

1994

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Recommended Citation

Margaret E. Montoya, *Law and Language(s): Image, Integration and Innovation*, 7 LA RAZA L.J. 147 (2015).

Link to publisher version (DOI)

<https://doi.org/10.15779/Z38BH20>

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La Raza Law Journal

VOL. 7, No. 2

1994

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Law and Language(s): Image, Integration and Innovation*†

Margaret E. Montoya‡

“Language is not a substitute for experiences but arches to the place where meaning lies.”

— Toni Morrison —

Examining the complex relationship between law and language enhances our understanding of the marginalization and subordination of linguistic Outsiders.¹ This nexus between law and language has many manifestations. In this essay I discuss the biases about language that constrain traditional legal discourse while I explore strategies for its reframing by using the languages of Outsiders. Succinctly stated, this essay posits that traditional language norms create images or maintain stereotypes that stultify public discourse as well as impose cultural integration and linguistic assimilation with destructive consequences. The essay proposes that linguistic norms in law schools can be refashioned through pedagogical innovations to minimize their subordinating effects.

Language plays a dominant role in our professional and personal lives. Language defines identities, cements relations, circumscribes communities, and encodes and decodes cultural messages. As lawyers, language is our professional tool; it's our product and our process. Language is a talent, allowing us to gestate an idea and give it birth through words. Language is

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† This essay was developed from a presentation at the 1994 annual meeting of the Association of American Law Schools in Orlando, Florida. The talk was part of the Minority Section panel entitled: “Law and Language: Image, Integration and Innovation.”

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1. I am using the term Outsiders as a substitute for the more commonly used “minorities.” Outsiders can include people of color, women, the poor, the disabled, and gays/lesbians, in other words, members of groups who have historically been discriminated against.

a gift that levels the playing field, allowing us to compete and, sometimes, to win. For me, language has been a door opener and an escape hatch. Language is my lens to refract the world, my link to others, my ladder out of isolation. Language is a source of considerable power. Most Latinas, Latinos and others who speak a language other than English, however, have been denied that power. Language has been a primary and enduring force of subordination in our communities.

For many Chicanas and Chicanos, language introduced us to law — language was the earliest point of intersection with official rules, official regulations and official prohibitions. The use of Spanish in the schools throughout the Southwest was widely prohibited and routinely punished.² Gloria Anzaldúa,³ and Vicki L. Ruiz,⁴ and others have written about this. My father tells of being beaten in kindergarten for speaking Spanish. In *Culture and Truth*,⁵ Professor Rosaldo remembers his Tucson junior high school where students were made to grab their ankles while they were swatted for the crime of speaking Spanish.

One of my University of New Mexico colleagues harbors this memory: In a New Mexico town during the 1950s, if a student would be overheard speaking Spanish, he/she would be forced to stand on tiptoes as the teacher drew a circle at the height of his/her nose. The student would be made to stand with his/her nose in the circle for the required length of time, enduring pain and humiliation for speaking Spanish.

Stories like these have normative consequences. As time passes, the necessity for creative cruel punishment attenuates. Our parents encourage us to speak English. Accomplished English-speakers listen for and correct our accents. We hear and sometimes we laugh at jokes about fractured English or comedy routines featuring Jose Jiménez, Speedy Gonzales, Paul Rodriguez, or Cheech Marin. We receive praise from teachers for speaking the over-corrected speech of the over-achiever. We learn to value the syntax, the cadence and the accent of the monolingual English speaker. Over time these stories constrain our behavior, mold our values and create our preferences.⁶ Over time Spanish, our mother tongue, becomes an “outlaw”

2. See Eduardo Hernandez-Chavez, *Language Policy in the United States: A History of Cultural Genocide in X LATINOS IN THE UNITED STATES: HISTORY, LAW AND PERSPECTIVE, A SIX VOLUME ANTHOLOGY OF SCHOLARLY ARTICLES X* (Antoinette Sedillo Lopez ed., forthcoming).

3. See, e.g., Gloria Anzaldúa, *How to Tame a Wild Tongue in BORDERLANDS, LA FRONTERA: THE NEW MESTIZA* 53 (1987).

4. Vicki L. Ruiz, “*Star Struck:*” *Acculturation, Adolescence, and the Mexican-American Woman, 1920-1950 in BUILDING WITH OUR HANDS: NEW DIRECTIONS IN CHICANA STUDIES* 111-12 (Adela de la Torre and Beatriz M. Pesquera eds., 1993).

