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### Law Fragments

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# Law Fragments

EMILY ALBRINK HARTIGAN\*

## INTRODUCTION

In writing about public theology, Catholic theologian David Tracy of the University of Chicago Divinity School reflects on the role of rationality in contemporary political discourse. In relation to Jurgen Habermas's analytic theory of dialogical reflection, Tracy considers the impact on the Western life-world of the "internal colonization" by the dominant capitalist-bureaucratic-technical public discourse that tends to reduce the person to "a mere 'producer,' a 'client,' and a 'consumer.'"<sup>1</sup> One major source of resistance to this reduction is a new participatory sensibility that he attributes in part to religion as participation or manifestation,<sup>2</sup> and to the sense of radical participation in nature and the cosmos in indigenous traditions.<sup>3</sup> The sense of God that religions in modern society now practice, Tracy notes, is one of withdrawal, so that the old idea of an explicit, commanding God is replaced by a hidden God to be made manifest only through a postmodern hermeneutics of religion as participation.<sup>4</sup> However, Tracy recognizes that the "nonreductive saturated" phenomenology that such religion represents would not be acceptable to the Enlightenment sense of reason.<sup>5</sup> The true images of "saturated auratic, sacred elements-become-images"<sup>6</sup> accompanies the breaking up of history, including intellectual history, into fragments. The image as fragment is particularly important when it arises from a suppressed history or marginalized persons – these fragments are necessary to resist totality, or as it was called after World War II, totalitarianism.<sup>7</sup> Thus pop art, rap, the new novel help the prophetic move to "blast alive the marginalized fragments of the past with the memory of suffering and

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\* J.D., 1978, University of Wisconsin-Madison; M.A., PhD, University of Wisconsin-Madison; B.A., 1968, Swarthmore. Gratitude as ever to Marie Failing, Howard Lesnick, Beto Juarez, and Andre Hampton for their insight, support and collegiality.

1. David Tracy, *Public Theology, Hope, and the Mass Media*, in 1 GOD AND GLOBALIZATION (Max L. Stackhouse & Peter J. Paris, eds., 2000).

2. *Id.* at 243.

3. *Id.* at 244.

4. *Id.* at 247.

5. *Id.* at 250.

6. *Id.* at 252.

7. HANNAH ARENDT, *THE ORIGINS OF TOTALITARIANISM* (Meridian Books, Inc. 1958) (1951).

hope."<sup>8</sup> Such fragments must retrieve these powerful and hopeful memories by removing them "from their seemingly coherent place in the grand narratives we have imposed."<sup>9</sup> The search is for "the spiritual fragments that expose any pretense to totality"<sup>10</sup> and free the "Muses to capture both needed images of participation in our religion-as-manifestation traditions and the explosive fragmentary images of the apocalyptic and prophetic proclamation traditions."<sup>11</sup> Tracy has warned the reader that such phenomena "could not fit what counted as rational."<sup>12</sup>

So let me tell you about Buddhalupe, and how she can help save the law. Before I get to her, I will have to back up and locate this conversation in some cross-cultural, tentatively historical, discourse, and in law review articles. After all, I haven't forgotten where I am.

### I. LAW'S BIAS AGAINST EARTH

The historical contrast between how the dominant legal discourse has portrayed Christianity and how it has treated earth-based religions is illustrative of a spiral of polar tensions that mimic each other through human history. In the history of the United States, the law has left indigenous traditions with scant or, now, no effective legal protection. Although "earth-based" and "feminist" are not full equivalents, there is a core human nexus that was tapped in multiple traditions throughout world history -- classical Greek drama, Babylonian deities, the Yin and the Yang -- and continues in the writings of women and particularly women of color in the United States today concerning woman, law and earth. Just as Antigone and her sister Ismene struggled with the weak and despised public legal position that women held in the "model" times of Athenian democracy, and Tiamat, the "chaotic" female counterpart of Apsu in Babylon merged with her mourned consort toward monotheistic patriarchy, so also writers such as law professor Verna Sanchez today face the blunt Free Exercise jurisprudence of the U.S. Supreme Court that privileges triumphalist Christianity while marginalizing earth-centered traditions.<sup>13</sup> The ancient allusions to mother earth and father sky, to Persephone and Apollo, that justified the all-male franchise in Greece, continue to proliferate in the heedlessness of Christian dominance in a nominally non-Establishment United States. The resistance to one "head" of household or state forges, in post-patriarchal times, a complexity of new images, retrieving suppressed histories yet surfacing them into a present that alters

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8. Tracy, *supra* note 1, at 253.

