed out that the comment was not directed at me personally, but at me as an associate dean representing the law school. I know that he is correct and the comment was an unintentional slight. I think that unintentional slights hurt more than intentional slights, however, because they

for a professional of color will present situations of marginalization even from our own people. I realized that for many of us on that path, our mentality is colonized.¹⁷ We look for leadership, do not see it among ourselves, and only see it in white leaders.¹⁸ We must learn to cultivate leadership among ourselves, support each other when appropriate, and withhold support when appropriate, free of an internalized feeling of inferiority.

A huge challenge for us, as faculty of color, is to deal with values and world views that are developed through interaction and conversations that are different from interactions and conversations held among white people and between white people and people of color. For example, I recently discovered that after a prominent Latino graduate of our law school got his first multi-million dollar judgment, a prominent white lawyer told him, "That is outrageous, Mexicans shouldn't get that much." The story is hard as it is, but I also discovered that he had apparently never told that story to any of my white colleagues, some of whom are his close friends.¹⁹ I believe that many of the conversations people of color have with each other, at least those that reveal racism or frustration, are not shared with white people. While these stories provide us with an outlet or a shared sense of community,²⁰ they also make the world look different to us and to our white colleagues.²¹ Cognitive psychologists describe this phenomenon as creating "schemas," where we begin to see only what we expect to see.²²

The third point that Richard Delgado makes is that the job

contribute to a feeling of invisibility in a way that intentional slights do not.

17. See, e.g., Laura M. Padilla, "But You're Not a Dirty Mexican": *Internalized Oppression, Latinos & Law*, 7 TEX. HISP. J.L. & POL'Y 59, 67-69 (2001) (explaining that the history of colonization and exploitation of Mexican people by the United States has caused many Latinos to feel subservient to their white colleagues).

18. See *id.* at 70 (suggesting that Latinos have been conditioned for centuries to want to be white, as being white would bring them greater economic, political, and social security).

19. Some faculty members tried to explain that the comment could have nothing to do with race, but with economics, since the clients were Mexican, they would "naturally have lower lost earnings." While it is possible that the white lawyer was thinking about the perceived low monetary value of the case in making his comment, it is sad that the premise of the perceived low monetary value of the case is not questioned. Why do we live in a society where some lives are "worth" less than others? Unfortunately, the correlation of lower values with race, is another demonstration of systemic racism.

20. See RENTERIA, *supra* note 2, at 97 (describing how the sharing of stories regarding experienced racism builds a sense of community and shared identity among Chicanos).

21. I do not know what stories white individuals share with each other, because, for obvious reasons, I cannot participate in such stories.

22. See, e.g., Sandra Lipsitz Bem, *Gender Schema Theory: A Cognitive Account of Sex Typing*, 88 PSYCHOL. REV. 354, 355 (1981) (explaining that schema theory is a process by which an individual perceives incoming information in conjunction with pre-existing information).

description of a role model is unclear.²³ With that, I have to agree. I had to figure out how to be a successful academic with little in the way of advance knowledge. While I had great mentoring, particularly from then Dean Ted Parnell and other supportive colleagues, the extra speeches and the extra committee work, which the school counted as service, seemed important to me but not valued as much by members of the academy. While some individuals were explicit and told me “service is not going to get you tenure,” I had to believe that because of my role as a “role model,” I had to do it. I wanted to do it! Again, maybe this was true because of my gendered conditioning.²⁴

Fourth, Professor Delgado states, “to be a good role model you have to be an assimilationist.”²⁵ In other words, you have to conform.²⁶ God forbid you have a quirk, a weight problem, or do not conform to the prevailing view of what a “role model” is supposed to be.²⁷ I had been teaching law for a few years and I did not yet have tenure. I was struggling to fit in as an academic. I did not then understand that in changing yourself to fit in, you lose something. You lose a little bit of your own identity and your own voice.²⁸ If you do that, it takes longer to find your own voice and if you are too far gone, you might not ever find your true voice.²⁹

Fifth and most disturbing, Delgado believes that role models must lie to their communities.³⁰ Role models must pretend that if a student with inadequate education and preparation, no connections, and no money worked hard, that student may be as successful as his

23. See Delgado, *supra* note 7, at 1227 (highlighting that it is unclear whether employers expect minorities to be active in the minority community, whether employers expect minorities to do the same things as white professors, or whether there is an intermediary standard).

