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ESSAY

RODRIGO'S SIXTH CHRONICLE: INTERSECTIONS, ESSENCES, AND THE DILEMMA OF SOCIAL REFORM

RICHARD DELGADO*

INTRODUCTION: IN WHICH RODRIGO TELLS ME ABOUT AN URGENT PROBLEM

I was returning to my office from the faculty library one flight below, when I spied a familiar figure waiting outside my door.

"Rodrigo!" I said. "It's good to see you. Please come in."

I had not seen my young protégé in a while. A graduate of a fine law school in Italy, Rodrigo had returned to the United States recently to begin LL.M. studies at a well-known school across town in preparation for a career as a law professor.¹ An African-American by birth and an

* Charles Inglis Thomson Professor of Law, University of Colorado. J.D., 1974, University of California-Berkeley. I gratefully acknowledge the assistance of Jean Stefancic, Bonnie Grover, and Devona Broussard in the preparation of this Essay.

¹ See Richard Delgado, *Rodrigo's Chronicle*, 101 *Yale L.J.* 1357 (1992) [hereinafter *Delgado, First Chronicle*] (introducing Rodrigo, an African-American and half-brother of American civil rights activist Geneva Crenshaw); see also Derrick Bell, *And We Are Not Saved: The Elusive Quest for Racial Justice* (1987) [hereinafter *D. Bell, And We Are Not Saved*] (discussing Geneva Crenshaw); Derrick Bell, *Foreword: The Civil Rights Chronicles*, 99 *Harv. L. Rev.* 4, 13-87 (1985) [hereinafter *Bell, Foreword*] (introducing Geneva Crenshaw). Rodrigo moved to Italy when his father, a U.S. serviceman, was assigned to an outpost there. He completed high school at the base school, then attended an Italian university on a government scholarship, studying Western civilization, then law. In *Delgado, First Chronicle, supra*, Rodrigo seeks the professor out to discuss his plans to obtain an LL.M. degree from an American law school in preparation for a career as a law professor. Further information on Rodrigo and his ideas can be found in Richard Delgado, *Rodrigo's Second Chronicle: The Economics and Politics of Race*, 91 *Mich. L. Rev.* 1183 (1993) [hereinafter *Delgado, Second Chronicle*] (Rodrigo and the professor examine law and economics movement's failure adequately to explain and cure racism); Richard Delgado, *Rodrigo's Third Chronicle: Care, Competition, and the Redemptive Tragedy of Race*, 81 *Cal. L. Rev.* 387 (1993) [hereinafter *Delgado, Third Chronicle*] (Rodrigo discusses his belief that caregiving should be provided through socialist system and explains how such system would benefit Blacks and whites); Richard Delgado, *Rodrigo's Fourth Chronicle: Neutrality and Stasis in Antidiscrimination Law*, 45 *Stan. L. Rev.* 1133 (1993) [hereinafter *Delgado, Fourth Chronicle*] (Rodrigo and the professor discuss effect of neutral jurisprudential principles on Blacks); Richard Delgado, *Rodrigo's Fifth Chronicle: Civitas, Civil Wrongs, and the Politics of Denial*, 45 *Stan. L. Rev.* 1581 (1993) [hereinafter *Delgado, Fifth Chronicle*]. For further information on Rodrigo, see also notes 2-4, 95 and accompanying text *infra*. Like Rodrigo, "the professor" is a fictional composite, based very loosely on several persons I have known and should not be identified with any single individual. The professor is a man of color, in the late stages of his career, who teaches

cestry,² the talented Rodrigo had sought me out over the course of a year to discuss Critical Race Theory and many other ideas. For my part, I had gratefully used him as a foil and a sounding board for my own thoughts.

"Have a seat. You look a little agitated. Is everything OK?" Rodrigo had been pacing my office while I was putting my books down and activating my voice mail. I hoped it was intellectual excitement and his usual high-pitched energy that accounted for his restless demeanor.

"Professor, I'm afraid I'm in some trouble. Do you have a few minutes? There's something I need to talk over with someone older and wiser."

"I'm definitely older," I said. "The other part I'm not sure about. What's happening?"

"There's a big feud going on in the Law Women's Caucus at my school. The women of color and the white members are going at it hammer and tongs. And like a dummy, I got caught right in the middle."

"You? How?" I asked.

"I'm not a member. I don't think any man is. But Giannina is an honorary member,³ as I think I mentioned to you last time. The Caucus has tried to keep its struggle quiet, but I learned about it from Giannina. And I'm afraid I really—how do you put it?—put my foot in the mouth."

"In your mouth," I corrected. Although Rodrigo had been born in the States and spent his early childhood here, he occasionally failed to use an idiom correctly, a difficulty I had observed with other foreigners. "Tell me more," I continued. "How did it happen? Is it serious?"

"It's extremely serious," said Rodrigo, leaping to his feet and resuming his pacing. "They were having a meeting down in the basement, where I went after class to pick up Giannina. We were going to catch the subway home, and I thought her meeting would be over by then. I stood at the door a minute, when a woman I knew motioned me in. That was my mistake."

"Are the meetings closed to men?"

"I don't think so. But I was the only man there at the time. They were talking about essentialism⁴—as I've learned to call it—and the or-

at a major law school located in the same city where Rodrigo studies.

² See Delgado, *First Chronicle*, *supra* note 1, at 1357-61. Rodrigo's father is an African-American; his mother an Italian national.

³ See Delgado, *Third Chronicle*, *supra* note 1, at 402 (introducing "Giannina," Rodrigo's partner and friend). Giannina is a published playwright and poet. See Delgado, *Fourth Chronicle*, *supra* note 1, at 1137 (describing her role in producing counter-parody "talent show" at Rodrigo's school).

⁴ On essentialism, see generally bell hooks, *Ain't I A Woman?: Black Women and Feminism* (1981) [hereinafter *b. hooks, Ain't I A Woman?*] (discussing inseparability of race and

ganization's agenda. A woman of color was complaining that the group never paid enough attention to the concerns of women like her. Some of the white women were getting upset. I made the mistake of raising my hand."

"What did you say?"

"I only tried to help analyze some of the issues. I drew a couple of distinctions, or tried to anyway. Both sides got mad at me. One called me an imperial scholar, an interloper, a typical male, and a pest.⁵ I got out of there fast. And now, no one will talk to me. Even Giannina⁶ made me move out of the bedroom. I've been sleeping on the couch for the last three nights. I feel like a leper."

A quarrel between lovers! I had not had to deal with one of those since my sons were young. "I'm sure you and she will patch it up," I offered. "You'd better—the two of you owe me dinner, remember?"

Rodrigo was not cheered by my joke nor my effort to console him. "I may never have Giannina's companionship again," he said, looking down.

"These things generally get better with time," I said, making a mental note to address the point later. "It's part of life. But if talking about some of these issues would help, I'm game. I've just been reading these things," I gestured toward some of the books and law review articles I had just carried up from the library, "on essentialism and feminist

sex for Black women); bell hooks, *Yearning: Race, Gender and Cultural Politics* (1991) [hereinafter *b. hooks*, *Yearning*] (articulating radical cultural critique linked with concern for transforming oppressive structures of domination); bell hooks & Cornel West, *Breaking Bread: Insurgent Black Intellectual Life* (1991) (scrutinizing dilemmas, contradictions, and joys of Black intellectual life); Elizabeth V. Spelman, *Inessential Woman: Problems of Exclusion in Feminist Thought* (1988) (showing how essentialism denies significance of heterogeneity for feminist theory and political activity); Trina Grillo & Stephanie M. Wildman, *Obscuring the Importance of Race: The Implications of Making Comparisons Between Racism and Sexism or Other -isms*, 1991 *Duke L.J.* 397 (discussing dangers of analogizing racism to other forms of discrimination); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 *Stan. L. Rev.* 581 (1990) (criticizing gender essentialism for failing to take into account Black women's experiences).

As Rodrigo and the professor use the term, essentialism consists of treating as unitary a concept or group that, to some at least, contains diversity. On essentialism as the selective ignoring of difference, see, e.g., notes 9-34 and accompanying text *infra*.

⁵ On imperial scholarship, see Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 *U. Pa. L. Rev.* 561 (1984) (discussing mechanisms by which mainstream scholars of majority race marginalize contribution of civil rights scholars of color); Richard Delgado, *The Imperial Revisited: How to Marginalize Outside Writing, Ten Years Later*, 140 *U. Pa. L. Rev.* 1349 (1992) (same).

For a further discussion of the women's grievances with Rodrigo and his behavior, see text accompanying notes 35-36, 41-43, 49 *infra* (criticizing Rodrigo for making inept analogies, ignoring loaded situation, and adopting know-it-all attitude). Giannina's grievances with Rodrigo are similar. See text accompanying notes 55-56 *infra* (accusing Rodrigo of leading movement in unproductive direction).

⁶ See note 3 *supra*.

legal theory.⁷ They're for an annotated bibliography I'm preparing."⁸

Rodrigo peered over at the pile on the corner of my desk. "I read that one last night. And I'm reading the two articles now. If you have the time, I'd love to talk. Since no one else will talk to me, I've got lots of time on my hands."

"Me too," I said. "Would you like a cup of coffee before we start?"

"I'd love one. I've been too distraught to eat."

I busied myself grinding the beans and setting the dials on my office espresso maker. "So, tell me what you know about essentialism. You like cream and sugar, right?"

Rodrigo nodded. After I left the machine to its own devices and returned to my chair, he began.

I

IN WHICH RODRIGO AND I REVIEW THE ESSENTIALISM DEBATE AND TRY TO UNDERSTAND WHAT HAPPENED AT THE LAW WOMEN'S CAUCUS

"The debate about essentialism has both a political and a theoretical component," Rodrigo began. "That book (Rodrigo nodded in the direction of *Yearning: Race, Gender and Cultural Politics*,⁹ by bell hooks, lying open on my desk) and those articles¹⁰ pay more attention to the political dimension. But there's also a linguistic-theory component."

"You mean the early philosophical discussion about whether words have essences?" I asked, pausing a moment to offer Rodrigo a cup of steaming espresso. I pointed out the tray of ingredients and said, "Help yourself if it needs more cream and sugar."

"Exactly," Rodrigo replied, slurping his coffee. "The early anties-
sentialists attacked the belief that words have core, or central, meanings. If I'm not mistaken, Wittgenstein was the first in our time to point this out.¹¹ In a way, it's a particularly powerful and persuasive version of the antinominalist argument."¹²

⁷ See sources cited in note 4 supra.

⁸ Recently, a number of bibliographies and essays of critical feminist and race writing have been compiled. See, e.g., Patricia A. Cain, *Feminist Legal Scholarship*, 77 Iowa L. Rev. 19 (1991) (examining how feminist legal scholarship is perceived by legal academy); Richard Delgado & Jean Stefancic, *Critical Race Theory: An Annotated Bibliography*, 79 Va. L. Rev. 461 (1993).

⁹ b. hooks, *Yearning*, supra note 4.

¹⁰ See note 4 and accompanying text supra (discussing works in greater detail); notes 15-24, 30-34, 36, 47-52, and accompanying text infra (same).

¹¹ See Ludwig Wittgenstein, *Tractatus Logico-Philosophicus* 9-25 (D.F. Pears & B.F. McGuinness trans., 2d ed. 1974) (1921) (developing idea that meaning of term or symbol lies in its use).

