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APPROPRIATION & TRANSCULTURATION IN THE CREATION OF COMMUNITY

DEBORAH W. POST*

I. THE FIRST SIGN (THE TOWER OF BABEL)

I participated in a roundtable discussion at the First National Meeting of the Regional People of Color Conferences entitled "Celebrating Our Emerging Voices: People of Color Speak—Coherence or Tower of Babble?"[1] With the allusion to the "Tower of Babel," the planners invoked a foundational myth, a metaphor within a narrative tradition that equates power with shared information and a common culture or at least a common language.[2] But the Tower of Babel could also be a story about powerlessness—the disunity caused by diverse voices or languages.

The question that was posed by the title is related to but also different from that posed by the moderator, Professor Leslie Espinoza, who asked each of us to choose three words to describe who we are. As I understood it, the moderator's question was designed to elicit

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[1] The First National Meeting of the Regional People of Color Conferences was held on March 25–27, 1999. The following also participated in the first roundtable discussion: Leslie Espinoza, moderator (Boston College); Shubha Ghosh (Georgia State); Cheryl Harris (University of California at Los Angeles); Twila Perry (Rutgers at Newark); Leland Ware (St. Louis University); Fred Yen (Boston College); Frank Valdes (Miami).

[2] "And the Lord said 'Behold, they are one people, and they have all one language; and this is only the beginning of what they will do; and nothing that they propose to do will now be impossible for them. Come, let us go down, and there confuse their language that they may not understand one another's speech.'" *Genesis* 11:6 (THE NEW OXFORD ANNOTATED BIBLE WITH THE APOCRYPHA, Revised Standard Version (1977)) [hereinafter *Genesis*]. The annotation contains the following translations: "Babel" means "gate of God," while "balal" means "confuse." *See id.* at 11:9 annot.

Bruce Lincoln discusses Roland Barthes' theory that myth is a "second-order semiotic system" that has "mystificatory conceptual content." *See* BRUCE LINCOLN, DISCOURSE AND THE CONSTRUCTION OF SOCIETY: COMPARATIVE STUDIES OF MYTH, RITUAL AND CLASSIFICATION 5 (1989). Barthes continues that myth is the "'appropriate instrument for . . . ideological inversion.'" *Id.* (quoting ROLAND BARTHES, MYTHOLOGIES 142 (1972)). Lincoln, for his part, distinguishes between history, legend, and myth. *See id.* at 24–25. The last category is different from the prior two because it has authority—the power to evoke sentiments of solidarity. *See id.* The truth claims of a myth are not literal (like history) but "*paradigmatic.*" *See id.* at 24.

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information about the relationship between personal identity and scholarship. But, as anyone who is familiar with critical legal scholarship knows, questions about personal identity in this context are also questions about group membership. The relationship between the internal (who am I?) and the external (who are we?), between individual and collective identity, is not unique to legal communities or communities of scholars. One sociologist has described the intellectual currents of our time in the following way: "Concerns with individual and collective identity . . . are ubiquitous" because of "the notion that self is integrally and immediately being and consciousness, name and voice."[3] What is often referred to in legal scholarship as outsider status is not just a matter of individual will and self-construction, but is also a by-product of political struggle:

> The significance of the identity struggled over is almost always claimed not just against other identities but within a particular field of shared relevance—e.g., a polity. Proponents of identity politics offer claims to have difference recognized as legitimate within a field like employment or legal treatment where people with many different identities are making similar claims.[4]

The existence of multiple voices was not questioned by the meeting planners; the usefulness or the value of multiple voices was. The proponents of multi- or poly-vocality make certain claims about the work of outsider scholars or the value of particular genres of scholarship—in particular, the use of personal narratives and parables.[5] The epistemic claims of such scholarship are not individualistic, but collective.[6] The voices referenced in the title of this roundtable discussion

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[3] *See* Craig Calhoun, *Social Theory and the Politics of Identity*, *in* SOCIAL THEORY AND THE POLITICS OF IDENTITY 9, 9–10 (Craig Calhoun ed., 1994) [hereinafter IDENTITY].

[4] *See id.* at 25.

[5] The claims may contest the dichotomy drawn between representational and explanatory scholarship, between description and theory. *See generally* Margaret Somers & Gloria D. Gibson, *Reclaiming the Epistemological "Other": Narrative and the Social Constitution of Identity*, *in* IDENTITY, *supra* note 3, at 37. In another context, the debate is over the nature of the claim—whether it is an "interpretive framework dedicated to explicating how knowledge remains central to maintaining and changing unjust systems of power," or whether standpoint theory is a claim about truth and reality. *See* Patricia Hill Collins, *Comment on Hekman's "Truth and Method: Feminist Standpoint Theory Revisited": Where's the Power?*, 22 SIGNS: J. WOMEN IN CULTURE & SOC'Y 375, 375 (1997).

[6] *See, e.g.*, Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARVARD C.R.-C.L. L. REV. 323, 324 (1987) ("Those who have experienced discrimination speak with a special voice to which we should listen. Looking to the bottom, adopting the

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are positioned; they speak with some authority of the view from particular perspectives, the view from particular social locations. These are voices that previously were silenced, ignored, or overlooked because the speakers were members of subordinated communities. These voices were missing from social theory because individualism, an ideological assumption that informs most theory in this society, ignores difference, proceeding as though all market participants, all participants in political discourse, are equivalent.[7]

While this was a meeting of the "people of color" conferences, the initial panel expressed our ambivalence, our doubts, about the collectivity that the name suggests.[8] The roundtable, therefore, was about personal identity and community: boundary lines we draw that include and exclude, sources of identity and the role identity plays in

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perspective of those who have seen and felt the falsity of the liberal promise, can assist critical scholars in the task of fathoming the phenomenology of law and defining the elements of justice."). Matsuda refers both to those who have "experienced discrimination" and to the experience of "people of color in America." *See id.* at 324–25; *but see* Susan Hekman, *Truth and Method: Feminist Standpoint Theory Revisited*, 22 SIGNS: J. WOMEN IN CULTURE & SOC'Y 341, 359 (1997) (rejecting feminist standpoint methodology because ultimately it makes "coherent analysis . . . impossible because we have too many axes of analysis. Ultimately, every woman is unique; if we analyze each in her uniqueness, systemic analysis is obviated").

When we refer to the voice of someone other than a writer, like the informants used by anthropologists, the term invoked is "polyphonic" scholarship rather than poly-vocal scholarship. "[I]f writing in the field is not seen as beginning with inscription, then the ethnographic writer less automatically appears as a privileged recorder, salvager, and interpreter of cultural data. Greater prominence given to transcribed materials can produce a more polyphonic final ethnography." James Clifford, *Notes on (Field)notes*, *in* FIELDNOTES: THE MAKINGS OF ANTHROPOLOGY 47, 57 (Roger Sanjek ed., 1990).

[7] *See Preface* to IDENTITY, *supra* note 3, at 3.

[8] The meaning of the term "people of color" itself is historically contingent. *See, e.g.*, Sunseri v. Cassagne, 185 So. 1, 4 (S. Ct. La. 1938). The etymology of the phrase has been traced by Louisiana courts. *See, e.g.*, Lee v. New Orleans Great Northern R. Co., 125 La. 236, 238–39, 51 So. 182, 183 (La. 1910). Before the Civil War, people of color were those people who were neither white nor black. *See id.* After the Civil War, "colored people" was the polite way to refer to people who formerly were called "Negro" or "nigger." *See id.* Contemporary use of the terminology is contested. One of the topics on a mixed race website recently was the appropriateness of the assumption that mixed race or multiracial people were also "people of color." *See Interracial Voice* (visited Aug. 18, 1999) <http://webcom.com/~intvouce/point21.html>. The person who did the assuming then proceeded to explain her choice. *See Letter from L. Johnson, Interracial Voice, supra.* She described a letter she got from a racist white hate group that "boasted that their mixing with us was making more of them because their Mixed children would never want to be N*GGERS." *See id.* The letter described is not consistent with the racial purity message of hate groups like the Church of the Creator discussed *infra* note 58.

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the creation of community.[9] There was implicit in the allusion to the "Tower of Babel" a suggestion that our differences obstruct or impede the formation of a community. There was explicit reference to this prospect in the letter we all received from the moderator:

> I think it will also be important to speak in specifics. Perhaps we might continue with the topic of conferences as a way to explore broader issues. Who gets invited? Who is asked to speak? Who is asked to listen? How does it feel to be an African American at a LatCrit Conference? What does it feel like to be a Latino/a at a RaceCrit Conference? Does RaceCrit translate to BlackCrit? Is sexuality masked when the conference states its focus as "People of Color"?[10]

The political question, a theme that ran throughout the conference, was the feasibility of the transformative self-perception that results in the construction of community, not just the creation of strategic coalitions.[11] Such a transformation is hard, perhaps even impossible, if we ignore the differences and conflicts between and among groups or the fact that we are talking cross-culturally.