9. *Id.*

10. *Id.* at 254.

11. *Id.*

12. *Id.* at 250.

13. Verna C. Sanchez, *All Roads Are Good: Beyond the Lexicon of Christianity in Free Exercise Jurisprudence*, 8 HASTINGS WOMENS' L.J. 31 (1997).

them as they arrive on the page. This mutually-transforming complexity shapes the law and its development, scattering clear identities and keeping political, cultural and legal conversational threads from reverting to monocultural false unity. Within the Protestant traditions, the tendency of women ministers toward indigenous Native American spirituality manifests the migration of the "dominant" discourse, while the plurality and ambiguity of traditions proliferate in abundance.<sup>14</sup>

As Professor Sanchez notes, the early American experience was of Protestant Christianity struggling to overcome a Puritanical authoritarian father image of God and move towards Christ and compassion. This struggle has been and is codified in a First Amendment jurisprudence that effectively enthrones Protestant Christianity and leaves the earth-based religions of the indigenous people of the continent at the mercy of the unselfconscious majoritarian political process.<sup>15</sup> Citing De Tocqueville, Sanchez notes that the paternal images of monarchic England, when faced with the diversity of religious views in the "new world," softened to the degree that "multiple establishments" flourished – but with a Protestant Christian fundament. Even that hegemony was fragile, as Native American author Vine Deloria noted, since "[t]he First Amendment was designed to keep Christians from killing each other."<sup>16</sup> By implication and visible in history, non-Christians were not so protected.<sup>17</sup>

One striking contrast between Protestant triumphalist Christianity<sup>18</sup> and other traditions in America's political culture surfaces in the difference between the impact on African religious practices brought over by those enslaved by the Spanish and those enslaved by Protestant colonialists. Because of the "polysanctified" tradition of Catholic saints, the Africans

14. While teaching at the University of Nebraska Law School in the late 1980s, I was delighted to find WIT, the Women's Institute for Theology, a gathering of mostly Protestant women who thrived on the creation-centered theology and ritual both of Christian "subordinate" tradition-strands and of the ancient denizens of a state, the name of which means "land of flat water."

15. The functional repeal of the Free Exercise clause of the First Amendment as a repository of minority right (the function of the Bill of Rights, after all) is chronicled in numerous law review articles, the most poignantly amusing of which remains James Gordon's *Free Exercise On The Mountaintop*, 79 CAL. L. REV. 91 (1991).

16. Sanchez, *supra* note 13, at 41.

17. Another Latina who analyzes the tenuous position of Latinas in power, law and religion, Laura Padilla, notes the paradoxical function of church for Chicanas, who are simultaneously denied a place at the table of power yet find the deep spiritual empowerment of church, which "operates as a place of refuge, renewal, and inspiration, for body, soul, and spirit." Laura M. Padilla, *Re/Forming And Influencing Public Policy, Law And Religion: Missing From The Table*, 78 DENVER U. L. REV. 1211, 1219 (2001).

18. The modifier "triumphalist" is necessary to distinguish those who do not follow some version of Professor Samuel Calhoun's "principle of non-imposition" or other self-conscious curbing of the human tendency to think that our way of seeing things is right to the exclusion of different perspectives, including religious perspectives (I include atheism and agnosticism as religious views).

under Spanish Catholicism could often find cognates for their deities, while the more austere and mono-centered emphasis of Protestantism set the polytheism of native traditions directly against strident monotheism. An obvious example is the persistence of the divine feminine within the Catholic tradition through the syncretic Virgin of Guadalupe, and the Santeria cross-over saints visible in even contemporary practices.<sup>19</sup>

Ironically, this potential for creative syncretism continues with Catholicism, despite its avowal by the ultimate in patriarchy, *il Papa*. Concern for the land has been a strong theme of Catholic teaching in the United States. Starting in 1975 with the Bishops' letter concerning the Appalachian region, and ranging beyond that in subsequent years, the Church in the U.S. articulated a spirituality of the earth:

The opportunity people have to live a productive and rewarding life is determined to a great extent by the way in which they or outside interests relate to the land. We wish this relationship to be one of cooperative harmony for the land . . . .<sup>20</sup>