¹² The antinominalist argument holds, in short, that words and terms do not correspond to

As always, Rodrigo surprised me with his erudition. I wondered how an Italian-trained scholar, particularly one so young, had managed to learn about Wittgenstein, whose popularity I thought lay mainly in the English-speaking world. "How did you learn about Wittgenstein?" I asked.

"He's popular in Italy," Rodrigo explained. "I belonged to a study group that read him. The part of his teaching that laid the basis for anti-essentialism was his attack on the idea of core meanings. As you know, he wrote that the meaning of a term is its *use*."¹³

"I haven't read him in a while," I added hastily. "But you mentioned that the controversy's political side seems to be moving into the fore right now, which seems true. And I gather it's this aspect of the essentialism debate that you wandered into at school."

"In its political guise," Rodrigo continued, "members of different outgroups argue about the appropriate unit of analysis—about whether the Black community, for example, is one community or many, whether gays and lesbians have anything in common with straight activists, and so on.¹⁴ At the Law Women's Caucus, they were debating one aspect of this—namely, whether there is one, essential sisterhood, as opposed to many. The women of color were arguing that to think of the women's movement as singular and unitary disempowers them. They said that this view disenfranchises anyone—say lesbian mothers, disabled women, or working-class women—whose experience and status differ from what they term 'the norm.'¹⁵

"And the others, of course, were saying the opposite?"

"Not exactly," Rodrigo replied. "They were saying that vis-à-vis men, all women stood on a similar footing. All are oppressed by a common enemy, namely patriarchy, and ought to stand together to confront this evil."¹⁶

permanent essences or things existing in a realm outside time. See, e.g., 3 *Encyclopedia of Philosophy* 59-60 (P. Edwards ed., 1967) (Essence and Existence); 8 *Encyclopedia of Philosophy*, supra, at 199-204 (on conceptualism, nominalism, and resemblance theories).

¹³ L. Wittgenstein, supra note 11, at 10-25 (postulating that meaning of a word comes from its use; even terms like "chair" have no core meanings or necessary and sufficient conditions for their application).

¹⁴ See, e.g., Harris, supra note 4 (criticizing gender essentialism).

¹⁵ See generally Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. Chi. Legal F. 139 (examining how tendency to treat race and gender as mutually exclusive categories of experience and analysis is perpetuated by a single-axis framework that is dominant in antidiscrimination law, feminist theory, and antiracist politics); Harris, supra note 4.

¹⁶ See Martha L. Fineman, *Challenging Law, Establishing Differences: The Future of Feminist Legal Scholarship*, 42 U. Fla. L. Rev. 25, 36 (1990) (advocating unified stand by all women against patriarchy).

"I've read something similar in the literature," I said.

"I'm not surprised. In a way, the debate the Caucus was having recapitulates an exchange between Angela Harris,¹⁷ a talented Black writer, and Martha Fineman, a leading white feminist scholar."¹⁸

"Those articles are on my list of things to read. In fact," I paused, ruffling through the papers on my littered desk, "they're right here. I skimmed this one and set this other one aside for more careful reading later. I have to annotate both for my editors."

"Then you have at least a general idea of how the political version goes," Rodrigo said. "It has to do with agendas and the sorts of compromises people have to make in any organization to keep the group working together. In the Caucus's version, the sisters were complaining that the organization did not pay enough attention to the needs of women of color. They were urging that the group write an amicus brief on behalf of Haitian women and take a stand for the largely all-Black custodial workers at the university. While not unsympathetic, the Caucus leadership thought these projects should not have the highest priority."

"I see what you mean by recapitulation of the academic debate. Fineman and Harris argue over some of the same things. Not the specific examples, of course, but the general issues. Harris writes about the troubled relationship between Black women and other women in the broader feminist mainstream,¹⁹ although she notes that many of the issues this relationship raises reappear in exchanges between straight and gay women, working- and professional-class minorities, Black women and Black men, and so on.²⁰ She and others²¹ write of the way in which these relationships often end up producing or increasing disempowerment for the less influential group. They point out that white feminist theorists, while powerful and brilliant in many ways, nevertheless base many of their insights on gender essentialism—the idea that women have a single, unitary nature.²² They point out that certain feminist scholars write as though women's experiences can be captured in general terms, without taking into account differences of race or class.²³ This approach obscures

¹⁷ See Harris, *supra* note 4.

¹⁸ See Fineman, *supra* note 16.

¹⁹ See Harris, *supra* note 4, at 585-604.

²⁰ See *id.* at 588-89, 594, 605-10.

²¹ See generally, e.g., Paulette Caldwell, *A Hair Piece: Perspectives on the Intersection of Race and Gender*, 1991 *Duke L.J.* 365 (criticizing *Roger v. American Airlines*, 527 F. Supp. 229 (S.D.N.Y. 1981), and legal system in general for failing to consider intersection between race and gender); Crenshaw, *supra* note 15.

²² See, e.g., Harris, *supra* note 4, at 585-90, 595-605.

²³ See *id.* at 585-90, 595-605, 612-13 (mentioning Robin West and Catharine MacKinnon as examples).

the identities and submerges the perspectives of women who differ from the norm. Not only does legal theory built on essentialist foundations marginalize and render certain groups invisible, it falls prey to the trap of over-abstraction, something the same writers deplore in other settings. It also promotes hierarchy and silencing, evils that women should, and do, seek to subvert."²⁴

"Much the same goes on within the Black community," I pointed out. "This community is diverse, many communities in one. Black neo-conservatives, for example, complain that folks like you and me leave little room for diversity by disparaging them as sellouts and belittling their views as unrepresentative."²⁵ They accuse us of writing as though the community of color only has one voice—ours—and of arrogating to ourselves the power to make generalizations and declare ourselves the possessors of socio-political truth."²⁶

"I know that critique," Rodrigo replied. "We talked about it once before.²⁷ It seems to me that they might well have a point, although it does sound a little strange to hear the complaint of being overwhelmed, smothered, spoken for by others, coming from the mouth of someone at Yale or Harvard."

"Like you at the Law Caucus, I found myself on the end of some stinging criticism."²⁸ I have Randall Kennedy and Steve Carter, particularly, in mind. They write powerfully, and of course many in the mainstream loved their message—so much so that they neglected to read any replies.²⁹ But let's get back to the feminist version, and what happened to you at the Law Women's meeting."

"Oh, yes. The discussion in many ways mirrored the debate in the legal literature and in that book." Rodrigo again pointed in the direction of the bell hooks book. "As you probably know, Harris's principal oppo-

²⁴ See Crenshaw, *supra* note 15, at 139-40; Harris, *supra* note 4, at 585-86.

²⁵ See generally, e.g., Dinesh D'Souza, *Illiberal Education* (1991) (articulating neoconservative critique of Black and liberal politics); Richard Rodriguez, *Hunger for Memory* (1982) (recounting experiences of Spanish-speaking student who pursues his education in English-speaking schools); Shelby Steele, *The Content of Our Character* (1990) (arguing that while there is racial insensitivity and some racial discrimination in our society there is also much opportunity); see also Stephen L. Carter, *Reflections of an Affirmative Action Baby* (1991) (articulating neoconservative critique of Black and liberal politics).

²⁶ See sources cited in note 25 *supra*; see also Randall L. Kennedy, *Racial Critiques of Legal Academia*, 102 *Harv. L. Rev.* 1745 (1989) (analyzing writings which examine effect of racial difference on distribution of prestige in legal academia).

²⁷ See Delgado, *First Chronicle*, *supra* note 1, at 1373-78 (discussing neoconservative critique); Delgado, *Second Chronicle*, *supra* note 1 (same).

²⁸ See Kennedy, *supra* note 26 (taking three members of Critical Race Theory school to task for various overstatements and omissions).

²⁹ Colloquy, *Responses to Randall Kennedy's Racial Critiques of Legal Academia*, 103 *Harv. L. Rev.* 1844 (1990) (containing reply articles by Leslie G. Espinoza, Milner S. Ball, Robin D. Barnes, and Richard Delgado).

ment in the anti-essentialism debate has been Martha Fineman, who takes Black feminists to task for what she considers their overpreoccupation with difference.³⁰ Their focus on their own unique experience contributes to a 'disunity' within the broader feminist movement that she finds troubling.³¹ It's troubling, she says, because it weakens the group's voice, the sum total of power it wields. Emphasizing minor differences between young and old, gay and straight, and Black and white women is divisive, verging on self-indulgence.³² It contributes to the false idea that the individual is the unit of social change, not the group.³³ It results in tokenism and plays into the hands of male power."³⁴

"And the discussion in the room was proceeding along these lines?" I asked.

"Yes," Rodrigo replied. "Although I had the sense that things had been brewing for some time. As soon as some of the leaders expressed coolness toward the Black women's proposal for a day-care center, the level of acrimony increased sharply. A number of women of color said, 'This is just like what you said last time.' Some of the white women accused them of narrow parochialism. And so it went."

"The white feminists accusing the sisters of disloyalty, the sisters telling the others that they seem uncaring, and dangerously empowered?"

Rodrigo nodded assent, so I continued, "And what got *you* into trouble?"

"Well, I started to draw an analogy between the controversy they were having and the one raging about Great Books and the canon.³⁵ I had hardly gotten the words out of my mouth when both sides were up in arms. They accused me of butting in, of being condescending and of trying to preach to them. I got out of there in a hurry. But ever since, I've felt a distinct chill. Before, we all had good relationships. Now, even Giannina won't speak to me."

Rodrigo's distracted look impressed on me the seriousness of his predicament, at least in his eyes. So, I resisted the temptation to joke, and instead went on as follows:

"Rodrigo, you might not know this because you've been out of the country for—what?—the last ten years?" Rodrigo nodded yes. "These

³⁰ See Fineman, *supra* note 16, at 39-41.

³¹ *Id.* at 40.

³² *Id.* at 42; see also *id.* at 36-37 (on rise of anti-essentialism within women's movement).

³³ *Id.* at 41.

³⁴ *Id.* at 41-43.

³⁵ On the debate about the scholarly canon, see generally, e.g., Alan Bloom, *The Closing of the American Mind* (1987) (arguing that great and esteemed Western classics must be preserved at all costs); Henry L. Gates, Jr., *Loose Canons: Notes on the Culture Wars* (1992) (arguing that battles over canon are overblown).

issues are really heated right now. And they're not confined to feminist organizations. Many of the same arguments are being waged within communities of color. Latinos and Blacks are feuding.³⁶ And, of course, everyone knows about Korean merchants and inner-city Blacks.³⁷ Black women are telling us men about our insufferable behavior.³⁸ We're always finishing sentences for them, expecting them to make coffee at meetings. Some of them with long memories recall how we made them march in the second row during the civil rights movement.³⁹ We make the same arguments right back at them: 'Don't criticize, you'll weaken the civil rights movement, the greater evil is racism, we need unity, there must be common cause,' and so on.⁴⁰ They're starting to get tired of that form of essentializing, and to point out our own chauvinism, our own patriarchal mannerisms and faults."

"Those are some of the things I got called at the meeting. It looks like I have company."

"We all need to think these things through. You and I could talk about it some more, if you think it would help. Can I offer you another cup of coffee?"

"I'd love some. And, yes, Professor, I'd appreciate it a great deal if you could help me sort things out."

"I'm sure I'll benefit just as much as you. Remember that I have all those annotations to write. You always help me get my thoughts in order."