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[9] *See generally* Kimberlé Williams Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, *in* CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT 357 (Kimberlé Crenshaw et al. eds., 1995). Professor Crenshaw begins with a discussion of the ways in which discourse and legislative reforms intended to assist the members of one subordinated community may be inadequate for some members of that community, specifically, those who are "subordinated by other structures of domination." *See id.* at 359 (explaining example of immigrant women and the marital fraud waiver). Crenshaw then concludes, somewhat optimistically given her preceding arguments, that "intersectionality," the theoretical approach she has just advocated, "provides a basis for reconceptualizing" race or gender or sexuality and that the intersections of these various identities may be sites for coalition between or among different communities. *See id.* at 377.

[10] Memorandum from Leslie Espinoza, roundtable moderator, to participants (Feb. 8, 1999) (on file with author).

[11] Colin Turnbull makes a distinction between individual self-awareness and self-perception and draws a parallel at the next level of analysis: the community. Turnbull states:

> Conformity, order and uniformity, however voluntary, do not make a community any more than does the mere assertion by a given social unit, be it a rural village or an inner city ghetto or block association, that it is a "community." Such an assertion may just be wishful thinking, or a conscious attempt to claim special consideration. And it may well be a mistaken extension of individual self *awareness* to group *awareness*, whereas what really defines a true community is the nature of its self *perception*.

Colin M. Turnbull, *The Individual, Community and Society: Rights and Responsibilities from an Anthropological Perspective*, 41 WASH. & LEE L. REV. 77, 91–92 (1984).

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II. THE SECOND SIGN (A DREAM SEQUENCE)

I was looking for inspiration, an idea that would be the focus of my remarks and that would explain my choices:

- Mother
  Abuela
  Juggler.

As time passed, my anxiety grew. By the weekend before the conference, I was desperate.

I say I don't dream. I am usually corrected by those who know better. They say what I really mean is that I don't remember my dreams, but even that statement is inaccurate. I do remember certain dreams—I call them "crisis" dreams—that signal major life changes, and the dreams that reveal deep ambivalence or fear. Those dreams are anxiety-driven.

I remember the dream about my as yet unwritten remarks. There was no horrible specter in my dream, no spirit of the past or the future admonishing or exhorting me. Instead, a friend and former law school classmate, Charles Ogletree, appeared in my dream, a veritable anodyne for restless sleep.[12] His appearance was hardly coincidental; Professor Ogletree's name had been repeated on public radio three times a day in advertisements for the PBS special "Beyond Black and White: Affirmative Action in America."[13] In my dream, Charles was not moderating a panel; he was showing me a piece of artwork. Because the words spoken in dreams fade faster than the visual images, I do not remember exactly what he said. The print he was pointing to showed someone morphing—a technological process that has become part of popular culture. Morphing is done by characters on television like Odo[14] and by characters in novels like Anyanwu in Oc-

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[12] I should explain that Charles Ogletree was a classmate of mine in law school, proving that at least one stereotype about black people is true—we do all know each other.

[13] The special got mixed reviews. Some thought it offered no new insight into a complex problem. *See* Walter Goodman, *Debating Affirmative Action But Keeping It Cordial*, N.Y. TIMES, Mar. 23, 1999, at E8. Another reviewer thought it was filled with "intelligence and even genuine good will." *See* Phil Kloer, *A Calm, Thoughtful T.V. Debate on Race*, ATLANTA J. & CONST., Mar. 23, 1999, at 1E. Both reviewers had praise for Charles' performance. *See* Goodman, *supra;* Kloer, *supra.* One called his questions "incisive." *See* Kloer, *supra.* The other credited him with keeping the conversation "civil and even playful." *See* Goodman, *supra.*

[14] *See Personnel* (visited Nov. 29, 1999) <http://www.startrekcontinuum.com/ds9/quadrant.asp?ssector=personnel.asp&ID=23475>.

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tavia Butler's *Wild Seed*,[15] as well as in music videos like Michael Jackson's "Black or White."[16] In my dream, the print showed a three-fold transformation, from black to white to alien.

The dream was a sign, of course, and a source of inspiration. The credence some of us give dreams may reflect a different sensibility, a vestige of a lapsed ethos. Maybe that is why dreams are a narrative trope in critical race theory.[17] Still, people of color read dreams the way we read the discourse and the material culture that surrounds us—we use a lexicon of symbols derived from the dominant culture.

There is nothing strange about this tendency. Outsiders are extremely self-conscious participants in the cultural mainstream. The difference between our colleagues who were born into the dominant culture and those of us who have struggled up from the bottom is the level of group awareness.[18] Even though we acknowledge our status as "outsiders," we also know that we live and work on the "inside." Almost everyone at the meeting was a member of the academy. We would not be teaching or practicing law if we had not demonstrated

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[15] Octavia Butler's heroine, Anyanwu, could change her body on a cellular level to a bird, dolphin, or leopard. *See generally* OCTAVIA BUTLER, WILD SEED (1980).

[16] *See* DANGEROUS (Fox 1991). When science fiction imagines technological differences, it often anticipates or imagines the future. We have submarines and rockets, we have gone to the moon, we are capable of transplants, and we might even be able to extend human life. A way to make (chemically or surgically) a black person white or vice versa may be discovered at some point in the future. The impracticability (or lack of demand) for this change may be the reason why at present morphing is only possible in the realm of "virtual reality."

[17] *See, e.g.*, PATRICIA J. WILLIAMS, THE ALCHEMY OF RACE AND RIGHTS, 207–08 (1991) (polar bear dreams); *see generally, e.g.*, Charles R. Lawrence, III, *A Dream: On Discovering the Significance of Fear*, 10 NOVA L. REV. 627 (1986). I must add here, however, that in recognizing the use of dreams as a literary device, I do not mean to suggest that either my dream or any other is something less than "real." I did have the dream, tropes notwithstanding.

[18] Diversity has become an industry in corporate America. *See* Eric Gunn, *Where Do White Men Fit In?*, CHI. TRIB., May 9, 1999, at C1. Most recently, diversity consultants have taken a different tack, downplaying the moral censure that might attach to the attitudes and practices that led to the exclusion of women and minorities from the corporate sphere. *See id.* Diversity trainers now emphasize "respect for the white male position" and recommend sensitivity to the feelings of exclusion experienced by white men. *See id.* At the same time, at least one expert interviewed has a theory about the insecurity of white men: "[e]veryone else is bicultural." *See id.*

Outsiders are bicultural. In the words of one of the "underpeople" in a science fiction short story, outsiders "learn by imitation and imitation is conscious." *See* Cordwainer Smith, *The Ballad of Lost C'mell*, *in* THE BEST OF CORDWAINER SMITH 287, 297 (J.J. Pierce ed., 1975). This statement puts the idea of assimilation in a nutshell. *See id.* Dr. Paul Myron Anthony Linebarger wrote under the pseudonym Cordwainer Smith. He was born in Milwaukee but grew up in Japan, China, France, and Germany. *See* John J. Pierce, *Introduction* to *the Best of Cordwainer Smith* 1, 2 (J.J. Pierce, ed. 1975). He spoke six languages and was, as it says in the introduction to his book, "intimate with several cultures." *See id.*

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our proficiency with the dominant culture to those who, to use an operative metaphor in our stratified society, have been appointed "gatekeepers" of our profession.[19]

The task of interpreting dreams has fallen into disrepute these days. According to some scientists, dreams are the excrescence of the conscious mind. While we sleep, our minds sweep out that day's misfired and stray electrical impulses.[20] I prefer the older theories that elevate the working of the unconscious mind to the status of preeminent problem solver. There is something peculiarly satisfying about mentally picking up and handling the symbols that the unconscious leaves lying about, puzzling out the clues that lead to some misplaced anxiety.

So I tried to puzzle out the question of the dream's meaning. What did a roundtable discussion about the harmony or cacophony of multi- or poly-vocality, the fissile politics of critical scholarship, and the attendant potential for misunderstanding or discord have to do with Charles Ogletree or an undisclosed artist's portrait of a process created by science fiction writers and designers of computer graphics?