24. See Rachel F. Moran, *The Implications of Being a Society of One*, 20 U.S.F. L. REV. 503, 507 (1986) (discussing the tendency of minority and women professors to rely “on assimilation to achieve acceptance in the law school community”).

25. Delgado, *supra* note 7, at 1227.

26. See *id.* (stating that a role model may never be a cultural or economic nationalist, separatist, or anything resembling a radical reformer).

27. See *id.* (suggesting that those who do not conform risk either losing their jobs or never being hired).

28. See Pamela J. Smith, *The Tyrannies of Silence of the Untenured Professors of Color*, 33 U.C. DAVIS L. REV. 1105, 1106-16 (2000) (believing that silence on racial issues “affirms the myth of security and safety in racialized environments”).

29. See Leslie G. Espinoza, *Masks and Other Disguises: Exposing Legal Academia*, 103 HARV. L. REV. 1878 (1990) (examining institutional expectations and how they can construct personal ambitions and opportunities and affect scholars of color negatively).

30. See Delgado, *supra* note 7, at 1228 (stating that Chicano law professors must lie to their students and tell them that if they study and stay out of trouble, the students may become law professors). If Chicano law professors tell the truth that their students will probably not become law professors, the role models discourage their minority students from looking up to them. *Id.*

or her role model professors.³¹ In times of drying up financial aid and a shrinking commitment to affirmative action, however, the doors that I believed were being thrown wide open when Professor Delgado wrote that article are indeed closing for our communities.³² And, as an individual, there is only so much that can be done to maintain the cracks in the doors through which the few can still slip.³³

So, as in many things, Richard Delgado had a great deal of insight. He was right; the path to success is not easy to travel.³⁴ The personal costs are great. I told Professor Delgado back then that I thought law professors of color had a “role model” responsibility of keeping the doors to education open. He agreed, but he was not sure that being a “role model” would necessarily accomplish that goal.³⁵ Thus, the assimilation path that Delgado describes as being a “role model” is fraught with difficulty, pain, and danger.

B. Marginalization—Remaining Outside: Being a Member but Having No Voice in the Professional Community

Marginalization is a fate I feared early in my career. I had the naive idea that once I got tenure, it would be impossible to be marginalized. I also erroneously thought that marginalization was a choice. Academics who were marginalized engaged in risky behavior leading to a lack of confidence and respect by colleagues. It never occurred to me that a confident articulation of my values in legal education or my position on issues could lead to marginalization no matter how hard I worked or how much of a team player I might have tried to be.³⁶ In this world, some people are players and some people are not. I wanted to be a player. I still do. However, I think that if you are afraid of being marginalized, you might silence your self, edit your thoughts, and be stingy with your ideas. Ideas must be heard to be considered. They will not build a following or make a contribution if

31. See *id.* at 1228 n.34 (suggesting that many minorities obtain academic jobs due to luck rather than through hard work).

32. See Lani Guinier, Comment, *Admission Rituals as Political Acts: Guardians at the Gates of Our Democratic Ideals*, 117 HARV. L. REV. 113, 129 (2003) (stating that as state and federal governments have cut funding for education, tuition costs have risen and financial aid has decreased).

33. See *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003) (upholding the use of affirmative action in the collegiate setting). However, Justice O'Connor has suggested that twenty-five years from now, affirmative action “will no longer be necessary.” *Id.*

34. See Delgado, *supra* note 7, at 1227 (explaining that the path to success is difficult because a minority role model is expected to uplift one’s entire people).

35. He also wondered aloud if I really understood the essay. He was right. I did not understand it the way I do now.

36. See Albert T. Quick & Kent D. Lollis, *Retention of Minority Professors: Dealing with the Failure to Presume Competence*, 10 ST. LOUIS U. PUBL. L. REV. 361, 363-64 (1991) (explaining that a presumption by white faculty that minority faculty members are incompetent leads to feelings of marginalization, challenges to legitimization, and difficulty in maintaining credibility).

they are not heard.³⁷ I have come to believe that writing and speaking from the margins is liberating and personally empowering. It can also make visible the previously invisible.³⁸ It has value and contributes to humanity's store of knowledge. My poetry has helped me find a voice in this regard.