5. RENATO ROSALDO, *CULTURE AND TRUTH: THE REMAKING OF SOCIAL ANALYSIS* 149 (1989).

6. As Robert Gordon has written, “This is Antonio Gramsci’s notion of ‘hegemony,’ i.e., that the most effective kind of domination takes place when both the dominant and the dominated classes believe that the existing order, with perhaps some marginal changes, is satisfactory. . . . [A]n ideology [is] ‘hegemonic’ if its practical effect is to foreclose imagination of alternative orders.” Robert W. Gordon,

language; Spanish joins other languages, dialects, and patois that have been devalued and prohibited.

Being obliged to abandon your mother tongue, to surrender your primary language, to give up the language that you first learned as a baby, forces a rupture with your family, your community, and your history. Being obliged to surrender a language is akin to losing parts of your senses.

Although bilingual when I arrived at law school, I had been well trained in my carefully accented and polysyllabic English. English was my public language. My memories from law school begin with one of the first cases I ever read. On page one of my criminal law casebook I met the only Chicana or Latina I would ever hear about during my law school education. The case dealing with infanticide was entitled *The People of the State of California v. Josephine Chavez*.⁷ In addition to the appellate opinion, the casebook included copies of the actual Chavez Complaint, Warrant of Arrest, Jury Instructions, Verdict and Judgment, news reports of the Chavez arrest and trial from *The Fresno Bee*, the local newspaper, the relevant sections of the California Penal Code, and the author's commentary and analysis.

The facts of the case involved Josephine Chavez giving birth one night over the toilet in her mother's home without waking her year-and-a-half-old son, her brothers, sisters or mother. She delivered, in the words of the opinion, with "the doors open and no lights . . . turned on."⁸ The baby dropped into the toilet and Josephine cut the umbilical cord with a razor blade. She recovered the body of the baby, wrapped it in newspapers and hid it underneath the bathtub. She attended a carnival that evening and then ran away. Later she turned herself in to her probation officer.⁹

The class wrestled with the legal issue: whether the baby had been born alive and was therefore subject to being killed by its mother. Finally, on the third day, I broke my silence and interjected what I thought were other equally relevant facts, her youth, her poverty, her fear of the pregnancy, her delivery in silence and in darkness.

My vivid recollection is that the classroom discussion about the Chavez case, like the appellate court opinion, was oblivious to the cultural, linguistic or socio-economic context of the alleged crime. Perhaps this oblivion is not surprising for an opinion written in 1947, nor even perhaps for

New Developments in Legal Theory in THE POLITICS OF LAW 418 (David Kairys ed., 1990) (Emphasis in original).

7. *People v. Josephine Chavez*, 77 Cal. App. 2d 621 (1947).

8. *Id.* at 622-23.

9. In a recent article, I use the Josephine Chavez case to analyze the silence which accommodates the discursive uniformity in law school classrooms. I argue in favor of expanding legal scholarship to include transcultural stories which challenge conventional paradigms and subvert the dominant discourse. See Margaret Montoya, *Máscaras, Trenzas y Greñas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse*, 19 HARV. WOMEN'S L.J. 185 (1994).

a law school discussion in the mid-1970s. However, I am quite sure that, even today, a classroom discussion of this case or others dealing with Outsider experiences would not emphasize the contextual information, especially if that contextualization required a language other than English.

So how are we today to make sense of this story? Can these tragic events be understood from the traditional perspective — a perspective that is monolingual and monocultural? How do we effectively explore Josephine Chavez's criminal intent, *mens rea*, diminished capacity, or examine the legal personhood of this dead baby unless we are prepared to draw on knowledge that is embedded in the life experiences of those who have been historically silenced? The linguistic and socio-cultural norms that control legal discussion, particularly within the classroom, impede the introduction of information about the experiences of subordinated groups. These norms impoverish the discussion within the classroom and stunt the creativity that can be brought to bear on the legal issues presented by the client's complex story. These constraints have legal and representational ramifications.