II

IN WHICH RODRIGO AND THE PROFESSOR DISCUSS THE PERILS OF MAKING COMMON CAUSE

I started my espresso maker on a fresh pot. As it settled into its

³⁶ See, e.g., Jack Miles, *Blacks v. Browns: The Struggle for the Bottom Rung*, *Atlantic Monthly*, Oct. 1992, at 41 (discussing economic competition between Latinos and African-Americans). See generally Symposium, *Los Angeles*, April 29, 1992 and *Beyond: The Law, Issues, and Perspectives*, 66 *S. Cal. L. Rev.* 133 (1993) (detailing role, among other things, of inter-ethnic rivalries in Los Angeles uprising).

³⁷ See generally Symposium, *supra* note 36.

³⁸ See, e.g., D. Bell, *And We Are Not Saved*, *supra* note 1, at 198-214 (discussing race-charged relationship of Black men and Black women); b. hooks, *Ain't I A Woman?*, *supra* note 4, at 87-117 (acknowledging Black male sexist oppression of Black women); bell hooks, *Black Looks: Race and Representation* 87-113 (1992) [hereinafter b. hooks, *Black Looks*] (analyzing relationship between Black men and Black women).

³⁹ See D. Bell, *And We Are Not Saved*, *supra* note 1, at 212-14; b. hooks, *Black Looks*, *supra* note 38, at 87-113.

⁴⁰ I had in mind the many angry remonstrances by prominent men of color against Anita Hill for her testimony against Clarence Thomas. I could not help contrasting these disapproving reactions with the warm support Anita Hill received from many women of color I know and work with.

humming cycle, I looked up at Rodrigo. He began:

“What got me in trouble, as I mentioned, Professor, was the suggestion that the whole controversy mirrored the one about Great Books and the scholarly canon.”

“How did that get you in trouble? I mean, I’m not sure I even see the connection.”

“The white feminists were the angriest. I already told you some of the things they said. But even some of the sisters hissed. I got the sense that I should leave, and so I did. But before my hasty exit, I explained that essentialism struck me as the usual response of a beleaguered group, one that needs solidarity in a struggle against a more powerful one. It has a close relation to perseveration—something you and I talked about before—in which a culture in decline insists on doing over and over again, with more and more energy, the very things that once brought it greatness but that now are bringing it doom.⁴¹ So you see how the Great Books analogy got me in hot water with the Law Caucus.”

“I think I am beginning to understand,” I said. “You are saying that essentialist thinking of any sort, white or Black, male or female, is an effort to tame variety, to impose an artificial sameness on a situation that has bewildering diversity built into it.”⁴²

“I think it’s an insistence on a single narrative. You’ve been writing about narratives in the law, Professor.⁴³ I think this is something similar—an effort to impose a single ‘story line’ in order to make life simpler than it really is.”

“I see,” I said. “There *is* a sort of progression. In linguistic theory, Wittgenstein and others showed that words don’t have central, unitary meanings.⁴⁴ Later, the focus shifted to culture, where outsider groups began to insist that their books, texts, experiences, language, and special-interest courses were as valid as those in the mainstream’s canon. There is no one valid set of stories, in other words.⁴⁵ Those battles have largely

⁴¹ See Delgado, *First Chronicle*, *supra* note 1, at 1374-77 (on role of perseveration as response to stress).

⁴² On the role of stories and “counterstories” in confining or broadening a culture’s store of narratives, see generally Symposium, *Legal Storytelling*, 87 *Mich. L. Rev.* 2073 (1989) (containing articles by Milner S. Ball, Mari J. Matsuda, Steven L. Winter, Patricia Williams, and Richard Delgado on use of stories to enforce or challenge consensus, to advance or retard progress of outsider groups, and to mediate between legal power (as expressed in general rules) and individual action).

⁴³ On the narrative vein of legal scholarship, see generally Bell, *Foreword*, *supra* note 1; Richard Delgado, *Legal Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 *Mich. L. Rev.* 2411 (1989); Symposium, *supra* note 42. On the critique of legal storytelling, see generally Daniel A. Farber & Suzanna Sherry, *Telling Stories Out of School: An Essay on Legal Narratives*, 45 *Stan. L. Rev.* 807 (1993).

⁴⁴ See L. Wittgenstein, *supra* note 11, at 9-25.

⁴⁵ See note 35 and accompanying text *supra*.

been won, as well.⁴⁶ Now the controversy has moved into the arena of politics and power. Groups are attempting to coerce or persuade sub-groups not to splinter off.⁴⁷ And a main weapon in this battle is the narrative of a common enemy.”

“After leaving the meeting, I thought of a good name for it,” Rodrigo added: “Relational essentialism. It’s the idea that Black women, for example, must join white women, but not because both groups have the very same experience, perspective, needs, and agendas. They don’t. Rather, it’s because they stand on the same footing with respect to patriarchy. In this respect, they are essentially the same, that is, oppressed and in need of relief.”⁴⁸

“Black men like you and me are guilty of the same thing when we tell the sisters to be quiet, to stop complaining of mistreatment at our hands or at those of certain famous Black men, lest they weaken the community in general.”⁴⁹

“I don’t exempt us,” Rodrigo said quietly. “We’re all guilty of the same thing on occasion. It’s a universal trait. We want to simplify the world by getting deviant, feisty, noncompliant others to come along. We want them to see the world and our struggle in exactly the same way that we do. In essentialism’s political guise, we need others—sometimes urgently—to join in our fight against a force that is oppressive. What essentialism’s three guises⁵⁰ share is the search for narrative coherence. My audience at the meeting hated this idea.”

“It’s easy to see why,” I said after a short pause. “Everyone likes to essentialize others—or themselves—on occasion. Is it possible that when you shared with me your concerns about being banished to the living room a little earlier, you and I were engaging in at least a mild variety of the same kind of essentialism? I’m sure you know the critique of ‘male bonding’ is based to a large degree on the sexual objectification of women. Some would say that your concern over the intimate consequences of your quarrel with Giannina reduces her to her sexual capacity as a woman.”

“I know,” Rodrigo replied. I try not to do it. It just slipped out, like my remark at the Caucus meeting.”

⁴⁶ That is to say, most universities now teach at least a fraction of their courses multiculturally, and relatively few scholars hold that no one outside the former canon of Shakespeare, Milton, etc., has anything to say.

⁴⁷ See notes 14-24 and accompanying text *supra*.

⁴⁸ On “relational essentialism,” see generally Richard Delgado, *The Inward Turn in Outsider Jurisprudence*, 34 *Wm. & Mary L. Rev.* 741 (1993) (coining term).

⁴⁹ See note 38 *supra*.

⁵⁰ *Viz.*, the three guises include the meaning of words, see notes 11-13 *supra*, the theory of coalitions, see notes 15-34 *supra*, and the debate about the canon of cultural knowledge, see note 35 *supra*.

"We must all struggle against it—the desire to simplify others, I mean. It makes the essentialized person or group angry, of course. Plus, we miss a chance to learn something. You're right to suggest that it's a universal tendency," I said. "But it's nevertheless a power move."

"Which in turn is a response to a sense of one's own predicament, one's own disempowerment," Rodrigo said.

"Vis-à-vis someone else, I think you said. And I agree, it's often relational. A essentializes B, who essentializes C out of fear over D, and so on down the line."

Rodrigo nodded in agreement, so I continued: "It's easiest to see in personal life. The trick is to connect it to political and legal theory."

"I ran across a brilliant example the other day of why essentialism has real, sometimes debilitating consequences for individuals. Would you like to hear it, Professor?"

"I'd love to," I said. "Can I offer you a bagel to go with that second cup of coffee?" I motioned toward my compact office refrigerator, which I had just restocked. When Rodrigo nodded enthusiastically, I unwrapped my bag of bagels and spread them out on my desk. "Which kind would you like?"

"What are those?"

"Those are onion. Those others are sesame seed."

"I'll take one of those," Rodrigo said, pointing. "Where were we?"

"You were explaining your theory that essentialist thinking is not harmless."

"Oh, yes. The other author, Kimberlé Crenshaw, is the one who offers the example. Let me know if you've heard it. She points out that Black women often experience discrimination at the job site on account of their Black womanhood.⁵¹ Often the employer is not particularly racist—that is, treats Black men fairly decently—nor sexist—that is, treats white women decently. But the employer thinks Black women are lazy, stupid, and sexually licentious. So the employer treats them poorly with regard to promotions and job assignments."

"Such a woman could clearly sue for employment discrimination," I said, "and recover damages."

"But how? I mean, under what theory? Crenshaw points out that a Black woman plaintiff, until very recently, had only two options. She could sue for racial discrimination, in which case she would be able to use statutes and case law developed with Blacks generally in mind. Or, she could sue for sex-based discrimination, invoking laws framed with women in mind.⁵² There was no legal category for Black women who

⁵¹ See Crenshaw, *supra* note 15, at 141-46.

⁵² See *id.* at 141-52.

experienced discrimination on account of their Black womanhood. So, they could either place themselves in a class of women dominated, numerically and in other ways, by white women, and use remedies framed with them in mind. Or, they could sue for racial discrimination, in which case they ended up lumped in a category containing Black men. In either case, they wound up in a group—white women or Black men—with more power, prestige, influence, and standing than they.”⁵³

“I believe the author and others have a name for this.”

“Intersectionality,” Rodrigo replied quickly. “It’s related to essentialism. As we have seen, the law of remedies assumes that there is one essential Black and one essential woman.⁵⁴ The Black is male, the woman white. The Black woman has to choose, and neither choice is comfortable. Neither category is hers.⁵⁵ Neither group has her agenda and needs in mind. And the law follows suit.”

“But isn’t it a wash?” I asked, offering Rodrigo some nicely aged brie I had overlooked in my refrigerator. “I got this on sale, but it’s pretty good. Try some.”

Rodrigo slathered his bagel with the cheese, and then continued: “I gather you mean that the person situated at the intersection of two categories, like the Black woman, gets to have two sets of allies.”

“Exactly,” I replied. “In some settings, and in some eras, racism will be the major problem for her. When this is the case, she can call on Black men as allies. In other situations, sexism will be the major concern. Then, she can call on the white women, who face the same problem. Black women may end up getting protection that has a poor ‘fit’ to their circumstances. But at least they can call on double the number of friends.”

“So I thought, too. But then a cool remark that Giannina made as we rode home that night got me thinking that maybe it isn’t so.”

“What do you mean?”

“At first, I thought as you did. In fact, the algebra of it is kind of neat. Anyone who lies at the intersection of two categories gets half-hearted protection from each of the two groups. And so, you might think that person is at least as well off as the others. This would, of course, blunt the criticism that persons marginal to a particular group are injured when the group essentializes its own experience, excluding these others from its agendas. It would blunt it because the reply would be, simply, that the intersectional person can call on double the number of allies, can find two (or more) groups, not just one, whose narratives

⁵³ See *id.* at 139-43.

⁵⁴ See notes 51-53 and accompanying text *supra* (explaining that either remedial category currently provided is inadequate).

⁵⁵ See *id.* (noting that categories provide only poor remediation).

will overlap, at least in part, with their own.”

“But now you are thinking this is not so? I think I agree with you, but I can’t quite put my finger on why,” I said. Secretly, I was hoping Rodrigo would let his famous imagination loose. I had to write several annotations on these issues of intersectionality over the next few days, and was hoping our discussion would enable me to produce a better product.

“I hope you’ll bear with me, Professor. This part of my theory is still pretty—how do they call it?—provisional. Please don’t be too hard on me.”