I have learned that marginalization is something that is done to you, not something you do to yourself. While an individual can worry about not being marginalized, an individual has no control over institutionalized racism.³⁹ Some individuals, particularly those in power, have limited views on the potential of women of color because their expectations will limit what they are able to hear and what they expect of women of color.⁴⁰ Susan Fiske has described the relationship between stereotyping and power.⁴¹ She argues that the powerless attend to the powerful who control their lives, while the powerful do not have to pay as much attention to the powerless.⁴² In addition, the powerful may be "attentional[ly] overloaded," or if they have a need for dominance, the powerful simply are not interested in dispelling their own stereotypes.⁴³ Thus, it is more difficult for women of color to break through the lowered expectations and the inattention to get their voices heard by the powerful.⁴⁴ I think we

37. See Pamela Trotman Reid & Elizabeth Kelly, *Research on Women of Color: From Ignorance to Awareness*, 18 PSYCHOL. OF WOMEN Q. 477 (1994) (suggesting that women of color have been "completely ignored" in research and literature). Women of color are now considered anomalies due to the absence in literature of "common" female experiences. *Id.* at 479.

38. I have learned a great deal about the power that can come from speaking truth with my non-latina sisters. For example, I have learned from the Native American women with whom I have had the pleasure and privilege to work, specifically my colleagues Christine Zuni Cruz and Aliza Organick, as well as many Native American students that I have had the privilege to know. I have also learned a great deal from the Executive Director of the Law School Consortium Project, Lovely Dhillon, who is of South Asian Indian heritage, and from many of my African American women colleagues and friends. I exhort us to remember the many colors of the women in our communities and their different experiences.

39. I define "racism" as intentional bias. I define "institutional racism" as a pattern of unconscious bias that leads institutions to perpetuate subordination. See Quick & Lollis, *supra* note 36, at 367 (concluding that institutional racism is generated by fellow law professors who believe that minorities lack competence).

40. See Susan T. Fiske, *Controlling Other People: The Impact of Power on Stereotyping*, 48 AM. PSYCHOL. 621, 623-24 (1993) (explaining how those in power often rely on stereotypes that limit their views of women, minorities, and other powerless groups).

41. See *id.* at 621 (stating that stereotypes "exert control through prejudice and discrimination").

42. See *id.* at 624 (arguing that the "powerless" need "powerful" people who they can follow since the "powerful" lead the "powerless" in society).

43. See *id.* (suggesting that when people are distracted by external factors, they are more likely to rely on stereotypes).

44. See *id.*; see also Margaret E. Montoya, *Mascaras, Trenzas y Greñas: Un/masking the Self While Un/braiding Latina Stories and Legal Discourse*, 15 CHICANO-LATINO L. REV. 1 (1999) (describing difficulties in attempting to speak out on issues of concern to Latinas in a Harvard Law School classroom).

need to find the power in our voices and speak them, even if they do not appear to be heard.

C. Cooptation—Losing Self, Erasing Past, Identifying with Values at Odds with Community Interest

Cooptation was never an option for me. Because of my background and because I stayed in my home state, I could not, even if I wanted to, erase my past or identify with values at odds with my past. The same problems with which I grew up still face New Mexicans today, particularly poor New Mexicans. My work in the clinic will not let me ever forget them. The Clarence Thomas⁴⁵/Linda Chavez⁴⁶ “syndrome,” where members of minority groups attack affirmative action and adopt values hurtful to poor communities of color, occurs when the individuals develop a distance from their communities and a sense of revulsion toward the less fortunate.⁴⁷ And I do mean less fortunate. Most of us, white or not, got here because we were lucky, either by birth, or by opportunity. We are privileged. Though many believe that to whom much is given, much is expected, some people really believe in the myth of merit. In order to justify their own success, they believe that hard work and talent are all it takes. They have been co-opted to believe that myth. I have seen many talented, hard-working people in all walks of life fail to achieve their dreams while lesser talented individuals get ahead. That is life. It is not fair. Perhaps it would be nice if it were fair, but fairness in a world of privilege that makes poor people, and particularly poor people of color, invisible is going to be a very hard objective to reach. I believe in the struggle to achieve fairness. I do not have answers, but cooptation is not one of them. It is not a way to open doors for anyone but the individual who is co-opted. Ironically, the co-opted individual tends to be extremely isolated and marginalized.

D. Transformation—Changing Paradigms, Growing, Change, and Fusion

Finally, a concept of change—this is an interesting concept. Who

45. See Mark C. Niles, *Clarence Thomas: The First Ten Years Looking for Consistency*, 10 AM. U. J. GENDER SOC. POL’Y & L. 327, 338-41 (2002) (recounting Justice Thomas’s opposition to affirmative action due to his belief that past discrimination does not justify current racial preferences). Justice Thomas also believes that affirmative action created a stigma for the beneficiaries of affirmative action by creating the belief that the beneficiaries are under-deserving of their positions. *Id.*

46. See LINDA CHAVEZ, *OUT OF THE BARRIO: TOWARDS A NEW POLITICS OF HISPANIC ASSIMILATION* 4-5 (1991) (arguing that entitlement programs disadvantage Hispanics because Hispanics must show that they are making less social and economic progress than any other minority group).