III. The Third Sign (Star Trek Meets Symbolic Inversion)

It goes without saying that the problems that confront scholars of color today have been addressed before in ancient myths. The Tower of Babel is only one example in Western culture. The image of someone morphing, on the other hand, is a familiar part of contemporary popular culture. The Tower of Babel may be either myth or history, but morphing is simply a physical capability of imaginary characters in fiction or fable. Fiction, fable, and myth are forms of discourse that can be used to teach and reinforce belief systems and to sustain the cultural hegemony that replicates subordination. The myths, fables, and fictions of popular culture entertain us and instruct us on what to

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[19] "Gateway" is a popular metaphor for the credentialing and training necessary to change status. The ABA refers to law school as "the gateway to the legal profession." *See* American Bar Association, Section of Legal Education and Admissions to the Bar, *Report to the House of Delegates*, A.B.A. J., Aug. 1996, at 129, 129. Where there is a gateway, there often is a gatekeeper whose job it is to restrict entry or limit access to that which is within or beyond the gate. It can be a standardized test such as the SAT, the LSAT, or the bar exam; it can also be criteria that determine who is qualified to be hired, retained, promoted, or tenured.

[20] For a discussion of the various psychological and biological explanations for dreams, see Martin Gardner, *Post Freudian Dream Theory*, Skeptical Inquirer, Jan.–Feb. 1996, at 7. *See also* Louise Harmon, *Wild Dreamers: An Essay on Dreamtalk and the Law* (unpublished manuscript on file with author).

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believe, why to believe in it, and what exists in opposition to those beliefs.

The Tower of Babel may be a myth about the power of God or the hubris of a worldly king.[21] Whatever the precipitating cause, the supernatural phenomenon that took place on the tower had consequences for humankind. According to current theological interpretations, what followed was confusion and ultimately conflict.

In the most popular and pervasive science fiction stories, those available on television and in movies, a utopian society without physical want or racial discord experiences conflict with external forces that threaten its peace and security. In the contemporary morality plays we call science fiction, people who can morph are either pariahs or imperialists. In the present incarnation of "Star Trek," for instance, whether "Next Generation," "Voyager," or "Deep Space Nine," a society with an intensely individualistic ethos (the Federation) does battle with communal forms of social organization (the Borg and the Dominion). There is no sustained conflict between or among the amazingly diverse but harmonious inhabitants of a particular starship, of course, but there is plenty of conflict between and among the intergalactic equivalent of nation-states.

We learn that the quintessence of humanity is individualism. The Other is a collective. The individualistic heroes with whom we are supposed to identify are saved from anarchy, however, by the ethic of negotiation and cooperation. In any event, the message is clear: individualism is always superior to the alternative, the unthinking or unquestioning racial or national loyalty found among the Borg, the Founders, the Taelons, or the Vorlons.[22] The only positive characteris-

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[21] I don't know if hubris is a Hebrew concept as well as Greek, but the annotated version of the Bible I used explains the Tower of Babel as an example of a "Promethean desire for unity, fame and security." *See Genesis, supra* note 2, at 11:8 annot. The annotation continues, "the story, now told to show the Lord's judgment upon the continuing sin of mankind, once explained the origin of languages and the cultural glory of Babylon, the center of Hammurabi's empire." *Id.* at 11:9 annot. Apparently one culture's sin can be another culture's glory, which may make the Tower of Babel an even more fitting title for a roundtable discussion of emerging voices.

[22] See briefing on the Borg (visited Sept. 17, 1999) <http://www.startrekcontinuum.com/startrek.asp>. The Borg is a collective. *See id.* The individual members are "drones" linked to each other and a collective consciousness "experienced by the Borg as 'thousands' of voices. The Borg are not aware of themselves as individuals but only as part of the larger whole." *See id.*

See briefing on the Founders (visited Sept. 4, 1999) <http://www. startrekcontinuum.com/ds9/listpersonnel.html>. The Founders are able to unite in what is called the "great link"—a sea into which the shape shifters subside when they return to the home planet called Dominion. *See id.*

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tic in each of the enemy communities is the physical, and sometimes mystical, link between the members.

Contemporary science fiction's depiction of contact with alien species plays out in a larger-than-life way the themes and rhetorical strategies extant in contemporary political narratives. The condemnation of identity politics is replete with examples of symbolic inversion that portrays the powerless as the powerful.[23]

For purposes of these contemporary fables, the closest political analogue to the communal enemies is the small-scale society so often the subject of ethnographies. We "know" that small-scale societies demand conformity, that they either cannot or will not tolerate deviance. It follows that those who advocate for or support group identity also support a form of tyranny.[24] Another criticism of identity politics reasserts the modern and the universalistic ethic—we are all humans—while reaffirming the importance of individualism. The argu-

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See discussion of the Taelons (visited Nov. 29, 1999) <http://www.earth. finalconflict.com>.

See information on the Vorlons (visited Feb. 2, 2000) <http://www.sadgeezer.com/babylon5/vorlons.html>. The evidence about the shared consciousness of the Vorlons is a bit sketchier. They may view themselves as part of a whole. Since Vorlons communicate telepathically, move around by entering someone else's body, and can leave parts of themselves behind to become part of someone else's mind/body, it is probably safe to conclude that the Vorlons have a communal (versus a highly individualistic) ethos.

[23] For further discussion of the rhetorical inversion in political ideology, see generally Deborah Waire Post, *The Salience of Race*, 15 TOURO L. REV. 351 (1999).

[24] Much has been made of my comment on the appropriateness of shunning those members of the African American community who put the community at risk. *See, e.g.*, Daniel Subotnik, *What's Wrong with Critical Race Theory: Reopening the Case for Middle Class Values*, 7 CORNELL J. L & PUB. POL'Y 681, 695 n.77 (1998) (describing my comments on the moral dimension of identity as "heavy handed"). In building the case for intolerance within the minority community, Professor Subotnik has chosen to ignore the comparable tradition in his own community. Not long ago one of our colleagues wrote an article explaining how Jewish law might treat the assassination of Prime Minister Rabin. *See* Chaim Povarsky, *The Law of the Pursuer and the Assassination of Prime Minister Rabin*, DINÉ ISRAEL, Vol. XVIII, at 7 (1995–1996). The "rodef," or pursuer, is one who is about to commit murder or inflict serious injury, and the law of the pursuer is an assertion of the right to self-defense by an individual or by a community. *See id.* at 7. The criticism of this defense does not deny the existence of the "dinim laws," but disputes the application of the laws to an elected official carrying out national policy. *See id.* at 9. Whether a group has something like a "din rodef" law may depend on the extent to which the members of that community are persecuted because of their minority status. Israel is a state, but the Jewish community exists in Diaspora, as do Africans who were sold into slavery. Presumably, Jews in Diaspora are always alert to the potential for another holocaust and are concerned about the Jew who may betray them to avoid his or her own persecution. *But see* discussion of the assimilation of American Jews *infra* note 74. Similarly, blacks are always alert to the possibility of re-enslavement and are concerned about the person within the community who might betray them into slavery in exchange for his or her own freedom.

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ment made by critics of group or identity politics is that it degrades and devalues the individual by repressing individual thought and creativity.[25]

There are a lot of assumptions built into the less than logical arguments constructed by those who oppose identity politics. Not the least of these are assumptions about what social scientists can tell us about "society," even a "small scale" society.[26] Ethnographies of the exotic and intimate societies that are popular in Anthropology 101 may well be examples of what Renato Rosaldo calls "imperialist nostalgia"—a longing for what colonialism has destroyed[27]—or they may be a longing for what never existed.[28]

All descriptions of society involve the cognitive process of imagining.[29] In current theoretical discussions among anthropologists, ethnography is sometimes described as a form of writing that employs narrative tropes to "evoke an image of 'a society' or 'a culture.'"[30] Nothing excites the anthropological imagination more than the idea of a "mechanical" or intimate community that is well-suited to the discipline's preference for holistic analysis. Even the smallest-scale society, however, cannot be experienced in its entirety.

Colin Turnbull is best known for his ethnography of the Mbuti of the Ituri Forest.[31] In a law review article, he chose to discuss individuality, community, and society using the Mbuti as a point of comparison for U.S. society.[32] The Mbuti are nomadic hunters and an indigenous group in the Ituri forest of what was once the Belgian Congo,

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[25] One version of this attack on identity politics berates the demand for "racial loyalty" while characterizing the ethic that informs group solidarity as a herd mentality. *See* Randall Kennedy, *Justice Thomas and Racial Loyalty*, AM. LAW., Sept. 1998, at 91. The critique also points to the impossibility of generalizing about the individual experiences of members of any group. *See id.* No individual can, according to these critics, express the concerns of an entire community, and any attempt to do so increases the risk of stereotyping. *See id.* Such critics like to refer to the lack of homogeneity in the black community—the "regions, classes, genders and other significant social stratifications." *See id.*; *see generally* Post, *The Salience of Race*, *supra* note 23 (discussing the radical individualism featured in Supreme Court decisions attacking race conscious remedies).