“Of course I won’t. Intersectionality and anti-essentialism are emerging as important issues in the law. If you can do anything to advance the debate, we’ll all be beneficiaries. And besides, I’ve got a very concrete reason for wanting to hear what you have to say. So, please go ahead.”

“There are three reasons why I think that an outsider cannot play along, as it were, with the relatively more empowered group that wants to essentialize it. They’re all related. And they all converge on a single moral, or maxim that Giannina said she has come to live by: namely, that if you are a relatively disempowered person, say a Black man or woman or a lesbian single mother, it is always a big mistake to take the perspective of the larger, more empowered group, even for strategic reasons.”

“I’d like to hear how you are going to document that, and I assume it has something to do with your three reasons.”

“Right,” the irrepressible Rodrigo responded with alacrity.

*A. Rodrigo’s First Reason Why the Social Reformer Is Caught
in a Dilemma in Which the Solution Is Not Always Opting
for the Largest Possible Coalition—
On Marching in the Right Direction*

“The first reason, Professor, is strategic. This is the one that Giannina alluded to that night. It’s that it’s better to march in the right direction rather than the wrong one. Suppose you’re a Black woman and you decide to go along with the feminist agenda, even if all the leaders are white, and all the goals seem more calculated to serve their interest than yours. You reason, ‘what the heck, at least some of the things they hold important I hold important too’—for example, protecting the right to an abortion. Moreover, the group has access to power, money, and channels of communication. So, even though the group is lukewarm about programs that you feel are important, like HeadStart, you at least get to march with them on an important issue.”

"It's always nice to have company," I said.

"Unfortunately, it turns out that it's generally better to march along more slowly in your own direction. It assures that at the least you get closer to your destination.⁵⁶ If you march with the larger group in a direction that is a little off from where you want to go—say, ten degrees skewed—you will have high morale. There will be great solidarity. There will be protest songs. Hands will be linked, and you will have an impressive-looking phalanx. Your picture will be in the papers."

"But in time you'll notice that you are diverging, getting further and further away from your goal, right?"

"Yes. But the price of strategic essentialism is not only that you get away from your agenda and your heart-of-hearts goals. You'll develop what Antonio Gramsci calls false consciousness.⁵⁷ You'll forget who you are and what your original goals and commitments were. Goals and personal identities and loyalties are socially constructed. If we work and struggle with people—no matter how well-intentioned—whose perspectives, culture, and agenda are different from ours, we will eventually change. Goals are not atomistic.⁵⁸ I can't say, I'll go along with the Republicans because I agree with their ideas on tax reform, but I'll be a Democrat with respect to this other policy, and so on. Spending time with Republicans means you will inevitably take on the mindset of a Republican. A Black man active in a white-dominated civil rights organization will eventually take on the traits and concerns he finds there. A Black woman working in a male-dominated group will risk losing her identity as a Black feminist. Some social scientists call this 'alienation.'"⁵⁹

"I'm not sure I quite understand all this high-Crit talk, Rodrigo. I do think that your metaphor of marching determinedly off in the wrong direction, with lots of company and all the bands playing, is a vivid and useful one. But you mentioned there were other reasons for caution."

⁵⁶ Marching in the right direction of course does not guarantee that one will arrive at one's destination. Many radicals who stayed true to their courses ended up harassed by government forces or killed. See, e.g., Alex Haley, *The Autobiography of Malcolm X* (1964).

⁵⁷ Attributed to Antonio Gramsci, the term "false consciousness" refers to a phenomenon in which the oppressed come to identify with their oppressors, internalize their views, and thus appear to consent to their own subordination. See generally Antonio Gramsci, *Letters from Prison* (Lynne Lawner ed. & trans., 1973); *Selections from the Prison Notebooks of Antonio Gramsci* 416-18 (Quintin Hoare & Geoffrey N. Smith eds. & trans., 1971).

⁵⁸ On the fallacy of seeing ourselves as discontinuous with our narratives and stories, see Richard Delgado & Jean Stefancic, *Images of the Outsider in American Law and Culture: Can Free Expression Remedy Systemic Social Ills?*, 77 *Cornell L. Rev.* 1258, 1279-81 (1992).

⁵⁹ See, e.g., Raymond Aron, *Main Currents in Sociological Thought* 146-51 (1965); Emile Durkheim, *The Division of Labor in Society* (George Simpson trans., 1933) (1893); Talcott Parsons, *Introduction to Max Weber, The Sociology of Religion* xxxviii-ix (1971).

B. *Rodrigo's Second Reason Why the Social Reformer Is Caught in a Dilemma—On the Need to Avoid Triumphalism*

"The second reason has to do with something you and other writers in the Critical Race Theory school have expressed—namely, skepticism of gains that seem to have been won through appeals to social altruism."

"I assume you mean our writing on the phenomenon of interest convergence and its pitfalls."⁶⁰

"Precisely. You and others have written of the way in which civil rights gains for Blacks and others always seem to coincide with white self-interest. In eras in which white self-interest and Black justice are not aligned, nothing happens. When, as happened around the time of *Brown v. Board of Education*,⁶¹ elite white groups need to allow a 'break-through' for minorities, one miraculously appears.⁶² Altruism, a sense of compassion, and racial justice count for little, if anything."⁶³

"I know that hypothesis, and believe it is generally valid," I said. "But how does it connect with your thesis about essentialism and your claim that the weaker party has little to gain by affiliating with the stronger, even where both are struggling against a common oppressor?"

"Oh, I should have explained myself better," Rodrigo said. "I didn't mean to be elliptical. What I meant is that temporary alliances always have a way of falling back, just as civil rights gains stemming from momentary interest-convergences between Blacks and whites always erode."

"When the interest-convergence ceases, you mean?"

"Yes. Take *Brown v. Board of Education*.⁶⁴ As everyone knows, the ringing words of the Court's opinion were quickly robbed of much effect by administrative foot-dragging, obstruction, and delay.⁶⁵ The case ended up changing very little. School districts are as segregated today as they were in the days of *Brown*.⁶⁶ And, of course, much the same has

⁶⁰ See generally, e.g., Derrick A. Bell, *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 Harv. L. Rev. 518 (1980) (explaining failure of school desegregation and increasing divergence of racial interests); see also generally Lani Guinier, *The Triumph of Tokenism: The Voting Rights Act and the Theory of Black Electoral Success*, 89 Mich. L. Rev. 1077 (1991) (criticizing overreliance on judicial remedies as unlikely to challenge white interest and hegemony); Girardeau A. Spann, *Pure Politics*, 88 Mich. L. Rev. 1971 (1990) (same).

⁶¹ 347 U.S. 483 (1954).

⁶² See Bell, *supra* note 60, at 524-25, 532 (stating that white groups allow civil rights breakthroughs, such as *Brown v. Board of Education*, not out of altruism, but sporadically to promote their own self-interest).

⁶³ See generally Derrick A. Bell, *Race, Racism, and American Law* 1-70 (2d ed. 1980); Bell, *supra* note 60.

⁶⁴ 347 U.S. at 495 (striking down system of "separate but equal" schools).

⁶⁵ See generally sources cited in note 60 *supra*.

⁶⁶ See Andrew Hacker, *Two Nations: Black and White, Separate, Hostile, Unequal* 147-

happened with women's issues. The right to abortion secured by *Roe v. Wade* was eventually cut back by narrow interpretation,⁶⁷ refusal to provide funding,⁶⁸ and the fervor of the religious right.⁶⁹ Despite a smaller rate of increase in the number of abortions since *Roe v. Wade*, women who obtain abortions often have to run a gauntlet of opposition and hassling.⁷⁰ Giannina described an experience a friend of hers had. It was harrowing."

"And so the conclusion you draw is . . . ?"

"Gains are ephemeral if one wins them by forming coalitions with individuals who really do not have your interest at heart. It's not just that the larger, more diverse group will forget you and your special needs. It's worse than that. You'll forget who you are. And if you don't, you may still end up demonized, blamed for sabotaging the revolution when it inevitably and ineluctably fails."

"Sounds dire," I said. "I hope you'll explain how this happens."

C. *Rodrigo's Third Reason—On Normativity and the Inevitable Egocentrism of Rights-Talk*

"As I mentioned, Professor, the three reasons converge. The third one has to do with the way normativity—prescriptive discourse—is deployed.⁷¹ Imagine that a group, say women, is successful in winning a concession from society at large, namely recognition of the right to an abortion. Who will reap the gains of the new right, and who will leave disappointed? Rights are precious things; they realign how we think about each other. Getting a new right recognized is a lot of work. In accomplishing this, one likely has made a lot of enemies and called in a lot of favors. The victory has not been cost-free. Who now will pay those costs?⁷² With abortion, we saw how quickly the right was nar-

63 (1992).

⁶⁷ See, e.g., *Webster v. Reproductive Health Servs., Inc.*, 492 U.S. 490 (1989) (construing right to abortion narrowly, as subject to reasonable limitations responsive to state interests).

⁶⁸ See *Maher v. Roe*, 432 U.S. 464 (1977) (construing right to abortion narrowly, and stating that right is not absolute and states need not fund abortions even if they do fund natural childbirth).

⁶⁹ See Sara Rimer, *Abortion Foes in Boot Camp Mull Doctor's Killing*, N.Y. Times, Mar. 19, 1993, at A12; Larry Rohter, *Doctor is Slain During Protest Over Abortions*, N.Y. Times, Mar. 11, 1993, at A1, B10.

⁷⁰ See Gerald Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* 175-201 (1991) (noting that rate of increase in number of abortions obtained decreased or remained same after *Roe*).

⁷¹ On the critique of normativity, see generally Symposium, *The Critique of Normativity*, 139 U. Pa. L. Rev. 801 (1991) (containing articles by Pierre Schlag, Steven L. Winter, Frederick Schauer, and Richard Delgado). "Normativity" refers to normative discourse—that is to say, discourse concerning values, about good and evil, and about ethics. "Prescription" refers to uttering *prescripts*—that is, moral statements about what should be done.

⁷² For a discussion of the way in which the costs of racial reform are always placed on

rowed. Courts ruled that states need not fund abortions and that governments may prohibit them entirely in state-supported facilities.⁷³ Poor women often cannot afford abortions and are therefore, in effect, denied access.⁷⁴ A few women in the majority group protested, but many went along since the restrictions did not affect them. But it's not merely that the right was cut back in predictable fashion, as *Brown v. Board of Education* was for Blacks. Worse, as soon as the political climate changed, Black women's sexuality came under fire. The new rights-and-responsibilities movement,⁷⁵ championed by some well-known feminists,⁷⁶ now designates Black women's sexuality as irresponsible, and the employment of abortion as a means of birth control as an abuse of a right.⁷⁷

"Much the same happened in the wake of various civil rights 'break-throughs,'" I pointed out.