47. See generally Padilla, *supra* note 17, at 68 (noting that because internalized racism involves harmful conduct aimed at members of the same oppressed group, internalized racism impedes the progress and efforts of Latino empowerment).

or what is being transformed? The professional of color? The institution? Other faculty? The larger society? Latino peoples' experiences as a people include a fusion of culture and identity. "Mestizaje" literally means "race mixture."⁴⁸ Latino peoples are products of mestizaje.⁴⁹ The racial mixture of indigenous people and Spaniards is our heritage.⁵⁰ Our culture includes the reality that as a people, we have lost our language twice.⁵¹ First, we lost the native tongues to Spanish and now, the Spanish to English. Our cultures have been fused. I have called our culture a culture of fusion: Spanish/Indian/American. We often speak "Spanglish" and put *chile* on our hamburgers.⁵² Transformation, adaptation, and fusion are our heritage. So, personally, I am not afraid of change. However, I realize that change can be quite threatening and the "browning of America" has been met with some alarm.⁵³

In focusing on women of all colors, the AALS conference seemed to seek "transformation." Unfortunately, I did not see many men at the conference, and I think men are needed if we are indeed going to "transform" anything.⁵⁴ As for the issues between white women and women of color, I do not have to elaborate that women of color and white women do not see many issues facing them in the same way.⁵⁵ Many of the women speaking at the conference, as well as many who did not, have written about the problems of "essentializing"⁵⁶ women's experiences as if all women experienced white male

48. Antoinette Sedillo Lopez, *Introduction* to HISTORICAL THEMES AND IDENTITY: MESTIZAJE AND LABELS xi (Antoinette Sedillo Lopez ed., 1995) (noting that Latinos are Spanish speaking, but they are not Spaniards). Latinos have Spanish, Indian, and Black and Anglo ancestors. *Id.*

49. *See id.*

50. *See id.*

51. *See id.*

52. *See* Elvia R. Arriola, *Difference, Solidarity, and Law: Building Latina/o Communities Through LatCrit Theory Foreword*, 19 CHICANO-LATINO L. REV. 1, 38 n.137 (1998) (defining "Spanglish" as "the use of English interjected with Spanish").

53. *See* Samuel P. Huntington, *The Hispanic Challenge*, 141 FOREIGN POL'Y 31, 32 (2004) (viewing Latino immigration as different from prior waves of immigration in its threat to American values). The author is oblivious to the fact that many Latino peoples were on this continent before it became part of the United States. The article is a fascinating mix of assumptions and stereotypes about American and immigrant values. *Id.* I cite the article because it captures the alarm some feel about the changing demographics of the United States.

54. My son Victor F. Lopez and Professor Michael Olivas are two notable exceptions. I applaud all men who attended this conference.

55. *See* Alma M. Garcia, *The Development of Chicana Feminist Discourse, 1970-1980*, in LATINOS IN THE UNITED STATES: FRAGMENTS OF HISTORIA (ELLA) (HERSTORY) 217, 230 (Antoinette Sedillo Lopez ed., 1995) (explaining that Chicano feminists viewed the white feminist movement as a middle class movement while Chicano feminists viewed the Chicano movement in terms of a working-class movement).

56. *See* Angela P. Harris, *Race and Essentialization in Feminist Legal Theory*, 42 STAN. L. REV. 581, 585 (1990) (explaining that essentialism refers to the "notion that a unitary 'essential' women's experience can be isolated and described independently of race, class, sexual orientation and other realities of experience").

domination and oppression the same way.⁵⁷ Of course, we do not. In part, I think that is because of one difference between us. I know we are all different, and not to generalize or “essentialize,” but many more white women are connected to white male power and privilege in a way that many women (and many men) of color are not.⁵⁸ Through fathers, husbands, brothers, cousins, etc., white women somehow know things. They know how the power games are played and are sometimes oblivious to their own privilege within the system. In addition, white men see their daughters and wives seeking to pass through the doors of opportunity they control and are more welcoming of them. Many women of color do not understand the rules of power games, no matter how hard we try to play. Further, we are not as welcome on the other side of the doors of opportunity.