Thus nearly thirty years ago, the official hierarchy's doctrine even in the largely commodified United States conceived of the land as integral to the flourishing of human life. This motif of pluralistic earth-concerned spirituality was codified by theologians like Matthew Fox, working from the spiritual practices of Starhawk as well as focused on traditional Christian texts such as Meister Eckhardt's creation-centered spirituality.<sup>21</sup> Sallie MacFague's *The Body of God: An Ecological Theology*<sup>22</sup> gathered and carried further much of this embodied, grounded theology. On the level of abstract analysis, David Tracy's *Plurality and Ambiguity*<sup>23</sup> elegantly applied post-Enlightenment reflection to religious traditions including his own, to demonstrate that no tradition is fully singular or unambiguous. Two millennia and the pontificate have not managed to make of Catholicism a successful monolith.

Catholicism is far from alone in this underlying movement of plurality, away from false unities and single stories.<sup>24</sup> Protestant theologian Mark Wallace, learning from women earth-based theologians, imagines a

19. Sanchez, *supra* note 13, at 52 n.131-32.

20. Catholic Bishops of the Midwest, *Strangers and Guests: Toward Community in the Heartland 2*, par. 7 (1980), quoted in SHARON THERESE ZAYAC, O.P., *EARTH SPIRITUALITY: IN THE CATHOLIC AND DOMINICAN TRADITIONS* 28 (2003).

21. MATTHEW FOX, *BREAKTHROUGH: MEISTER ECKHART'S CREATION SPIRITUALITY* (1980).

22. SALLIE MACFAGUE, *THE BODY OF GOD: AN ECOLOGICAL THEOLOGY* (1993).

23. DAVID TRACY, *PLURALITY AND AMBIGUITY: HERMENEUTICS, RELIGION, HOPE* (1987).

24. For one of the earlier and most influential political theoretical commentaries that declared justice to be a plurality, see MICHAEL WALZER, *SPHERES OF JUSTICE: A DEFENSE OF PLURALISM AND EQUALITY* (1983). Walzer, who is currently working on a collaborative project on Jewish thought, openly identifies his work as arising from his Jewish faith.

polyvalent spirituality of creation rather than a singular, ratiocinated hegemony, and connects this directly to the discourse of deconstruction. Wallace has given the exalted name "post-modern green pneumatology" to what would be familiar to many women readers as Gaia-based spirit. Wallace recognizes the Derridian resistance to a singular truth, or a totalizing narrative, and from both this resistance and a sensibility formed by the recognition of the epistemic limits of any one tradition, Wallace pursues the face of creation that has been obscured by Western European post-Enlightenment thought.<sup>25</sup>

## II. OLD AND ODD TESTIMONIES OF THE EARTH

Bless me Coatlique-Tonantzin for I have . . . .

Once, when I went to cover Superbarrio<sup>26</sup> at the Basicilica, I tried to pray. Hail Mary, full of grace, who art in heaven . . . .

Bless me Tonantzin-Guadalupe for I have . . . forgotten the words . . . . So I'll just pray the way my grandpa did, to the four winds. He said God was on his shoulder, anyway. In the name of the Sun, the Moon, and the holy Mother Earth . . . amen. Aho. Hue Tonantzin. Ave Maria. Coatlazopueh.<sup>27</sup>

For the Chicana/o, this face of creation is familiar, maternal, integral. It is not Cotton Mather whom Sandra Cisneros mixes with her Buddhist sensibilities, but rather the Virgin of Guadalupe. The non-Protestant pantheon of Christianity -- including paradoxically the sect whom the Protestants disavow, the Mormons, with their "Our Mother in Heaven"<sup>28</sup> -- when Mary and all the many permutations of the divine feminine are brought in from the margins of the tradition based in the life of Jesus of Nazareth, becomes fecund. Coming from an overwhelmingly Catholic culture, Cisneros takes her particular Chicana-saturated and auratic-Christian image on a trip East, and she doesn't mean New York. The Asian traditions invade us as the inevitable currents and eddies of globalization flow back toward us, and we relocate in the both/and of here and also East. As we move East, however, we will make a stop at Block Island, to visit the pungently prophetic Protestant, William Stringfellow.

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25. MARK I. WALLACE, *FRAGMENTS OF THE SPIRIT: NATURE, VIOLENCE, AND THE RENEWAL OF CREATION* (1996).

26. Superbarrio is a [rather plump] figure in Mexican politics who dons a superhero costume to champion the dispossessed, and is beloved by the populace. See GONZALES, *infra* note 27.