"I think it's a general phenomenon," Rodrigo agreed. "Rights, once won, tend to be cut back. And even when part of them remains, the price of the newly won right is exacted from the most marginal of its beneficiaries.⁷⁸ For example, affirmative action benefitted largely the middle-class, upward-striving Black person, like me—ones who likely would have succeeded anyway.⁷⁹ Desperately poor Blacks benefitted little. And the remedy, affirmative action, was so visible and controversial that it drew fire, assuring that all Blacks paid the penalty of its benefits to the few—penalties in the form of stigma, hostility by the majority, and the overriding belief by whites that all Blacks are so undeserving or so stupid

Blacks or lower-class whites, see generally Derrick A. Bell, *Faces at the Bottom of the Well: The Permanence of Racism* (1992) [hereinafter D. Bell, *Faces*] (expounding economic-determinist, or "racial Realist," view of American legal history); Derrick A. Bell, *Bakke*, *Minority Admissions*, and the Usual Price of Racial Remedies, 67 Cal. L. Rev. 3 (1979) [hereinafter Bell, *Bakke*] (noting that because minorities and their counsel were "relegated to the wings" in *Bakke* litigation, persons of color paid costs of racial relief).

⁷³ See note 68 and accompanying text *supra*.

⁷⁴ See notes 67-68 and accompanying text *supra*.

⁷⁵ On the role of the "new communitarians" and their emphasis on social responsibilities as correlatives of rights, see generally Robin West, *Foreword: Taking Freedom Seriously*, 104 Harv. L. Rev. 43 (1990). See also William A. Galston, *Clinton and the Promise of Communitarianism*, *Chron. Higher Educ.*, Dec. 2, 1992, at A52; Denise K. Magner, *Probing the Imbalance Between Individual Rights, Community Needs*, *Chron. Higher Educ.*, Feb. 13, 1991, at A3; Michael A. Rockland, *Rediscovering America, Responsive Community*, Winter 1991/1992, at 55; *The Responsive Communitarian Platform: Rights and Responsibilities, Responsive Community*, Winter 1991/1992, at 4.

⁷⁶ See, e.g., West, *supra* note 75, at 79-85 (deriving ethic of responsibility from general feminist principles of caring for others).

⁷⁷ See *id.* at 67-68, 79-85 (discussing abortion as remedy for sexual irresponsibility).

⁷⁸ See Bell, *Bakke*, *supra* note 72, at 14-16.

⁷⁹ See S. Carter, *supra* note 25, at 71-80; Richard Delgado, *Affirmative Action as a Majoritarian Device: Or, Do You Really Want to be a Role Model?*, 89 Mich. L. Rev. 1222, 1224 (1991).

that they require affirmative action to have a chance.”⁸⁰

“So your third reason has to do with the way the gains one seems to win through coalescing with a more powerful group backfire, causing one to end up disappointed and demonized?”

“Normative discourse is always self-centered,” Rodrigo replied. “The critique of normativity shows that in a number of ways.⁸¹ For example, society may tolerate or even inaugurate new rights for women or minorities. But then it will invariably declare that your and my exercise of those rights is not what they had in mind at all. When a low-income Black woman has an abortion, that will seem like lasciviousness and hypersexuality, an irresponsible exercise of the right.⁸² When a right to nondiscriminatory treatment in employment is recognized, everyone celebrates. But when a Black man with credentials short of Albert Einstein’s gets a job, that will seem troublesome and unprincipled.”⁸³

“So, the conclusion you draw from all this is . . . ?”

“That one should never adopt the perspective of the more powerful group, even strategically. Adopting another’s perspective is always a mistake. One starts out thinking one can go along with the more numerous, better organized, and more influential group—say, white women in the case of sisters of color—and reap some benefits. You think that you can jump nimbly aside before the inevitable setbacks, disappointments and double crosses set in. But you can’t. You will march strongly and determinedly in the wrong direction, alienating yourself in the process. You’ll end up having the newly deployed rights cut back in your case, perhaps being criticized as irresponsible when you try to exercise them. Moreover, any small suggestion for deviation in the agenda, any polite request that the larger group consider your own concerns, will bring quick denunciation. You are being divisive. You are weakening the movement.”

“Rodrigo, you have me half convinced,” I replied. “I’ve long thought that the interest-convergence hypothesis was right. You’ve just

⁸⁰ See, e.g., S. Carter, *supra* note 25, at 49-54; S. Steele, *supra* note 25, at 133-37; Delgado, *supra* note 79, at 1224-25.

⁸¹ See generally Richard Delgado, *Norms and Normal Science: Toward a Critique of Normativity in Legal Thought*, 139 U. Pa. L. Rev. 933 (1991) (arguing that normativity in legal thought is empty, circular, and prone to reinforce a false piety); Pierre Schlag, *Normative and Nowhere to Go*, 43 Stan. L. Rev. 167 (1990) (arguing that normative discourse is solipsistic, empty, and “inscribed”).

⁸² See West, *supra* note 75, at 81-82; see also Richard Delgado, *Pep Talks for the Poor: A Reply and Remonstrance on the Evils of Scapegoating*, 71 B.U. L. Rev. 525, 527-29 (1991) (criticizing West’s approach).

⁸³ That is to say, the fairness norm is understood to mean that white men get jobs; normative terms like “merit” and “fair” derive their principal meanings in relation to empowered actors and their viewpoints. See generally Delgado, *Fifth Chronicle*, *supra* note 1. See also S. Steele, *supra* note 25, at 120-21.

elegantly extended that hypothesis to the essentialism debate and embedded it in a linguistic and cultural context. But if you are ever going to restore your credibility in the eyes of the sisters of color at your law school—not to mention the rest—you can't stop at that. They will want to know where you go from there. If essentialism and making common cause with a too-large group, one that doesn't pay attention to your unique needs, is always a mistake, what do you do to replace it? You need more than a theory to explain what's wrong; you also need to explain what we ought to be doing. Otherwise you run the risk of being seen as a troublemaker, one who goes around stirring up animosity among potential allies and friends."

Rodrigo winced a little. "I think that may have something to do with what happened to me. And I've given a little thought to what you say needs to be done. But this part of my theory I'm much less certain about than the critique part. Do you have the time to listen? You're a great critic, Professor. And I have a most immediate need to refine my thoughts. Giannina and I may be finished if I don't."

I smiled at Rodrigo's earnestness, remembering my own youth.

"Can I offer you some fruit?" I asked. "We've been going at it for quite a while. I find I need something every now and then to keep my energy up. And my doctor, as you know, wants me to eat many small meals as I go through the day."

Rodrigo nodded gratefully. I took down a small tray of oranges and dried apricots I kept stowed in a cabinet next to my refrigerator. Rodrigo continued.

III

IN WHICH RODRIGO SKETCHES THE CONTOURS OF A THEORY OF ANTI-ESSENTIALISM AND THE RELATION OF SMALL GROUPS TO SOCIAL CHANGE

"Interest-convergence never lasts long, as I said, Professor. And it's a bad idea to try to stage-manage it by aligning yourself with the next-less-disempowered group, the one just up the scale from you, for all the reasons I mentioned.

"But if we drop out of larger groups, people will accuse us of being narrow nationalists, of being poor team players, of being obsessed with our own parochial interests. And won't they have a point—at least in their way of looking at it?" I asked.

"There are two challenges," Rodrigo replied. "The first is to remain oppositional, not to give in to the welcome embraces of the group that is not like you. This is fairly difficult. All the pressure is in the other direction. We are taught, even indoctrinated, to be cooperative team play-

ers.⁸⁴ One who pursues his or her own way is depicted as disloyal, disruptive, and derided as a 'single-issue' person. In our society, those are not nice words. But one can persevere. The second challenge is to understand why pursuing a nationalist,⁸⁵ counter-essentialist course is a good idea, to explain how it brings benefits to everyone, not just to one's own kin-group."

"This I'd love to hear," I said, peeling an orange I'd just retrieved from the back of the refrigerator. "Have some."

"These are delicious. Where did you get them?" asked Rodrigo.

"At a place just down the street from where I live," I replied. "It's a Korean-run grocery store. They have great produce, and I go there in part to make a point.⁸⁶ Have as many as you like. I've got more."

"The big supermarket where Giannina and I shop doesn't have nearly as good ones. We may switch. Where was I?"

"You were starting to explain why anti-essentialism is good for all, even the larger group, and not a case of disloyalty or excessive self-preoccupation."

"Oh, yes. My theory has to do with double consciousness. You're familiar with the term of course, Professor."

"Of course. The Black scholar, W.E.B. Du Bois, wrote of it.⁸⁷ It holds that persons of color see the world in two ways at the same time. The Black person, for example, sees himself as normal and abnormal at the same time—as others see him, and also as he sees himself. It's a familiar feeling we all know."

"And in recent times, Black and other feminists of color have expanded that notion to include the idea of multiple consciousness.⁸⁸ A

⁸⁴ This is especially true for women. On the social construction of women and women's roles, see generally Carol Gilligan, *In a Different Voice* (1982); Catharine A. MacKinnon, *Feminism Unmodified* (1987).

⁸⁵ On the nationalist strain of Critical Race thought, see generally Gary Peller, *Race Consciousness*, 1990 Duke L.J. 758; Delgado & Stefancic, *supra* note 8, at 463.

⁸⁶ The professor laments the frictions between the Black and Korean communities that led, in part, to the Los Angeles disturbances, as well as their local, inter-ethnic parallels in other cities. By shopping at a Korean-owned store, the professor makes the point that inter-ethnic rivalries are fruitless.

⁸⁷ On double consciousness generally, see W.E. Burghardt Du Bois, *The Souls of Black Folk* 3-4, 16-17 (1903); see also Ralph Ellison, *Invisible Man* 7-17 (Signet ed. 1952) (explicating idea of Black invisibility by describing difference between Black people's views of themselves and way whites view them); b. hooks, *Ain't I A Woman?*, *supra* note 4 (developing broad feminist theory that addresses both privileged women who live at center and those who live at margin of society); bell hooks, *Feminist Theory: From Margin to Center* (1991) (same). On multiple consciousness, see note 88 and accompanying text *infra*. On the idea that double or multiple consciousness confers an advantage on those possessing it, see Delgado, *First Chronicle*, *supra* note 1, at 1365-68. On the proposition that it also benefits the broader society, see *id.* at 1366-67, 1376-78.

⁸⁸ See generally Robin D. Barnes, *Black Women Law Professors and Critical Self-Con-*

Black female lesbian, for example, sees the world from at least those three different perspectives of race, gender, and sexuality. Her experience is not the same as that of the average Black woman, or that of a Black gay male. It's a complex interaction among those three points of view, and perhaps others as well."

"And you were saying, Rodrigo, that this somehow confers an advantage? To the person bearing multiple consciousness, or to others?"

"To both. The possessor of multiple consciousness learns to see everything through two or more lenses at once. This actually gives you a better grasp of reality. It's kind of like looking through a pair of binoculars. Binocular vision is always better than the kind you get by looking at something through just one lens. So, it gives the possessor an advantage."⁸⁹

"I've heard it said that slaves observed their masters better than their masters observed them. Is your theory related to that idea?"

"In a way it is. The slave perceived the master more accurately than the master perceived him; he had to to survive.⁹⁰ Reading the master's folkways and moods was an essential skill the slave developed to avoid harsh treatment. But he also observed the master more clearly because he had double consciousness—he saw the master both as a master and as a human being. The master, on the other hand, regarded the slave one-dimensionally as a slave or worker only, not as a human being. There were a few exceptions, of course."