*On Privilege*⁵⁹

You don't know, do you?
 with your frosty skin . . .
 Privilege is like that.
 Can't taste the sugar—
 of knowing that your children will never be taunted
 never be tracked.
 Can't feel the sun—
 of knowing your presence will never be questioned
 you belong.
 Can't smell the fragrance—
 of clean, fresh courtesy and respect
 invisible to you.
 Can't hear the voices—
 of others who are different from you
 they don't make sense.
 Can't see the pain—
 of demeaning, humiliating, shame—you ask,
 why are they so angry?
 You only notice privilege
 when you don't have it.

57. See *id.* (arguing that essentialism leads to the silencing of black voices); see also Elizabeth M. Iglesias, *Structures of Subordination: Women of Color at the Intersection of Title VII and the NLRA. Not!*, 28 HARV. C.R.-C.L. L. REV. 395, 400-02 (1993) (discussing Title VII of the Civil Rights Act and the National Labor Relations Act and arguing that women of color are not a homogenous group but are identified as a homogenous group through legislation).

58. I recognize that white women perceive their own marginalization. See generally Nancy Levit, *Keeping Feminism in its Place: Sex Segregation and the Domestication of Female Academics*, 49 U. KAN. L. REV. 775 (2001) (discussing the marginalization of women and feminism and positing that segregation in academic institutions leads to the “domestication” of female academics).

59. Antoinette Sedillo Lopez, *On Privilege*, 2 AM. U. J. GENDER & LAW 217 (1994).

II. WHAT COMES AFTER “TRANSFORMATION”?

My colleague Alfred Mathewson is one of the most insightful law teachers I know. He shared with me a draft of an essay entitled *Segregated Proms in 2003* addressing the news reporting on racially segregated high school proms in rural southern school districts.⁶⁰ He describes some of his memories of being in the group of teenagers in the late sixties and early seventies who integrated the high schools in North Carolina. He states:

When I heard the story about the separate proms in Taylor, Georgia, I thought about this point. My class at Bertie held an integrated prom but it was virtually our only social event together. I never visited a white friend’s home while in high school, and no white friend ever visited mine. In fact, to the best of my knowledge no white person, other than an insurance salesman, ever set foot in my mother’s house. You cannot expect students to hold integrated proms or reunions if they do not or will not forge social bonds outside of school. Both the classes of 2002 and 2003 in Taylor held integrated proms. The difference this year was that many white students also held a whites only prom. If those white students had gone through trials and triumphs outside of school with their black classmates, I suspect the white kids would have been far less likely to exclude them.⁶¹

Later in the essay after describing painful racial incidents involving his children, he continues:

Perhaps, they find too few role models in the generation of their parents. I have often commented that the Civil Rights warriors knew how to knock doors down but they had no way of preparing the beneficiaries for what awaited them on the other side. It is equally true that white parents had no blueprint for dealing with the integration that followed. Parents on both sides of the door grew up in an era in which racial diversity was proscribed by law. In fact, the refusal to engage in racial diversity was legally permitted. The very essence of Jim Crow laws was to prevent voluntary actions on the part of individuals and institutions to form such bonds. The efforts of individuals and institutions have met with mixed results ever since.⁶²

Alfred is right. Civil rights activists opened doors for us. Our challenge is to figure out how to keep the doors open while negotiating what lies on the other side. We must transform society to

60. See Alfred Mathewson, *Segregated Proms in 2003*, in VOICES OF THE BROWN GENERATION: MEMORIES AND REFLECTIONS OF LAW PROFESSORS (Richard Bonnie & Mildred Robinson eds., forthcoming) (on file with author).

61. *Id.* at 4.

62. *Id.* at 6.

accommodate gender and all colors, races, cultures, and creeds. We must find strength in our diversity to bridge the divides between different groups and work together toward a just society. Latinas in legal education have an important role to play in this quest. Understanding our experiences helps us to succeed in that role.

CONCLUSION

*Pebbles in the Pond*⁶³

One pebble
ripples
out to shore
Two pebbles,
ripples
merge together
Three pebbles
begin
to make a wave

Many pebbles
change the water
churning and moving
change the shape of the pond
Be a pebble in the water,
change the water
Don't let the water change you.

63. Antoinette Sedillo Lopez, *Pebbles in the Pond*, CLEA NEWSLETTER (Clinical Legal Educ. Assoc.), Feb. 2004, at 3-4.