[26] *See generally* Robert J. Thorton, *The Rhetoric of Ethnographic Holism*, *in* REREADING CULTURAL ANTHROPOLOGY 15 (George E. Marcus ed., 1992).

[27] *See* RENATO ROSALDO, CULTURE AND TRUTH: THE REMAKING OF SOCIAL ANALYSIS 69–87 *passim* (1989).

[28] *See* Thorton, *supra* note 26, at 23.

[29] *See id.*

[30] *See id.* at 17.

[31] *See generally* COLIN M. TURNBULL, THE FOREST PEOPLE (1961).

[32] *See generally* Turnbull, *supra* note 11.

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then Zaire, and now is once again the Congo.[33] But even the Mbuti, who live in bands of three to thirty families, numbered about 40,000 at the time Turnbull was writing.[34]

The relative viability of the small-scale society, all of the members of which are linked on a biological and emotional level, is open to dispute.[35] But there is no disputing another creation of anthropologists—the still intact dichotomy between simple or primitive societies, on the one hand, and complex or technologically advanced societies on the other. "Communal" societies usually fall into the primitive or simple category. They are always playing catch-up—usually as groups within nations, rather than as "emerging" or "third world" nations—with the more modern or technologically advanced societies of Western Europe and North America. All available evidence would seem to contradict the idea that small-scale societies pose a significant threat to the United States or Western Europe. The Mbuti of the Ituri forest are not about to attack, let alone conquer, Europe or the United States.

In science fiction, however, the social organization associated with close biological and geographical connections and with the intimacy of a small band or village is attributed to groups composed of millions of people. Community is stretched to encompass nationhood through the use of some imaginary, shared physiological traits—a mind link or the ability to merge with and into an undivided whole.[36] It is the communal society that has the better technology, the wealth, and the military force that pose a significant risk to the Federation or some other group clearly identifiable as the successor to Western

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[33] *See id.* at 92.

[34] *See id.* at 93.

[35] Some might claim that in a series of novels Octavia Butler has imagined a nation of telepaths who conquer the United States. It is not clear what they conquer any more than it is clear who is conquered, although a contest between two groups, both of which have been transformed over time, is presented serially in these books. *See generally* OCTAVIA E. BUTLER, CLAY'S ARK (1984); OCTAVIA E. BUTLER, MIND OF MY MIND (1977); OCTAVIA E. BUTLER, PATTERNMASTER (1976).

[36] Turnbull states:

> When we talk of the nation as a community we imply that nationality demands more than we commonly give it by way of loyalty, unity, and responsibility. While a community can, theoretically, be of any size, the intimacy, the *degree* of communality of interests, rights and responsibilities that we imply by the term "community" are only to be found in relatively small populations and geographical areas.

Turnbull, *supra* note 11, at 100.

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European and North American cultures.[37] The millions of people so linked are always the aggressors, and, in the end, it is the communal ethic that is perceived as the greatest threat to the survival of humankind.

In the contemporary fables that animate the public discourse, symbols of power have been inverted for the purpose of reinforcing the belief in and commitment to the dominant ideology and individualistic ethic.[38]

IV. THE FOURTH SIGN (STEALING SYMBOLS BACK AND FORTH)[39]

If I want to discuss science fiction and the fables that are not critical of this project—encouraging, not discouraging, emerging voices—I can look to the works of Outsiders in that genre. There are competing narratives that appear in the work of authors like Octavia Butler[40] and Samuel R. Delany.[41] Both are black; one is a woman and the other a gay man. These two authors have a lot to say about individual and group identity, including discussions regarding what is involved in the creation of community, how signs (including language) are used as boundary markers between or among different communities, and how some individuals are able to move back and forth across those boundaries because of the ambiguity or removability of signs. The works of Butler and Delany describe another possibility that is particularly instructive for people of color who are working to build coalitions or a more inclusive community.

In this essay, I have chosen to focus on Samuel Delany's *Flight from Neveryon* because our project involved the selection of signs. Delany is self-consciously postmodern and explicit about his use of semiotic theory. In the first novella in *Flight from Neveryon,* the narrator, a

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[37] Both Jean Luc Picard and Captain Janeway, characters from the Star Trek series, seek refuge in the classics: the music of Satie, Earl Grey Tea, and American detective fiction, for the former, and the studio of Leonardo da Vinci for the latter.

[38] *See* LINCOLN, *supra* note 2, at 142–59.

[39] "The stealing back and forth of symbols is the approved method whereby the Outs avoid being driven into a corner." KENNETH BURKE, ATTITUDES TOWARD HISTORY 328 (1959).

[40] *See Octavia Butler, in* MAJOR 20TH CENTURY WRITERS 468 (2d. ed. 1999). Octavia Butler's major characters are black women, and her stories are often concerned with the appropriate and inappropriate uses of power.

[41] One scholar has described "Delany's entry into [science fiction's] previously all-white cultural terrain" as "a postmodern intervention." Jeffrey Allen Tucker, *Racial Realities and Amazing Alternatives: Studying the Works of Samuel R. Delany* (visited Oct. 21, 1999) <http://www.tcom.ohiou.edu/books/scifi/delany.htm>.

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young smuggler, muses that "appearances are signs of possibilities, at least when one remembers that what appears may be *a sign by masking as easily by manifesting.*"[42] This young man is searching for a mythical liberator, Georgik, who, we learn, is reputed to wear a collar—a badge of slavery. We know that the liberator's companion, a one-eyed man named Noyeed, has suggested to the liberator that he divest himself of this collar. He advises the liberator to abandon this sign, or transfer it to him, and then slip into the mist, unidentifiable and politically invisible. "You will be the freer, relieved of the mark . . . to move more fully, further, faster," the one-eyed man assures Georgik the liberator.[43]

Professor Espinoza, our moderator, instructed us, the participants in the roundtable, to choose three words—signs—that would describe who we are. Her question is similar to the one raised by Noyeed's soliloquy on the collar Georgik wears: what is the relationship between signs we adopt and the meanings we wish to convey about our identity and personal freedom?[44] Are signs necessary or do signs restrain us in our ability to achieve individual goals? And even if they do, are the signs that identify us racially as non-white as easy to put on and take off as the collar that Georgik wears?

You would think that for someone who has written about the politics and morality of identity,[45] this exercise would be simple. It wasn't. My writings on race predate the criticism of the black/white paradigm that emerged in Latcrit and APAcrit Scholarship,[46] and I

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[42] SAMUEL R. DELANY, FLIGHT FROM NEVERYON 19 (1994) (emphasis added).

[43] *Id.* at 16.

[44] See the discussion of the use of symbolic inversion in the production of radical change in LINCOLN, *supra* note 2, at 142–59. When we talk about subordinated communities and symbolic inversion, the most obvious examples are the appropriation and use of the terms "black" and "queer," and the transformation of insults into symbols of self-esteem, group pride, and power.

[45] *See generally* Deborah Waire Post, *Reflections on Identity, Diversity and Morality,* 6 BERKELEY WOMEN'S L. J. 136 (1990–91).

[46] *See generally, e.g.,* Berta Esperanza Hernandez Truyol, *Building Bridges—Latinas and Latinos at the Crossroads: Realities, Rhetoric and Replacement,* 25 COLUM. HUM. RTS. L. REV. 369 (1994); Juan Perea, *The Black/White Binary Paradigm of Race: The "Normal Science" of American Racial Thought,* 85 CALIF. L. REV. 1213 (1997); Elizabeth M. Iglesias, *Out of the Shadow: Marking Intersections in and Between Asian Pacific American Critical Legal Scholarships and Latina/o Critical Legal Theory,* 19 B.C. THIRD WORLD L. J. 349 (1998). Professor Iglesias begins her article with "three themes beyond the black/white paradigm." Iglesias, *supra,* at 351. First, Iglesias asserts that "the articulation and clarification of Asian/Latina/o commonalities. . . . will help ground our respective anti-subordination struggles in and upon, rather than against, the pursuit of inter-group justice and solidarity." *Id.* Second, "discovered commonalities can shed new light on structures and processes of domination [that] might otherwise remain invisible." *Id.* Third, "a deeper understanding of our commonalities provides the needed foundation for the equally necessary task of confronting and

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have not addressed the controversy over biracial identity that has become a political and legal issue in the last decade.[47]

The criticism of race as concept or category has a long history with which most of us are comfortable. At least part of the current discussion in academic circles and at conferences like the First National Meeting of the Regional People of Color Conferences is the continuing utility of racial classifications or the utility of race in the creation and enforcement of civil rights. The suggestion that we, the generation that benefited most from race-conscious remedies, should now abandon entirely the idea of race in combating all forms of subordination makes some of us uncomfortable. For that reason, it is controversial. Controversy is inevitable because identity has played a critical part in antisubordination politics, and the existence of the current controversy is sufficient to complicate the process of choosing signs.