The effective representation of a bicultural client such as Josephine Chavez requires that we tell her story using language and knowledge that has been taboo in the traditional law school classroom. Our understanding of Josephine Chavez's motives and behavior is enhanced if we import words and concepts from Spanish into our analysis. Her story implicates information about *familia*, about *vergüenza*, about *respeto*. The familial and cultural matrices that encode meaning are different in the two languages. The networks embedded in the words *familia* and family are defined differently and experienced differently. *Vergüenza* may translate into shame but *vergüenza* is experienced as more than shame. *Respeto* has different cultural parameters than the meaning we give to respect.

In other words, the effective legal representation of the bicultural client requires the re-presentation of her reality. The interpretation of the bicultural and bilingual client's story is facilitated through the use of what the Mauritian literary critic Françoise Lionnet has called "*métissage*."¹⁰ The term "*métissage*," originally used to refer to racial and cultural mixing or creolization, is here used to describe the literary criticism technique which borrows insights from various disciplines to examine the interreferential nature of the writings of post colonial cultures.¹¹ Lionnet uses *métissage* to describe the autobiographical story that is told in the dominant language but which draws from the dominated language.

Métissage urges us to eschew race- or gender-imbued concepts that distort or demean our lived experiences. *Métissage* propels us to seize lan-

10. *Métis* is the French word for half-breed. But *métis* is also cloth woven from cotton and hemp. *Métis* describes a new product from two different inputs.

11. Françoise Lionnet, *Autobiographical Voices: Race, Gender, Self-Portraiture* 8 (1989).

guage, reinvent it, redefine it to give meaning and value to our lives. *Métissage* creates discursive space for the telling of stories from the vantage point and in the words of the subordinated. *Métissage* brings authenticity to our stories. By appropriating public space for stories that combine the dominant language with the "outlaw" language, we can give a voice to parts of our lives that have been silenced.

Métissage has applicability beyond autobiographical narratives. The linguistic code-switching that characterizes *métissage* enhances our ability to teach our students to understand their client's stories. A central task in lawyering is to take the client's story and translate it into legal parlance. An appreciation of *métissage*, of creating a new story by valuing and respecting both the client's version and the lawyer's jargon creates a fluidity in the representational process. *Métissage* allows the lawyer to choose from different linguistic systems and from varying identities for the client and for the lawyer herself.

I have found that telling personal stories establishes a climate of trust with students. Reciprocity in self-disclosures creates an environment of safety for story telling. So I work to incorporate narrative formats into my classroom and clinical teaching. I use stories to teach students to listen to client stories, interpret client stories, and at times, tell their own stories. For example, I have taped a mock interview¹² that demonstrates *métissage* and raises cultural and linguistic as well as ethical issues for discussion by law students in my clinical course. In the interview I play a Latina lawyer with limited facility in Spanish. The client Miguel "Caballo" Grado has suffered a back injury and is seeking assistance with an SSI claim. Soon after the interview begins, the client asks about my family background:

Client: Did you say it was Montoya?

Lawyer: . . . my name is Margaret Montoya.

Client: *Donde*. . . Where are you from?

Lawyer: Well, my dad's family, Los Montoya, is from the southern part of the state and my mother's family is from the northern part of the state.

Client: What's your dad's name?

Lawyer: Ricardo Montoya and, you know, they're from, he was from Santa Rita.

Client: Hmm, I knew a bunch of Montoyas who were all from Silver City, and I think the family was from Santa Rita.

Lawyer: Well, my grandfather's name was Felix Montoya. . .

Client: No.

Lawyer: . . . and my grandmother's name was Refugio Sierra.

Client: Hmm, that's interesting. Did. . . You're telling me they're from Santa Rita, but did they live in Silver City too? Because I know *este* Modesto Montoya, Modesto Montoya there in Silver.

12. I would like to acknowledge the invaluable assistance and creativity of my student Ricardo Medino in developing this interview with me.

Lawyer: Oh, you know, Mr. Grado, I don't know a lot about, you know I know my dad's brothers and sisters, but. . . I don't really know those one generation back, so I don't really know if there would have been. . .

As I proceed to share information about my family, the client attempts to locate me within his framework of names and geographic associations. In fact, the client and I spend over three minutes of the taped interview discussing my family connections. As the interview goes on, the client, provides relevant information about his family's financial affairs. In a subsequent interview, after displaying some concern about providing this information, the client tells me that he has been treated by a *curandera*, a medicine woman who has given him massages and herbal tea medications.