"It's coming back to me. The first time we met, you argued that multiple consciousness enables the outsider to see defects in the prevailing order before one immersed in that system could.⁹¹ You said that, in scholarship, this conferred an advantage, particularly with respect to grasping and deploying postmodern theory.⁹² But, if I hear you correctly, you are urging that outsiders ought to hang onto their peculiar

sciousness: A Tribute to Professor Denise S. Carty-Bennia, 6 Berkeley Women's L.J. 57, 61-62 (1990-91) (discussing need for cohesion and common purpose among Black women law professors); Mari Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 Women's Rts. L. Rep. 7 (1989) (using women of color as paradigm group to advocate utilization of multiple consciousness as tool of legal analysis). For a collection of writings on the distinct experiences of women of color vis-à-vis each other and men, see *This Bridge Called My Back: Writings by Radical Women of Color* (Cherrie Moraga & Gloria Anzaldúa eds., 2d ed. 1983); of Black women, see Paula Giddings, *When and Where I Enter: The Impact of Black Women on Race and Sex in America* (1984).

⁸⁹ See W.E.B. Du Bois, *supra* note 87, at 16-17; Delgado, *First Chronicle*, *supra* note 1, at 1366-67.

⁹⁰ See Georg W.F. Hegel, *The Phenomenology of Mind* 229-40 (J.B. Baillie trans., 1967) (1807). On the difference in the ways that slaves and masters knew one another, see James Baldwin, *The Price of the Ticket* 554 (1985); Stanley Rosen, G.W.F. Hegel 162-64 (1974).

⁹¹ See Delgado, *First Chronicle*, *supra* note 1, at 1365-71.

⁹² See *id.* at 1366-68.

form of social insight, maintain it pristine and separate, in order to benefit the larger group as well. But isn't it just this larger group that they plan to leave if they followed your advice?"

"I know it sounds paradoxical, Professor. But bear with me for a minute. Merging with the larger group causes you to forfeit a kind of sightedness. So it's bad for you. But it's also bad for the larger group because dissenters who agree to remain in the larger movements eventually become coopted and alienated from their own position, with the result that the larger group loses an important source of criticism, a kind of early warning signal from which they could learn something. Systemic evils, like racism and sexism, are never visible within the culture, because those evils are woven into the paradigm—into the system of meanings by which we construct and understand reality.⁹³ Speech is paradigm-dependent. And, if racism—or any other evil—is embedded in that paradigm, one can't speak out against it without being heard as incoherent.⁹⁴ That's why racism and sexism are harder to correct than scientific error."

"I'm not sure I see that. How about an example?"

Rodrigo was silent a long moment. Then, he looked up thoughtfully:

"Professor, does your school have an affirmative action program?"

"Of course. I think virtually every one does. Yours must, as well."

"It does. But I learned something interesting when I was working on a report for the curriculum committee.⁹⁵ As you recall, we've been working with some of the faculty in revising the first- and second-year curriculum. This came up sort of tangentially, but now I think it's really important. At one point, my friend Ali, who is also on the committee, and I asked the law school for figures about employment, salary, job offers, etc. We were exploring quite a different hypothesis"

"What they call serendipity," I interrupted.

"Exactly. And what we learned turned out, as you will see, to have a great bearing on the matter we are currently discussing: Namely, the invisibility of the status quo. We learned that the minority students, most of whom were admitted to the school under an affirmative action program, tended to graduate at a rate almost identical to that of law students in general. Not only that, they tended to get jobs at roughly the same rate. Last year, in fact, they did better than the whites. They also

⁹³ See generally Delgado & Stefancic, *supra* note 58 (drawing on linguistic theory to explain invisibility of pernicious nature of ethnic depiction and drawing on history to show how harms of such ethnic depiction operate effectively but below consciousness).

⁹⁴ See *id.* at 1260-61, 1277-82.

⁹⁵ See generally Delgado, *Fifth Chronicle*, *supra* note 1 (in which Rodrigo and the professor discuss pedagogy and legal education).

earned a slightly higher average starting salary. More of them got judicial clerkships—I mean on a percentage basis, of course.”

“That’s fascinating. I remember hearing one or two figures like those at my school. What do you make of that?” I asked.

“Ali and I were intrigued, as you can imagine. So, we looked around further. It turned out that years after graduating, the same holds true. The minorities end up appointed to judgeships and commissions at a rate greater than their proportion in the alumni body. All the students, of course, are smart, and many of them go on to quite distinguished careers. But the minorities tend to do a little better. We checked at some other law schools and found the same story: The minorities did a little better than the whites, or at least not worse. Not in every case, of course, and not on every single measure, but in general.”

“And the conclusion you draw from this is . . . ?”

“I thought that there has to be some form of cultural preference encoded and deeply buried in the way we admit and grade students, something, perhaps in the way we use letters of recommendation, evaluate extracurricular activities, or perhaps the LSATs, that gives an edge to the whites and disadvantages the minorities. The output figures imply strongly that the minorities are just as able, or more so. But they get admitted in quite small numbers. My law school has only a handful of students of color.”

“Mine, too.”

“Yet the ones who do get in excel.”

“From which you conclude that some form of favoritism is going on?”

“Some encoded cultural preference for the slightly less qualified whites.⁹⁶ I don’t want to overstate this, Professor. As I mentioned, all the graduates do well. But judging from output statistics,⁹⁷ the minorities are superior to or undifferentiable from the rest.”

“Perhaps they have an unfair advantage,” I quipped, “namely, a sense of mission.” I immediately regretted my tongue-in-cheek remark when Rodrigo shot me a rueful look.

“I’m joking. You’ve pointed out a serious problem. I don’t mean to make light of it. I’ve often reflected on how brilliantly many of my minority students acquit themselves in class and later. But I think you were

⁹⁶ If Rodrigo was stating that whites are less qualified, then it seemed to follow that the students of color must be *more* qualified. I hoped Rodrigo would explain this statement, which seemed to me surprising. As luck would have it, he soon did. See text accompanying note 97 *infra*.

⁹⁷ See text accompanying notes 95-96 *supra* (explaining how outcome statistics—i.e., performance following graduation—show both groups in similar position or students of color slightly ahead).

mentioning this en route to a point about perception, right?"

"Exactly. I found when I ran some of these figures past people of the majority race that they did *not* draw the inference I did. Rather, they looked puzzled, or disbelieving. They wanted to know where I got my statistics, and when I said the placement office, they looked flabbergasted. Several said that the minority-success figures I had unearthed must themselves be the product of affirmative action in wider society."

"In other words," I said, "they begin with the premise that minorities are inferior, indeed must be—otherwise why would there be affirmative action? Then, when it turns out that the minorities, despite all the obstacles they face, nevertheless do well, it must be because judges, employers, appointments committees, and so on are giving them favored treatment. You draw one conclusion, they another."

"And that's the whole thrust of a canonical mindset.⁹⁸ It means that if you have two possible inferences from a set of data, one in which minorities are the equal of whites, or even have a slight edge, and one in which they don't, you immediately think of the second."⁹⁹

"I agree that preconception—what you call canonical thinking—functions that way. Paradigms always preserve themselves. But I'm unclear what connection all this has to your argument in favor of an antiesentialist cultural nationalism that would renounce coalition politics."

"Let's see if I can bring myself back on track." Rodrigo was silent for a moment, his fingers lightly touching his forehead. I was glad to see that my quick-witted young friend, who often seemed able to dance miles ahead of me, occasionally needed to regroup. He continued at length:

"The connection is this. The larger group always has a canon—a set of principles, articles of faith, ways of seeing the world. These may exclude you—at least not include you as fully as you might like. If you go along with them, there will inevitably arise occasions like the one I just mentioned between Blacks and whites, except that you will be on the receiving end of poor or uncomprehending treatment from a group with whom you thought you had a lot in common.

"Since their narrative is designed for a different purpose—namely,

⁹⁸ On the canon generally, see note 35 *supra*; see also Stanley Fish, *Is There a Text in this Class?* (1980) (discussing role of conventional meanings in facilitating and confining discourse).

⁹⁹ On the role of the majoritarian mindset in controlling the course of racial reform, see D. Bell, *And We Are Not Saved*, *supra* note 1, at 95-96, 140-61 (asserting that it is impossible for Blacks to participate in political process with any real expectation that their goals can prevail because of their status in society); D. Bell, *Faces*, *supra* note 72, at 2-9, 109-26, 158-94 (same, but because of majoritarian preconceptions and mindset); Kimberlé Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 *Harv. L. Rev.* 1331, 1350-52, 1370-76 (1988) (discussing hegemonic function of racial stereotypes and beliefs in legitimizing oppression of Blacks).

theirs—your requests will seem unprincipled distractions, evidence of disloyalty or overpreoccupation with self. They may seem like reverse essentialism—a perverse insistence on the importance of such a petty and divisive thing as race.¹⁰⁰

“And so you are generally—maybe always—better off with your own,” Rodrigo concluded.

“Yet you said, I think, that accepting this would benefit not just the insurrectionist group but the larger one from which it secedes, as it were. I’m curious how you see that. How can it benefit white women in the feminist movement, for example, if the Black women go their own way? Is it the binocular vision idea you mentioned before?”

“The main benefits inure to the secessionist group. But the larger group benefits, as well. They get careful outside criticism. They get a certain degree of protection from complacency by reason of the need to vie for the support of potential allies in outside groups. They get constant reminders that our perspective is not the only one. I got one just the other day,” Rodrigo concluded, a little ruefully.¹⁰¹

“But Rodrigo, aren’t you overlooking that the next-larger group, the one that suffers the defection, *needs* the smaller group? It needs it to consolidate cultural change, to install new conventions. It needs allies, as well, to institute ordinary, concrete reforms, like new civil rights laws. What might look to you like loyalty to self looks to others like a case of weakening a revolution that desperately needs you—needs your numbers, needs your genius, needs the credibility you bring by virtue of your very diversity. Revolutionary groups of all sorts need solidarity. When a reform movement starts to fragment, isn’t it in trouble? Rodrigo, I think for once you are guilty of excessive optimism. You ignore the *costs* of fragmentation. I don’t see how anti-essentialism can possibly benefit the group whose solidarity is weakened. I think one revolution dies to give birth to another. Isn’t that the best you can say?”

Rodrigo smiled as he listened to my earnest objection.

“Professor, I was about to say that I had a response and that it had

¹⁰⁰ On the role of majoritarian narratives in enabling society to justify condemning or ignoring outsider stories, see generally Jerome Culp, *Firing Legal Canons and Shooting Blanks: Finding a Neutral Way in the Law*, 10 St. Louis U. Pub. L. Rev. 185, 191-95 (1991) (advocating inclusion of non-neutral perspectives of women and minorities in the canon); Delgado, *supra* note 43, at 2412-18 (examining use of stories in struggle for racial reform); Delgado & Stefancic, *supra* note 58, at 1284-88 (criticizing system of free expression for impeding cause of racial reform through favoritism of elite groups and promotion of negative images of minorities).

¹⁰¹ See Delgado, *First Chronicle*, *supra* note 1, at 1370-80 (pointing out different perspectives and behavior based on biology, culture, and history); see also Patricia J. Williams, *The Alchemy of Race and Rights* 12-13, 44-51, 146-65 (1991) (analysis of role of conflicting interpretation in many racial situations).

to do with the role of hunger. Then I noticed that it is past dinnertime.”

“We could get a bite to eat at the little Persian deli next door,” I offered. “They just opened up last month. I’ve been there twice. They’re pretty good, although I think they close at seven.”

“It’s a few minutes of. What do you say we get some take-out? I’ll treat this time.”

“Please let me,” I said. “Your life is disrupted enough right now, and I assume you have interviews coming up?”

“Starting next week.”

“You’ll have extra expenses. Let me pay. If you make up with Giannina, perhaps the two of you can have me over when you’re back from the circuit.”