The current critique of identity politics, diversity, or multiculturalism assumes the existence of and ascribes to people of color an inflexibility, an affinity for structure and fixed boundaries, that does not exist. In an earlier piece, when I suggested that there is an ethical dimension to the question of identity, I did not deny the existence of choice.[48] If there were no choice, there would be no ethical dilemma. Choices are limited only if one is unwilling to "cross over," to adopt a sign that alters the category into which he or she would be placed by those who believe in or subscribe to the social categories that are extant in this society and this culture. Such movement has always been possible, even though it was, and still is, risky.[49]

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embracing our differences." *Id.* at 352. The focus on interracial political identities such as that of the Latino/a which is located at the "intersection of multiple racialized identities," is supposed to be anti-essentialist and supportive of broader-based anti-subordination coalitions. *See id. at* 354–55.

[47] *See generally, e.g.*, Carol R. Goforth, *"What is She?" How Race Matters and Why It Shouldn't*, 46 DEPAUL L. REV. 1 (1996); Tanya Kateri Hernandez, *The Interests and Rights of the Interracial Family in a "Multiracial" Racial Classification*, 36 BRANDEIS J. FAM. L. 29 (1997–98). See also the website devoted to the discussion of mixed race/multicultural issues, *supra* note 8.

[48] *See generally* Post, *supra* note 45.

[49] See the discussion of passing and biracial identity in Brent Staples, *The Real American Love Story: Why America is a Lot Less White Than It Looks* (visited Mar. 7, 2000) <http://slate.msn.com/HeyWait/99-10-04/HeyWait.asp>. On the other hand, my friend, Agnes Williams, née Travis, a native of Lawrenceville, Virginia, and granddaughter of a child of a slave owner and his slave, told me that the white "relations" actually encouraged the "white" blacks to "cross over."

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The signs used in the U.S. system of racial classification are skin color and a combination of other physical characteristics that cannot be altered easily. In its least pernicious form, color preference is part of an aesthetic in many nations and cultures.[50] Notwithstanding the availability of bleaching creams and plastic surgery to narrow or widen the nose, raise the cheek bones, or redo the eyes,[51] skin color and other physical characteristics cannot be as easily put on or taken off as Georgik's collar.

In the United States, color is ambiguous; a necessary but not sufficient criterion in the present classificatory scheme. The "one drop" rule does not operate to preclude movement from non-white to white for all people of color as it does for people of African descent. In many cases litigating whiteness, the classification of a remote ancestor is at issue. If the ancestor was American Indian, the person was considered white. If the ancestor was of African descent, the person was considered negro or colored.[52] There is, then, a certain amount of

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[50] *See generally, e.g.*, John M. Kang, *Deconstructing the Ideology of White Aesthetics*, 2 MICH. J. RACE & L. 283 (1997). I think Professor Kang might take issue with the notion that aesthetics are innocuous:

> From our immigration to America in the nineteenth century to our settlement today, and from our earliest days as children to our old age and retirement, we Asian Americans have lived and continue to live with the belief that Asian physical features can constitute legal, political and social liabilities. . . . For over one hundred years we have been told that our slanted eyes make us appear deceitful, untrustworthy, and at the very least abnormal.

Id. at 333–34.

I have taken the same position myself in the past. *See* Deborah Waire Post, *Homecoming: The Ritual of Writing History*, 10 HARV. BLACKLETTER J. 5, 14–15 (1993).

[51] The popularity of plastic surgery in the global Asian community has been noted in several periodicals. *See generally, e.g.*, *Under the Knife*, THE VIET NAM ECONOMIC TIMES, Nov. 1, 1998, *available in* LEXIS, World Library, VTTMES file; Alison Dakota Gee, *The Price of Beauty*, ASIAWEEK, Aug. 2, 1996, at 38, *available in* LEXIS, News Library, ASIAWK file; *see also* ELIZABETH HAIKEN, VENUS ENVY: A HISTORY OF COSMETIC SURGERY 200-09 (1997) (describing the search for "racial anonymity" by Asian Americans). *But see* Laurie Goering, *Changing the Faces of Peru; Budget Priced Plastic Surgery is Attracting a Growing Clientele, Many of Whom Believe Looking More European or Asian Will Bring Success*, CHI. TRIB., Aug. 16, 1999, at 4.

[52] The changing attitudes towards American Indians, referred to by one court as a feeling of "awkward[ness]" at classifying "blacks and Indians together" and the subsequent acknowledgement of the ability of Indians to become white. *See* People v. Dean, 14 Mich. 406, 421 (1866) (prosecution for illegal voting). According to the majority, "Indian blood was never considered in that state [Ohio] (as it was not considered here) any detriment whatever to social consideration; and even half-breeds as well as quarter-breeds are by no means uncommonly reckoned among the whites, and are often quite indistinguishable from them in appearance and language." *Id.*

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wiggle room.[53] The "one drop" rule dilutes the usefulness of, but does not eliminate, skin color as an indicia of race.[54]

The United States is not South Africa, where, according to one scholar, colored people exist as a community because they are "readily 'recognizable' and 'seen.'"[55] In the United States, the existence of people of mixed race and the influx of immigrants from all over the world make it difficult to classify people phenotypically. There are many blacks who "pass" for white and, whether they know it or not, quite a few whites who have black relations.[56] There are also people of African descent who do not look white but who try to escape the stigma of race by assuming the identity of a black or brown person

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[53] *See* IAN F. HANEY LOPEZ, THE SOCIAL CONSTRUCTION OF RACE: SOME OBSERVATIONS ON ILLUSION, FABRICATION, AND CHOICE, 29 HARV. C.R.-C.L. L. REV. 1, 10 (1994).

[54] Although the literature is replete with references to the "one drop" rule, most of the laws classifying people by race that I have seen refer to the lineage of a person and require racial purity back a certain number of generations. While the laws in many jurisdictions initially contemplated a process by which one could become white—examining whether one was more white than black—eventually the tendency was for laws to classify as negro or colored "every person in whose veins a single drop of African blood could be traced." *Dean*, 14 Mich. at 430 (Martin, C.J., dissenting). The biological test was, of course, supplemented by tests that relied on appearance and on reputation in the community.

For example, in Louisiana, under a now-repealed statute, one was not "white" if there was a person of African American descent as far back as four generations. *See* Jane Doe v. State of Louisiana, 479 So.2d 369, 371 (1985). If one had 1/32 or less "Negro blood," then he or she was white. *See id.* In *Doe*, several members of a family sought a writ of mandamus to compel the Louisiana Department of Health and Human Resources to reclassify their parents as "white" rather than "colored." *See id.* The court refused the mandamus. *See id.* According to the court, "[i]ndividual racial designations are purely social and cultural perceptions, and . . . . [t]here is no proof in the record that [the parents] preferred to be designated as white. They might well have been proud to be described as colored." *Id.* at 372. Therefore, the court concluded that the parents' "subjective perceptions" about their race "were correctly recorded." *See id. See also* Lawrence Wright, *One Drop of Blood*, NEW YORKER, July 25, 1994, at 46 (discussing hearings before the House Subcommittee on Census, Statistics and Postal Personnel on the use of racial classifications in the census).

[55] *See* JON MICHAEL SPENCER, THE NEW COLORED PEOPLE: THE MIXED RACE MOVEMENT IN AMERICA 15 (1997).

[56] Brent Staples uses the statistics in the amicus brief for *Loving v. Virginia* to show that a substantial portion of the white population also has black ancestors. *See* Staples, *supra* note 49, at 5. The statistics were prepared by a sociologist and anthropologist from Ohio State University. *See id.* His report claimed that 155,500 blacks per year crossed over the color line in the 1940s. *See id.* Recent experiments have used DNA technology to attempt to determine the paternity of the children of Thomas Jefferson's slave, Sally Hemings, thus providing another example of the surprises in store for some white Americans. *See Morning Edition* (NPR radio broadcast, May 17, 1999), *available in* LEXIS, News Library, NPR file. Ms. Mary Jefferson is the descendant of Eston Hemings, the son of Thomas Jefferson and Sally Hemings. *See id.* As Ms. Jefferson puts it, "I'm middle aged, middle class, white America. That's what I know." *Id.* She did not know until recently that Eston Hemings was black. *See id.*

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who is not of African descent. This is the political and social context in which I was asked to choose three signs.