Client: You know, I don't know how the Social Security is going to look at it, but I've been seeing a *curandera*.

Lawyer: Hmm.

Client: . . .and uh, she's been doing wonderful stuff for my back at least it lasts more than the pill does. Ah, she helps me with the massages and she does other things for me, gives me some potions if you will, and ah, they've been pretty effective so that I could get to bed at night.

Lawyer: I need to get more information. . the *curandera* is, hmm. . . so she, does she do other things than give you a massage? You said that she gives you. . .

Client: Well, she gives me some teas.

Lawyer: . . .and what kind of teas does she. . .

Client: Ah, various kinds of bark. . .I know that I was having some problems with my bladder one time and she gave me some *popotillo* and then she gave me some *yerba buena*.

Lawyer: Yea. . .I don't know *popotillo*. *Yerba buena* is mint tea, Uh I don't know *popotillo*.

Client: It's a . . .It's a wild herb that grows out there and, ah, it's good for bladder infections and stuff like that and it really works great. It cleans your whole system out.

Lawyer: And you have told Dr. Fox [the treating physician] that in fact you're . . .

Client: Umm, Uh.

Lawyer: It's alright if you haven't. It's that I'm going to have to figure out how we use this information.

Client: Well, you know. . .It's traditional to seek a *curandera*. There's nothing wrong with it. I really haven't mentioned it to him too much. Uh, I do not know how he would take it.

Lawyer: Sure.

Client: I don't know how up here, but down there, it's just, ah, you know anything that has to do with our culture and stuff is frowned upon. . .

The purpose of this simulated interview is to explore the following issues through the use of *métissage*: the impropriety of attorney disclosures when interacting with clients; client expectations about attorney behavior;

techniques for gaining access to and interpreting legally relevant information that is culturally coded; and interviewing and counseling techniques for intra- and intercultural interactions. The deliberate and extended use of Spanish and English in the simulation and the interjection of details from the everyday lives of poor Latinos/as has yielded rich discussions about the representation and re-presentation of clients from subordinated populations.

When I consider who we are as legal educators and why we do what we do—my answers to those questions are based on what I learned from the Josephine Chavez case. The Josephine Chavez story impels us to transgress the traditional linguistic norms that constrain legal analyses and cabin legal discourse.

Claiming the right to use Spanish in academic discourse is an important form of resistance against cultural and linguistic domination. Reclaiming these “outlaw” languages, taboo knowledge and devalued discourses is a stand against cultural hegemony. Telling stories through the language of the master and the language of the subversive subaltern (in Gita Rajan’s phrase¹³) allows us to examine how language can be regenerative of meaning.

The Josephine Chavez case has long had a grip on me because in the same way that I couldn’t fully tell her story without resorting to Spanish, I couldn’t then, and can’t now tell my story either. As a Latina, weaving meaning from both English and Spanish is a necessary process in the understanding of my subjectivities. To the extent that my identity is socially constructed, that identity is encoded through two linguistic codes. Reflecting on my subjectivities, de/constructing the forces that have acted to create my multiple identities, requires decoding through Spanish and English.

Gloria Anzaldúa has written about the psychological, sexual and spiritual borderlands “physically present wherever two or more cultures edge each other, where people of different races occupy the same territory, where under, lower, middle, and upper classes touch, where the space between two individuals shrinks with intimacy.”¹⁴ My contribution to academic discourse is my ability to extract meaning from the aesthetic, linguistic and cultural borderlands of my existence and blend that meaning with traditional legal analysis. Indeed, this is the challenge for legal educators who identify with subordinated communities. It is time that we reclaim Spanish and other “outlaw” languages for use in the classroom and in legal scholarship and seize the opportunities these languages offer for pedagogical innovation.

13. See Gita Rajan, *Subversive-Subaltern Identity: Indira Gandhi as the Speaking Subject*, in *DE/ COLONIZING THE SUBJECT: THE POLITICS OF GENDER IN WOMEN’S AUTOBIOGRAPHY* 196 (Sidonie Smith & Julia Watson eds., 1992).

14. Anzaldúa, *supra* note 3, at unpaginated preface.