“Okay, if you’ll promise to come. Giannina has been wanting to meet you.”

“It will be my pleasure.”

IV

IN WHICH RODRIGO POSITS A THEORY OF SOCIAL CHANGE AND EXPLAINS THE ROLE OF OPPOSITIONAL GROUPS IN BRINGING IT ABOUT

Ten minutes later, we were riding up the elevator to my office, balancing cups of hot tea and plates of dolmas and pita bread. “I’m glad to know you plan to elaborate on your theory of social change, Rodrigo. In one of our earlier discussions, you kind of left that hanging.¹⁰² As you know, I am a skeptic on that score. A number of friends and I have been developing a theory of what we call the ‘empathic fallacy’ to explain why reform is so halting and slow.¹⁰³ The last time we talked—or maybe it was the time before last—you said something to the effect that social reform through law was unlikely. But you left open the possibility that it might come another way.”

We arrived at my door. As I struggled to get out the key without spilling my food, Rodrigo said, “My theory—it’s only vague and sketchy at this point—consists of two parts. I think I know a further reason, I mean in addition to the ones you and your friends are developing, why we never get lasting reform through litigation, legislation, etc. That’s the first part. The second part consists of showing how reform does come

¹⁰² See Delgado, *Second Chronicle*, supra note 1.

¹⁰³ See Delgado & Stefancic, supra note 58, at 1261, 1281-82 (coining term and explaining its operation in system of racial reform that rests heavily on free expression). As the name implies, the empathic fallacy refers to the exaggerated faith in the ability to achieve new levels of sensitivity through free expression in the marketplace of ideas, and subsequently to dispel broadscale cultural evils, such as racism.

about, when it comes.”

“Which is rare enough.”

“I agree,” Rodrigo said. “Need some help with that key?”

“No, I’ve got it.” Moments later we were seated comfortably back in my office.

“This is like having a picnic,” Rodrigo said as he dived into his meal. “I’m glad we got there before they closed.”

“You should go there sometime while they’re open,” I said. “The service is good, and they let you stay as long as you want. I sometimes go there with my students to continue a discussion we had in class.”

“Are you ready for the first part of my theory?” Rodrigo asked impatiently.

I took a last bite of my dolmas, washed it down with a swig of tea, and said, “I’m all ears.”

A. *Rodrigo Lays Out a Natural History of Social Ideas*

“I think that virtually all revolutionary ideas start with an outsider of some sort,” Rodrigo began. “We mentioned the reasons before. Few who operate within the system see its defects. They speak, read, and hear within a discourse that is self-satisfying. The primary function of our system of free speech is to effect stasis, not change.¹⁰⁴ New ideas are ridiculed as absurd and extreme, and discounted as political, at first. It’s not until much later, when consciousness changes, that we look back and wonder why we resisted so strongly.”¹⁰⁵

“Revolutionaries always lead rocky lives. You’ll see that too, Rodrigo, although I don’t know if you classify yourself as one or not. All the pressure is in the direction of conforming, of doing what others do, in teaching, in scholarship, in fact in all areas of life.”

Rodrigo shrugged off my counsel. “So, new ideas and movements come along relatively rarely. And when they do, they are beleaguered. For a long time, they garner little support. Then, for some reason, they acquire something like a critical mass. Society begins to pay attention. Now, the situation is in flux. The group now needs all the allies they can

¹⁰⁴ See *id.* at 1259-61, 1277-82 (examining appalling historical ethnic depiction of people of color and its purpose for majority culture); see also Milner S. Ball, *Stories of Origin and Constitutional Possibilities*, 87 *Mich. L. Rev.* 2280, 2296-2300 (1989) (discussing difficulty of re-adopting original stories and need for multiple voices to be realized in one story); Richard Delgado & Jean Stefancic, *Hateful Speech, Loving Communities: Why Our Notion of “A Just Balance” Changes So Slowly*, 82 *Cal. L. Rev.* (forthcoming 1994) (detailing difficulties of attempting to change any legal paradigm).

¹⁰⁵ See Delgado & Stefancic, *supra* note 58, at 1260, 1275-81; see also Charles Lawrence, *The Id, The Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 *Stan. L. Rev.* 317, 321-24 (1987) (pointing out that perpetrators of racism rarely see their behavior as racist).

muster. They begin to make inroads and need to make more. They see that they are beginning to approach the point where they might be able to change societal discourse in a direction they favor."

"Including the power to define who is 'divisive,'" I added.

"That, too—especially that," Rodrigo said animatedly, seeing how my observation fit into the theory he was developing. He looked up with gratitude, then continued:

"At this point, they need all the help they can get. If they are you, they need Gary Peller and Alan Freeman.¹⁰⁶ If they are feminists, they need Cass Sunstein.¹⁰⁷ Earlier, they needed the religious right in their campaign against pornography.¹⁰⁸ And so on. With a little growth in numbers, they may perhaps reach the point at which power begins to translate into knowledge.¹⁰⁹ And knowledge, of course, is the beginning of social reform. When everyone knows you are right, knows you have a point, you are well on your way to victory."

"And for this the group needs numbers."

"Right. With them, they can change the interpretive community.¹¹⁰ They can remake the model of the essential woman, say, along lines that are genuinely more humane."¹¹¹

¹⁰⁶ Viz., white authors who have written work supportive of Critical Race scholarship by academics of color. See generally Alan D. Freeman, *Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine*, 62 *Minn. L. Rev.* 1049 (1978) (describing major developments in antidiscrimination law in 25-year period following *Brown v. Board of Education*, 347 U.S. 483 (1954), with emphasis on "victim's perspective"); Alan D. Freeman, *Racism, Rights, and the Quest for Equality of Opportunity: A Critical Legal Essay*, 23 *Harv. C.R.-C.L. L. Rev.* 295 (1988) (commenting on racism and rights in response to minority critique of Critical Legal Studies movement); Gary Peller, *Race Consciousness*, 1990 *Duke L.J.* 758 (exploring conflict between integrationist and Black nationalist images of racial justice, and its effect on current mainstream race reform discourse).

¹⁰⁷ See generally, e.g., *Feminism & Political Theory* (Cass R. Sunstein ed., 1990) (providing a representative wide-ranging, yet unified, set of readings on feminist political thought); Cass R. Sunstein, *Pornography and the First Amendment*, 1986 *Duke L.J.* 589 (arguing that pornography is low-value speech that can be regulated consistently with first amendment).

¹⁰⁸ See generally Delgado & Stefancic, *supra* note 104.

¹⁰⁹ See Michel Foucault, *Power/Knowledge: Selected Interviews and Other Writings 1972-77* (Colin Gordon ed. & Colin Gordon et al. trans., 1980). Michel Foucault, a well-known contemporary philosopher, wrote about the relation between structures of social control and what is regarded as knowledge. He believed that knowledge is often socially constructed—that is, a matter of consensus—and that what is regarded as true is as much a function of power and influence as objective truth.

¹¹⁰ "Interpretive community" is a commonly employed term in the theory of interpretation. It refers to the manner in which texts and words acquire a meaning in reference to a community of speakers who agree tacitly to employ them in particular ways. See S. Fish, *supra* note 98, at 8-17. As Rodrigo employs it, he means that large numbers of people can sometimes change the way we see things, deploy words, and ascribe meanings to concepts such as women. See text accompanying note 111 *infra*.

¹¹¹ On the hope that this kind of radical reconstruction of womanhood can happen, see generally *America's Working Women* (Rosalyn Baxandall et al. eds., 1976) (offering collection of views on social change and reform).

*B. Rodrigo and I Discuss the Role of Reformers
and Malcontent Groups*

“So, Rodrigo,” I continued, “you are saying that new knowledge of any important, radical sort begins with a small group. This group is dissatisfied, but believes it has a point. It agitates, acquires new members, begins to get society to take it seriously. And it’s at this point that the essentialism/anti-essentialism debate usually sets in?”

“Before it wouldn’t arise. And later, when the large group is nearing its goals, it doesn’t need the disaffected faction. So it’s right at this mid-point in a social revolution—for example, the feminist movement—that we have debates like the one I got caught in the middle of.”

“But you were saying before that the disaffected cell ought to sit out the revolution, as it were, and not just for its own good but for that of the wider society as well?”

“It should. And often such groups do, consciously or unconsciously. I’m just saying that when they do, it’s usually not a bad thing.”¹¹²

“And this is because of your theory of knowledge, I gather, in which canonical thinking always gets to a point where it no longer works and needs a fundamental challenge?”

“And this, in turn, can only come from a disaffected group. Every new idea, if it has merit, eventually turns into a canon. And every canonical idea at some point needs to be dislodged, challenged, and supplanted by a new one.”

“So maverick, malcontent groups are the growing edge of social thought.”

“Not every one. Some are regressive—want to roll back reform.”¹¹³

“I can think of several that fit that bill,” I said shuddering. “But you said earlier that the outsider has a kind of binocular vision that enables him or her to see defects in the bubbles in which we all live—to see the curvature, the limitations, the downward drift that eventually spells trouble.¹¹⁴ But just now you used another metaphor. What was it?”

Rodrigo thought for a moment. “Oh, I remember. It was just before we went out for food. The metaphor was the role of hunger.”¹¹⁵

¹¹² For example, the frequently noted low voter turn-out rate for disaffected groups occurs when they perceive that an election is unlikely to address their concerns.

¹¹³ I assumed Rodrigo meant regressive in the root sense, as in trying to cause society to return to a much earlier state, such as the South during slavery or the reign of kings during feudalism.

¹¹⁴ Rodrigo used the “bubble” metaphor earlier, I recalled, to explain how outsiders may sometimes give useful information to those in the dominant group. See Delgado, *Fifth Chronicle*, supra note 1, at 1602-03.

¹¹⁵ See text accompanying notes 101-02 supra (in which Rodrigo remarks that need and dissatisfaction, metaphorically represented by hunger, may be driving force behind some social

"I'd love for you to explain."

"It's like this." Rodrigo pushed aside his plate. "Change comes from a small, dissatisfied group for whom canonical knowledge and the standard social arrangements don't work. Such a group needs allies. Thus, white women in the feminist movement reach out to women of color; Black men in the civil rights movement try to include Black women, and so on. Eventually, the larger group makes inroads, changes the paradigm, begins to be accepted, gets laws passed, and so on."

"Can I take that plate?" I asked. Rodrigo passed it over, and I put it in the nonrecyclable bin outside my office along with the other remnants of our snack. "This is what you argued before, so I assume you're getting to your theory about hunger."

"Correct. But you see, as soon as all this happens, the once-radical group begins to lose its edge. It enters a phase of consolidation, in which it is more concerned with defending and instituting reforms made possible by the new consensus, the new paradigm of Foucault's Knowledge/Power,¹¹⁶ than with pushing the envelope towards more radical change. The group is beginning to lose binocular vision, the special form of insight most outgroups have, about social inequities and imbalances."

"And so the reform movement founders?" I asked. "We've seen many examples of that. As you know, legal scholarship is now extremely interested in that question. Many in the left are trying to discover why all our best intentions fail, why the urge to transform society for the better always comes to naught."¹¹⁷

"I'm not sure I'd say the movement founders," Rodrigo interjected. "Rather, it enters into a different phase. I don't want to be too critical."

"But at any rate, it peters out," I said. "It loses vigor."