I cannot choose to abandon humanity, although there are those who would deprive me of this status.[57] And yet I would never put "human being" on any list describing who I am. My humanity is something that does not have to be signaled; it is something I have a right to assume everyone knows and takes for granted.

I can choose a sign that expresses individual or group identity, but I cannot transform my body in a way that will convince an audience I am literally (not symbolically) a porpoise or an eagle.[58] A human being cannot "morph" into a person of different race or sex without mechanical intervention.[59] There is no official or unofficial way a black person can be "whitened."[60] Wrapping oneself in the ma-

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[57] Benjamin Nathaniel Smith, a friend and follower of Nathan Hale (leader of the World Church of the Creator), murdered a Korean and a black man and wounded seven others. *See* Pam Adams, *Murder Spree Kills Hale's Law Chances*, COPLEY NEWS SERVICE, July 7, 1999, *available in* LEXIS, News Library, COPNWS file; John Holland, *Leader of Racist Church Sentenced*, SUN-SENTINEL (Fort Lauderdale), Nov. 20, 1999, at 3B. Smith testified before the Illinois State Bar Association's Committee on Character and Fitness in support of Hale's petition to be admitted to practice law in Illinois. *See* Adams, *supra*. In an interview on NPR, Hale uses the term "mud people" to refer to all people of color—Asians, Hispanics, blacks, "people that aren't white." *See* Interview by Noah Adams with Matthew Hale, Leader of the World Church of the Creator, *All Things Considered* (NPR radio broadcast, July 9, 1999), *available in* LEXIS, News Library, NPR file. In further elaborating on his theory of human evolution, Mr. Hale explained:

> What we mean by that [the use of the term "subhuman" to describe non-white people] is that the pinnacle of nature, once again, is the white race, and the pinnacle of human beings, if one was to use that term, is the white race. So the non-white races are certainly a lower form of life, and one can say that that is what subhuman means, a lower form of human.

Id.

[58] Anyanwu could take the form of the porpoise or the eagle. *See generally* BUTLER, *supra* note 15.

[59] Even mechanical intervention may not allow us to morph in a way that will be recognized by the law. Some transsexuals (persons who feel that they are trapped in a body that does not correspond to their gender identity) have "sex reassignment" therapy. Some courts have rejected the theory that a "male" who has undergone such surgery is biologically female. *See, e.g.*, Littleton v. Prange, No. 04-99-00010-CV, 1999 Tex. App. LEXIS 7974 (Oct. 27, 1999) (holding that a person who is "chromosomally male" cannot validly be married to another man and, therefore, has no cause of action for wrongful death as another man's spouse). It is too early to speculate on what will happen when medical technology reaches the point where genes can be manipulated to eliminate diseases associated with ethnicity. For a lucid discussion of gene replacement therapy, the replacement of defective genes in a person suffering from a genetic disease, see Janice Kane, *The Promise of Antisense Drugs*, CHEMICAL MARKET REP., Nov. 9, 1998, at FR11.

[60] *See supra* note 51.

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terial culture, ingesting and absorbing the beliefs of Euro-American culture cannot make someone white. So it would strain credibility if I wrote "white woman" on my sign. I could, however, choose a category closer to white—an ambiguous category.

On the other hand, one might also assume that at a "people of color" conference it would not be necessary to announce my status as a black woman. Unlike humanity, racial or ethnic identity is part of the discourse at these meetings, an issue that is critical to the very existence of a movement that brought this and related regional conferences into existence. The signs associated with racial classifications are not always used for the purpose of exclusion. They may establish connections, eliminate isolation, and foster creativity. I believe that two other women on the panel, one more inclined to poetry and the other to pragmatism, included gender and race on their lists.[61]

But my biological identity as woman and my brown skin color are visible signs in a culture that has chosen them as a method of classifying, ranking, and expressing relationships of inequality. The phrase "black woman" seemed redundant.

I do not claim that my brown skin is unambiguous. Nothing could be further from the truth. I have said as much in other articles I have written.[62] The sign "black woman" would clarify the exact meaning of my pigmentation. Yes, it would say, I am of African descent, but I would have been using limited resources—remember that we could only choose three words—to explain what was seen rather than to reveal some aspect of identity that might be less obvious, less visible, but just as important to the discussion we were having.

What all of this means is simply that there are multiple, but still circumscribed, choices. Does this mean that there are no right or wrong, appropriate or inappropriate, selections? The discussion always comes around to the issue of the justifiability of our choices.

V. My Signs (Appropriation and Transculturation)

I chose three words: "mother," "abuela," and "juggler." These choices may be seen by some as an expression of identity as a feminist—or at least as adherence to one branch of feminism. Black women may critique the feminist theory as essentialist, but we have also embraced certain epistemological and methodological claims of

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[61] Cheryl Harris and Twila Perry were the other two black women on the panel. See Twila Perry's article in this issue.

[62] *See* Post, *supra* note 45, at 136.

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feminism.[63] The signs "mother," "abuela," and "juggler" may be ways of locating myself within a particular theoretical tradition, a feminist standpoint theory.[64]

Calling myself "mother" is a way of describing not only who I am, but what I do. Motherhood shifts the locus of my inquiry and critique of the law. This sign is not an expression of commitment to "family values" as defined by the conservative wing of the Republican Party, nor an expression of support for the allegedly progressive agenda of the parents' rights movement advocated by Cornell West, both of which reaffirm a commitment to patriarchy.[65]

Motherhood is not simple sentimentality, but the site of a variety of legal rules and regulations. A black mother's struggle against racism is twofold: a struggle against the racism that is particular to and directed at women of color and also the struggle on behalf of her

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[63] For a discussion of these claims, see generally Dorothy E. Smith, *Comment on Hekman's "Truth and Method: Feminist Standpoint Theory Revisited,"* 22 SIGNS: J. WOMEN IN CULTURE & SOC'Y 392 (1997).

[64] *Cf. generally* Collins, *supra* note 5.

[65] It is not surprising to me that organizations promoting "family values" often are headed by men and that the solutions they offer for most social problems begin with the reinstatement of men as the head of households. Gary Bauer's Family Research Council offers the following justification for welfare reform: "To the extent that the welfare state has eliminated the necessity of a father who provides, it has reduced the sense of personal responsibility that kept him at home through good times and bad." *See* Jennifer E. Marshall, *The Greatest of These is Love: A Faith Based Alternative to the Welfare State* (visited Nov. 11, 1999) <http://www.frc.org/fampol/fp97ims.html>.

On the other end of the political spectrum are those whose "progressive" agenda is limited to families defined as heterosexual couples with children. Consider the following critique of the failures of the left on the issue of parenthood:

> Many on the left fail to understand that we need to rein in untrammeled individualism.... [L]iberal welfare policies permit fifteen- and seventeen-year-olds to bear and raise children out of wedlock—indeed, through Aid to Families with Dependent Children (AFDC), now called Temporary Assistance for Needy Families (TANF), government supports these teenagers, albeit grudgingly. The new freedom of individuals to choose single parenthood is, of course, not limited to poor teens. Madonna certainly didn't think she needed a husband in order to have a child....

SYLVIA ANN HEWLETT & CORNEL WEST, THE WAR AGAINST PARENTS: WHAT WE CAN DO FOR AMERICA'S BELEAGUERED MOMS AND DADS 34 (1998). My reaction to this section of the book is colored by my experiences as a single (divorced) parent. When I lived in Houston, Texas, I attended Wheeler Avenue Baptist Church from time to time. The minister, Reverend Lawson, was a man I much admired. One day, however, he made family the topic of his sermon and he expressed his opinion that single parents with children were not families. I never attended his church again.

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children who are brutalized by white men and white institutions.[66] For mothers of sons, the struggles against patriarchy and misogyny are twofold: a struggle to liberate ourselves and to liberate our sons.[67] Motherhood is a claim to intersectionality "within constructs of multiplicity residing in social structures themselves and not in individual women."[68] As such, it is as vital and compelling in its potential for establishing coalitions as any other critical perspective.

With the exception of my very first article, nothing that I have written in the past ten years is without a story about my son. There is nothing that I have written that is not informed in some way by my sensibility as a parent who understands the meaning of legal rules and how those rules affect the dignity and destiny of my son or other children. The relationship between my identity as a mother and my professional identity is not remote, but immediate and concrete. Beliefs about social justice, law reform, and the creation of community are part of a single project carried out in various settings. I imagine the world that I will not inhabit but in which I have a vested and tangible

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[66] The political activism of the mother of Vincent Chin brought violence against Asian men to the attention of the public. *See, e.g.*, Michael Phillips, *'Carry the Tiger' Tells of Chinese Immigrant Family's Tragedy*, L.A. TIMES, Feb. 27, 1999, at F2 (reviewing Cherylene Lee's play about Chin's death and Lily Chin's activism). Vincent Chin was beaten to death with a baseball bat by two automobile workers in 1982. *See id.* I could also reiterate my conclusion in an earlier article: "I wonder whether ultimately the fear of young black men is misplaced. Perhaps the person to fear is the mother of the young black man." Deborah Waire Post, *Race, Riots and the Rule of Law*, 70 DENV. U. L. REV. 237, 262–63 (1993). The article also points out the possibility for coalitions, noting that some mothers of young black men are white women. *See id.* at 263 n.59.

[67] I remember reading an essay several years ago by Audre Lorde on raising a son. *See* AUDRE LORDE, *Man Child: A Black Lesbian Feminist's Response*, *in* SISTER OUTSIDER 72 (1984). She acknowledged that "Black children in America must be raised to be warriors. For survival, they must also be raised to recognize the enemy's many faces." *Id.* at 75. Despite this reality, or perhaps because of it, she has a wish for her son that is not unlike my wish for my own son:

> I wish to raise a Black man who will not be destroyed by, nor settle for, those corruptions called *power* by the white fathers who mean his destruction as surely as they mean mine. I wish to raise a Black man who will recognize that the legitimate objects of his hostility are not women, but the particulars of a structure that programs him to fear and despise women as well as his own Black Self.

See id. at 74.

[68] *See* Collins, *supra* note 5, at 377. The National Organization for Women adopted a "Mothers' Liberation Resolution," prefaced by a statement that "70% of adult women (age 15 and over) are mothers." *See* National Organization for Women, Madison Chapter, *What at* [sic] *is a Family?: A Discussion of Family Values for the 1990s and Beyond* (Nov. 12, 1994 Program) (visited Nov. 11, 1999) <http://www.execpc.com/~mwnow/files/program2.html> app.

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interest. The sign "mother" does not remove me from any community—professional, academic or people of color. Rather, it provides one more connection between and among diverse communities.

The choice of the word "abuela" is meant to raise different issues, issues about authenticity and appropriation. The night before my strange dream, I was puzzling over Delany's description of a young student who had, as students often do, adopted the attire of groups to which he did not belong. His appearance is described as "a living lie, an embodied dream."[69]

In the dream I described earlier, the one I had before the conference, Charles Ogletree was trying to tell me that the picture in the dream was dangerous. I knew, the way we only know in dreams, that the work of art was an example of a particular kind of danger: the threat of appropriation.[70]

Can I justify my choice of the sign "abuela" or do I run the risk of the sort of dissembling or pretense that makes me into a liar? Does it matter that I speak Spanish or that the United States has become multilingual? Should I cite to the statistics and the projections on the demographics of this country in the next century? Should I justify my choice by explaining that my son traveled to Bolivia to do community service and came back with a bride, Jaqueline Claros Lopez from Santa Cruz? Is it relevant to this choice that we speak Spanish at home or that my grandson really does call me abuela?

To take this line of inquiry even further, could I describe myself as "emau" (Cantonese for aunt) because my niece JoHanna married a man named Steven Wong whose family is from Hong Kong?[71] Can I classify myself as Indian because family lore claims that one of the parents of Great Grandma Waire (born DuBois) was an American Indian? There are people of African American descent here on Long Island and elsewhere who do.[72] When individuals from different groups intermarry, do other family members change in subtle ways? If

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[69] *See* DELANY, *supra* note 42, at 63–64.

[70] For a discussion of appropriation of another artist's creation as an example of postmodernism, see generally Louise Harmon, *Law, Art and the Killing Jar*, 79 IOWA L. REV. 367 (1994).

[71] In Chinese, there is more than one word for aunt, thus reflecting the distinction between maternal and paternal lines. *See* e-mail message from JoHanna Wong to Deborah Post (Aug. 30, 1999) (on file with author).

[72] *See* Beth Greenfield, *A Tribe Called Quest*, THE LONG ISLAND VOICE, June 9, 1999, at 14. Part of the controversy over the status of the Shinnecocks as a tribe is related to their intermarriage with African Americans. The term that is used by racists to describe them is alleged to be "Monigs," short for "more nigger than indian." *See id.*

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kinship and identity begin with the extended family, what happens when intermarriage is not isolated or sporadic but pervasive and continuous?

The answer to these questions will depend on the rules that govern marriage in various communities. White Americans, for instance, were, until very recently, endogamous by virtue of anti-miscegenation laws.[73] Rules against miscegenation were designed to keep whites pure. By custom, other communities may be endogamous as well, not because of a concern with racial purity, but because of a concern with survival.[74] The motive for marriage rules makes a difference in the response to demands for multiracial identity. The demand that "white heritage and culture" be honored as much as the "black heritage" legitimately may be greeted with suspicion, while the demand for recognition by a parent from another subordinated community may not be so suspect. A great deal will depend on an examination of the hierarchy within communities of color or subordinated communities and the extent to which such intermarriage is proscribed. If intermarriage is taboo because of assumptions about racial or ethnic superior-

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[73] The differences between endogamy and exogamy are discussed in CLAUDE LEVI STRAUSS, THE ELEMENTARY STRUCTURES OF KINSHIP (1969). For examples of the anti-miscegenation laws at work, see generally Ferrall v. Ferrall, 153 N.C. 174, 69 S.E. 60 (1910) (divorce sought on grounds that wife was a negro) and State v. Melton, 44 N.C. 49 (1852) (indictment for fornication).

[74] Rules such as the one that requires non-Catholics to agree that their children will be raised as Catholics or that lead gentile women to convert to Judaism so that the children of the marriage will be Jewish are two obvious examples. The survival of the Jewish community in the United States seems a more pressing concern than the survival of Catholicism, however. *See* Interview by Lou Waters with Alan Dershowitz, *CNN Today* (CNN television broadcast, Mar. 21, 1997), *available in* LEXIS, News Library, CNN file; Interview by John Gibson with Alan Dershowitz, *Rivera Live* (CNBC News Transcript, Mar. 21, 1997), *available in* LEXIS, News Library, CNBC file. Alan Dershowitz was discussing his latest book, *The Vanishing American Jew. See id.* His major premise was that American Jews assimilate at a very high rate (read: intermarry with gentiles). *See id.* The percentage of Jews in the U.S. has declined from four percent to two percent, and he predicts that it will become one percent. *See id.* Some might take issue with Dershowitz's argument that anti-Semitism is disappearing in the United States.

One of the most controversial and exciting debates at Touro Law Center in recent years concerned the Halachic proscription of intermarriage: "While a prohibition against the performance of such conversions and against the subsequent marriage of the couples involved is a rule of behavior, and, therefore, under mitigating circumstances could be compromised, the effectiveness of those conversions is a factual matter and cannot be compromised." *See* Chaim Povarsky, *Contemporary Marriage—Motivated Conversions*, JEWISH LAW REPORT, July 1992, at 2 (footnote omitted).

For an interesting look at the attitudes towards intermarriage in the Black community at the turn of the century, see generally Denise C. Morgan, *Jack Johnson: Reluctant Hero of the Black Community*, 32 AKRON L. REV. 529 (1999).

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ity or inferiority, a legitimate question may be raised about the need or desire of the children of such a union to "honor" the culture that has defined them as inferior.[75]

Intermarriage is only one of the ways in which cultural contact occurs. My third choice, "juggler," was meant to signal other possibilities. This sign was chosen to communicate, to borrow a term from the anthropological literature, a "paradigmatic" truth.[76] I was attempting to use a metaphor, although not a particularly good one considering the meaning already attached to it. It probably will be interpreted by most readers as a reiteration of a feminist theme or as interjecting a reality that might be overlooked: the strategies that women, especially mothers, use to survive in the academy or in any professional setting.