"But then, eventually, another group rises up to take its place. Often this is a disaffected subset of the larger group, the one that won reforms, that got the Supreme Court or Congress to recognize the legitimacy of its claims. It turns out that the reforms did not do much for the subgroup. The revolution came and went, but things stayed pretty much the same for it. So, it renews its effort."

change).

¹¹⁶ See generally M. Foucault, *supra* note 109.

¹¹⁷ See generally D. Bell, *And We Are Not Saved*, *supra* note 1 (providing new insights and suggesting more effective strategies in response to failed pledges for racial equality in past); D. Bell, *Faces*, *supra* note 72, at 10-13 (arguing that in order to create viable strategies to alleviate burden of racism Blacks should acknowledge fact that racism is an integral, permanent part of society); A. Hacker, *supra* note 66, at 199-219 (arguing that white America continues to preserve Blacks as subordinate caste in response to increased competition and insecurity); Delgado & Stefancic, *supra* note 104; Guinier, *supra* note 60, at 1102, 1134-54 (criticizing Black electoral success model for failing to focus on nature of representation within collective decisionmaking bodies controlled by prejudice and external inequalities).

"And that's what you meant by hunger?"

"In a way. Those who are hungry are most desperate for change. Human intelligence and progress spring from adversity, from a sense that the world is not supplying what the organism needs and requires. A famous American philosopher developed a theory of education based on this idea."

"I assume you mean John Dewey?"¹¹⁸

"Him and others. He was a sometime member of the school of American pragmatists. But his approach differed in significant respects from that of the other pragmatists like William James and Charles Pierce. One was this.¹¹⁹ And so I'm thinking we can borrow from his theory to explain the natural history of revolutionary movements, applying what he saw to be true for individuals to larger groups."

"Where you think it holds as well?" I asked. "It's always dangerous extrapolating from the individual to the group."

"I think the observation does hold for groups, as well," Rodrigo replied. "But I'd be glad to be corrected if you think I am wrong. The basic idea is that groups that are victors become complacent. They lose their critical edge, because there is no need to have it. The social structure now works for them. If by intelligence, one means critical intelligence, we become dumber all the time. It's a kind of reverse evolution. Eventually society gets out of kilter enough that a dissident group rises up, its critical skills honed, its perception equal to that of the slave.¹²⁰ It challenges the master by condemning the status quo as unjust, just as Giannina challenged me. Sometimes the injustices it points to are ones that genuinely need mending, and not just for the discontented group. Rather, they signal a broader social need to reform things in ways that will benefit everybody."¹²¹

I leaned forward; the full force of what Rodrigo was saying had hit me. "So, Rodrigo, you are saying that the history of revolution is, by its nature, iterative. The unit of social intelligence is small; reform and re-

¹¹⁸ See generally John Dewey, *Experience and Education* (First Collier Books ed. 1963) (1938) (classic statement of progressive education which includes theory of inquiry learning, freedom, and learning through experiences); see also generally John Dewey, *How We Think* (1933) (articulating philosopher's approach to thought and action in relation to his program of American pragmatism).

¹¹⁹ *Viz.*, Dewey's theory of education, a topic that he addressed much more fully than any other American philosopher of his period. He believed that understanding how the mind works and assimilates new material is essential to understanding how an individual adapts to her reality.

¹²⁰ See text accompanying notes 90-91 *supra*.

¹²¹ On the notion that reforms born of the struggle for racial justice often end up benefiting all, not just Blacks, see generally Harry Kalven, *The Negro and the First Amendment* (1965) (focusing on impact of the civil rights movement on first amendment); see also Delgado, *Second Chronicle*, *supra* note 1, at 1195-1202.

trenchment come in waves. This fits in with what you were saying earlier about the decline of the West and the need for infusion of outsider thought. And, it dovetails with other currents under way in environmental thought,¹²² economic thought¹²³—and, as you mentioned, in American political philosophy. Maybe you'll start a resurgence of attention to John Dewey, who I always thought was a neglected, but very brilliant, philosopher.”

“Do you see any defects in my theory, anything I should consider?”

After a pause, I said, “Well, there's the World Trade Center issue.”¹²⁴

“I'm not sure what you mean.”

“Isn't the intelligence of radically disenfranchised groups and sub-groups just as likely to turn criminal and take destructive forms, like blowing up the World Trade Center, as it is to take the constructive critical turn you posit?”

“This may happen occasionally,” Rodrigo conceded.

“But it's no small objection, Rodrigo,” I pressed. “Many believe that the need today is not for further fragmentation, further nationalism, further multiplication of small groups along lines of ethnicity, politics, or religion. Rather, the need is for the opposite—for peace, for cooperation, for everyone to acquire a large, ecumenical understanding of the world and our place in it.¹²⁵ We can't solve problems piecemeal. Everything is connected. What's needed is a holistic vision, not the parochial concern, say, of Arab nationalists. We need to see problems in a national, if not global, perspective.”

“But we won't get that unless the world is fair.” Rodrigo was speaking slowly and emphatically now. He leaned forward in his seat. “You see, Professor, the ecumenical view requires that everyone see the

¹²² On the idea that small is better, environmentally speaking, see, e.g., Kenneth E. Boulding et al., *Environmental Quality in a Growing Economy* 3-14 (Henry Jarrett ed., 1966) (criticizing society's obsession with production and consumption, and its lack of concern for future ramifications); Aldo Leopold, *A Sand County Almanac and Sketches Here and There* viii, ix, 199-226 (1949) (arguing for land ethic which examines land-use questions in terms of ethics and aesthetics, and not just as economic problems).

¹²³ On the idea that government should be as small and nonintrusive as possible, see generally Richard A. Epstein, *Forbidden Grounds: The Case Against Employment Discrimination Laws* (1992) (arguing that economic and social consequences of antidiscrimination laws in employment should be focused on more than historical injustices).

¹²⁴ See Ralph Blumenthal, *Trade Center Bombing Suspect Not a Patsy, Officials Conclude*, *N.Y. Times*, Mar. 9, 1993, at A1 (describing suspected terrorist group conspirator in bombing of New York office building); Chris Hedges, *Bomb Suspect's Path to Piety and Elusive Dreams*, *N.Y. Times*, Mar. 8, 1993, at A1 (same).

¹²⁵ See generally K. Boulding, *supra* note 122 (arguing for long-term vision of environment in dealing with present problems); *Reweaving the World: The Emergence of Ecofeminism* (Irene Diamond & Gloria F. Orenstein eds., 1990) (presenting multicultural, global vision of reform in response to current environmental, political, and social crises).

regime as just. If not, they will unite with others disaffected like themselves and struggle their hardest to bring their grievances to the next-larger group. The next-larger group inevitably will preach to them about the errors of division, partisanship, and disloyalty, and will tell them that their cooperation is necessary to forward the larger group's agenda, whatever that is. But if the Palestinians thought their situation was fair, they would not be disturbing the peace in the Middle East. If Black women thought they were being dealt with fairly in the women's movement—or at the hands of the Black brothers, for that matter—they would not be agitating for increased attention to their needs.”

“So justice comes before peace?”

“Logically, yes, and also in the natural history of ideas,” Rodrigo replied. “Of course, if one is a member of a more-empowered group, as you and I are vis-à-vis Black women, one's need will be for peace, for unity, for consolidation, for other virtues of a stable and just age. But the smaller group will think just the opposite—that the age is not just and has no business being stable.”

I was silent for a moment. “Now, Rodrigo, isn't there a lesson in this for you and your quarrel with Giannina?”

“I think now I understand better the conflict between me and the women. Women themselves are outsiders from the mainstream. Maybe they're better able to see the patriarchy in the system than I am. The problem is that I didn't realize that my point about essentialism being a power struggle between the groups is generalizable to men and women, and to me and Giannina. As far as what happened at the meeting, I realize that much of my thinking follows from Giannina's own analysis of what was taking place between the white women and the women of color.”

Just then I heard the phone ringing in my secretary's office down the hall and realized we were about to be interrupted by call-forwarding if the caller persevered beyond four rings. While waiting for the call to flip over, I mused to Rodrigo:

“Rodrigo, I think I agree with you about your general analysis. Moreover, I want to write your epitaph. It will say . . .”

Just then my office phone started to ring, so I quickly finished my thought:

“‘Justice first, then peace’—a motto that others have employed in different versions to highlight the incompatibility between an oppressive regime that contains structures of unfairness, and social stability. Such a regime is inherently unstable because of the everpresent possibility of revolt.”

Rodrigo smiled in appreciation. I picked up the phone. What I then told him made him smile even more:

"It's Giannina," I said. "She wants to know if the three of us would like to go to a movie."

CONCLUSION

Minutes later, Rodrigo was scrambling out of my office, cramming notes and papers in his book bag. As I watched his lanky frame disappearing rapidly down the hallway, I reflected on our conversation. I thought that his analysis of essentialism had considerable merit, especially as a descriptive theory accounting for the divergent views of commentators like my friend, Martha Fineman, who writes about the need for solidarity, and those of writers of color like Angela Harris and Kim Crenshaw, who see the need for separate treatment of subgroups. His further step of connecting the anti-essentialism debate to theories of Critical thought and social change gave me greater pause. The literature was replete with scholars trying to make sense of the failures of twentieth-century reform movements, including ones I hold dear. My colleagues and I had been exploring the role of normativity, of misplaced faith in the law, and of the phenomenon of the "empathic fallacy," in hopes of making sense out of the train of setbacks. His idea that things are cyclical seemed appealing, and corresponded to my own sense of how social change worked. And, of course, I was rather flattered at the prominent role it afforded mavericks and discontented scholars, like me, whom Rodrigo considered useful mutants! Yet I hoped for further support for his thesis. Would I receive anything comparable to Rodrigo's printout which he had so quickly and generously provided me following our first conversation?¹²⁶

As I walked down the darkened corridor on my way home to change clothes before the movie, I looked through the glass window on the door to the faculty mailboxes. I was startled to see a small gray envelope there in my box. I had checked my mail only shortly before. I fished out my key and walked in. Alas, no printout of articles and books. Instead, I saw, written in a small, neat hand, the following poem:

ENTRY IN A BIRMINGHAM CITY JAIL

in a hallway of the library
 behind a glassed-in wall
 the warden's docket lies
 open to the page
 where twenty-seven years ago
 minus two weeks exactly
 at 5:50 in the afternoon

¹²⁶ See Delgado, *First Chronicle*, supra note 1, at 1381-83 (Appendix A & B—Rodrigo's printout).

on the twelfth day of April 1963
The Reverend Martin Luther King
thirty-four years old
was booked as number 607
for violating section 1159
of the City Code of Birmingham
creating a disorderly disturbance
by walking down the middle of the street.
the Reverend Ralph Abernathy
and five other black persons
some male, some female
preceded him into the Avenue "F" jail.
at 6:06 after
all the commotion subsided
one Robert Groves
number 608
white and male
joined them
drunk.

Giannina (1990)

As I continued down the hallway, I reread the poem and wondered: Why did she write it? And what did it mean? I knew, of course, that a text had no single, determinate meaning, least of all a poem. On some level, Giannina's poem may have been an effort to reach out—a peace offering. Perhaps she was reminding us that the feud was just a small thing, that noble ventures, like King's, must struggle not to lose themselves in banality: On one level, we are all brothers and sisters, but if one fails to notice differences, then Martin Luther King becomes just another prisoner, like the drunks—important features erased. I left the building and walked in the direction of my apartment to prepare for the evening and for my first chance to meet the elusive Giannina.