"Translator" might have been a better choice, although even that word is imprecise. What I meant to communicate was a sense of in-betweenness, not as a translator or interpreter, but more as an artist or a member of a creative community. People of color in the academy excel at intercultural competence. We exist in what Mary Louise Pratt calls the "contact zone."[77] Intercultural competence, prevalent in subordinated communities, is a byproduct of hegemony, but it is also a spur to creativity and to the propagation of counter-hegemonies. This creative process also involves and demands appropriation.

Pratt calls this process of appropriation transculturation. Her example is a chronicle of the Spanish conquest of Peru written by Filipe Guaman Poma de Ayala.[78] The chronicle was written in Quechua and Spanish.[79] What makes the piece an example of the transculturation Pratt describes is the perspective. The text is an example of a "representation[] that the so-defined others construct *in response to* or in dialogue with" the texts of the colonizer or of the dominant culture in which these dominant cultures "represent to themselves their others (usually their conquered others)."[80] These arts of the contact zone involve "selective collaboration with and appropriation of idioms of the metropolis or the conqueror."[81]

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[75] *See generally* Ruth G. McRoy & Edith Freeman, *Racial-Identity Issues Among Mixed Race Children*, *in* CRITICAL RACE THEORY: THE CONCEPT OF "RACE" IN NATURAL AND SOCIAL SCIENCE 220 (E. Nathanial Gates ed., 1997).

[76] *See* LINCOLN, *supra* note 2, at 24.

[77] *See generally* Mary Louise Pratt, *Arts of the Contact Zone*, *in* WAYS OF READING: AN ANTHOLOGY FOR WRITERS 528 (David Bartholomae & Anthony Petrosky eds., 1996).

[78] *See id.* at 530–36.

[79] *See id.* at 531.

[80] *Id.*

[81] *Id.*

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Appropriation is bilateral. Just as we appropriate symbols and ideas from the dominant culture, it is important to remember that appropriation often works in the opposite way. Appropriation is critical to the alteration of meaning used in subordination. As such, motive has to be examined in connection with the process of appropriation, the selection of a sign.

"What are 'wiggers?'" I asked my son when he was in high school. It was a rhetorical question; I already knew the answer.[82] Among whites, "wiggers" are people who are assumed to have rejected their own culture and assimilated to another. They are, therefore, inauthentic; they are a "living lie." They have appropriated habiliments of a class—a race—that is subordinate to their own. Assimilation, the process by which the "other" becomes white, is movement in the opposite direction, from bottom to top.

The Appropriator in my dream was lurking about, but he was indistinct and indistinguishable. (The original artist, on the other hand, was nowhere to be found.) The question for the reader of dreams is complicated: Who is the artist and who the appropriator, and what do these ideas have to do with critical race theory or U.S. culture? Who envisioned the process depicted in the painting of racial transformation from black to white to something completely unknown?

Appropriation and imitation, questions of authenticity and inauthenticity, have long been the subject of debate within minority communities. At least since the time of the Harlem Renaissance, if not before, Americans of African descent have worried over these questions, coming down on both sides. Sometimes the issue is the attempt by a white artist to depict the life of a black person. More often it concerns conflict between the values embraced by the original artists, persons of color, and white appropriators. The injury is two-fold. The appropriator might take the artist's work and use it for purposes antithetical to the beliefs of the artist, to the ideals the artist tried to communicate in his or her work and to the beliefs that inspired the work. Then, too, appropriation is a form of economic injury. When the appropriator is a member of the dominant culture, it may be just another exercise in subordination. But is there appropriation in the first instance, when

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[82] For a story about two young women in Indiana who were labeled "wiggers" and their subsequent 15 minutes of fame, see E. Jean Carroll, *The Return of the White Negro*, ESQUIRE, June, 1994, at 100. See also the discussion of the controversy sparked by Toni Morrison when she discussed social location public discourse about President Clinton being treated like a black man in Patricia J. Williams, *Mr. Lincoln's Legacy*, THE NATION, Oct. 26, 1998, at 9. *See also* Wendy Shalit, *Soundings: "Nobel Lie,"* CITY J., Autumn 1998, at 9–10.

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the ideas, expression, or even world view of one community are adopted by someone who does not occupy the social position to which these are attached? And are we not appropriating the dominant culture and using it for purposes that offend those who believe they own that culture?

Are the young white men and women called "wiggers" a link between two cultures and two communities, between those who dominate and those who are dominated? It may depend on the meaning they assign to the music they play and the clothes they wear. "Pluralistic ignorance" creates a place for people of color who are bicultural. We are the translators and possibly the transformers of both cultures. What will we do when the colonizer can imagine the world from a different perspective—from the perspective of the colonized?

CONCLUSION

There were two thoughts I took away from Pratt's piece. One was the notion that the "imagined community" to which we belong, the United States, has been profoundly changed by the arts of the contact zone and by the demands of outsiders to participate in and to interrogate the dominant culture. The second was a question about whether the work that is currently being done by people of color will produce an "imagined community" that is something more than the strategic coalitions that have existed in the past.

Identity is important to the project in which we are engaged. Maybe we are engaged in building a Tower of Babel, a challenge not to God but to the notion of social and biological supremacy that makes this a racist, sexist, and homophobic country. It may not be necessary to speak one language if the building process requires, demands, some acknowledgement of cultural difference. This era offers an opportunity for cultural collaboration.

Appropriation is a part of what we do, but we must recognize that the very same process can be, and has been, turned right back on us. We should invite appropriation where it creates an inversion challenging the status quo. What we should be wary of is the species of appropriation we see in the now familiar use of antidiscrimination rhetoric to support the reinstatement of a system of racial hierarchy and privilege. What we need to examine closely are the images in popular culture reinforcing the notion that communities of subordinated peoples are suspect and dangerous.

During the panel, we each chose three signs to represent who we are. Now and in the future, we can use our facility with words and our

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knowledge of each other's cultures and of the dominant culture in either of two ways. We can be oppositional in ways that are subversive, or we can simply try to ameliorate the relationships of dominance and subordination within the broader society.

If we choose the former rather than the latter, we run certain risks. Part of the project may involve symbolic inversion: taking symbols and "challenging numerous categories fundamental to modern Euro-American society," including the categories of race, sexuality, and gender. Bruce Lincoln uses Duchamp's *Fountain* as an example of successful symbolic inversion.[83] *Fountain* challenged the "distinction commonly drawn between that which can be termed the High and the Low, by which is meant not only the physical top and bottom, but also the associated categories of the elevated and the base or degraded."[84] Guaman Poma in his chronicle ended with an imaginary dialogue, a "reversal of hierarchy" in which "the subordinated subject single-handedly gives himself authority in the colonizer's language and verbal repertoire."[85] While there is ample evidence that symbolic inversion can be an instrument of agitation and even reform, the process can be repeated and reversed by the dominant culture: "An order twice inverted is an order restored, perhaps even strengthened as a result of the exercise."[86]

Mary Louise Pratt has written: "Autoethnography, transculturation, critique, collaboration, bilingualism, mediation, parody, denunciation, imaginary dialogue, vernacular expression—these are some of the literate arts of the contact zone. Miscomprehension, incomprehension, dead letters, unread masterpieces, absolute heterogeneity of meaning—these are some of the perils of . . . the contact zone."[87]

We know that hegemony confers authority on some and denies it to others; hegemony distinguishes between forms of discourse that have power and those that are weak.[88] Despite these consequences, we

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[83] *See* LINCOLN, *supra* note 2, at 142–45.

[84] *Id.* at 145.

[85] *See* Pratt, *supra* note 77, at 533.

[86] *See* LINCOLN, *supra* note 2, at 159.

[87] Pratt, *supra* note 77, at 536.

[88] One way in which different voices can be ignored is the tactical use of the "strong language" of theory that enacts power relationships within our own communities. *See* James Clifford, *supra* note 6, at 58. Clifford cites to the discussion of this distinction in Talal Asad, *The Concept of Cultural Translation in British Social Anthropology*, *in* WRITING CULTURE: THE POETICS AND POLITICS OF ETHNOGRAPHY 141 (James Clifford & George E. Marcus eds., 1986).

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are better off giving ourselves authority to engage in the decidedly subversive acts of symbolic inversion and transculturation.

We are always looking for signs and sites of the contest for authority and power within our communities. Multiple voices, identities, and uses of the same cultural material are the resources available to us in the contact zone. We should be advocates for emerging voices in legal scholarship, for scholarship that does not avoid disagreements or drown out or obscure conflicting discourses. This project should inform our choices of the signs we adopt as symbols of our identity and our struggle.[89]

[89] *See* Clifford *supra* note 6, at 59 (noting that most ethnographies are "smoothed over" to cover up the "cacophony and discursive contradiction found in actual cultural life").

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