27. PATRISIA GONZALES, *THE MUD PEOPLE: CHRONICLES, TESTIMONIOS, & REMEMBRANCES* 122 (2003).

28. Cheryl B. Preston, *Feminism and Faith: Reflections on the Mormon Heavenly Mother*, 2 *TEX. J. WOMEN & L.* 337 (1993).

A fierce Biblical Christian and lawyer, William Stringfellow writes of God yet denies the possibility of Christian Jurisprudence. This is a U.S. legal theory akin to Jacques Derrida's refusal of metaphysics and philosophy as it has been known, to Tracy's refusal of totalities, and to Gebara's rejection of any sole narrative colonizing others. Stringfellow names our worldly endeavors -- most pointedly the work of the law -- as (negatively) chaotic, as a "worship of nothing" and as nihilistic manifestations of our "frantic preoccupation with security and survival that is ultimately exposed as exploitation of the dispossessed."<sup>29</sup> Derrida marks the ignominy of feeding to his cat food that could sustain children, and the inevitable participation in death that our lives entail.<sup>30</sup> Both Stringfellow and Derrida chorus the absence of what those of us who are concerned about law and the sacred hope to name but cannot perform. We claim to speak of God (theology) but cannot. We work to explicate what Christianity (or another tradition) has to say about law, but we cannot write truly. We are caught in an absolute tension, in a crux, on a cross of paradox. We may "speak as fools but speak anyway"<sup>31</sup> but whether we say anything of meaning is not ours to decide. Anything we say is the speech of fallen creatures, and occurs within the powers and principalities. Universities are principalities, fallen and hypocritical. Money and power shape their warp and weft, dictate the size and availability of their looms, distort their shuttles and commodify their thread. We generate credentials and multiple choice tests for our professions. What is really important lies not among the credentials or tests or even the money. In my tradition, one name of this uncapturable presence is Christ. This elusive-yet-indispensable "presence" (the only presence, perhaps) is "something else" that, I venture, Derrida recognizes through insistence on its paradoxical absence, though he does not restrict its name to Christ or Yahweh or Buddha. This is the radical grace to which we must attend, because there is no other source of reconciliation of grace and law. The content of what we do must be what we are called to be, each by name, and the stance one of worship, of, as law professor Howard Lesnick puts it, "the experience of awe in the presence of the infinite, which grounds a palpable sense of wonder, an openness to mystery."<sup>32</sup>

Our worship, our gratitude and love of God, must include our wholeness, our sin. Thus the volume for which I originally wrote a fuller essay on Stringfellow (and of necessity the volume in which this essay appears), manifests our inherent fallibility. According to the two co-

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29. WILLIAM STRINGFELLOW, *THE POLITICS OF SPIRITUALITY* 39 (1984).

30. JACQUES DERRIDA, *THE GIFT OF DEATH* (1998).

31. This phrase has been spoken more than once, but Tom Shaffer's use struck me first.

32. Howard Lesnick, *No Other Gods: Answering the Call of Faith in the Practice of Law*, 18 J.L. & RELIGION 2, 485 (2002-2003).

editors,<sup>33</sup> the Pew volume was to be restricted to twentieth century "titans" and to exclude any living theologians. The Pew Trust "Christian Jurisprudence in the Twentieth Century" volume resulting from the consultation meeting of law and religion scholars, of which I was a (dissenting) member, in reality includes figures whose work is really not in the twentieth century but the nineteenth, yet excludes the most spectacular impetus in twentieth century Christianity, Christian feminism. Decades of work, and definitive books like Mary Daly's *Beyond God The Father*,<sup>34</sup> which decentered the previously overwhelmingly masculinist theological discourse of the past two centuries, are missing, allegedly barred by the "no living thinkers" rule. Excluded also is the work of theologians of color such as Virgilio Elizondo, founder of mestizo theology, or Cornel West or Delores Williams and other critical race theologians who wrote in the twentieth century of the existential distinctiveness of the perspective of those raced as subordinate -- although in order to include Liberation Theology, Gustavo Gutierrez was smuggled in still breathing. The Pew volume's decision to exclude (any other) living theologians means, much as the use of seniority systems to govern lay-offs, that those long denied voice and justice, those whose breakthrough is truly "world-historical" will be excluded. The legalism, rigidity, and deceptive race and gender "neutrality" of that decision would evoke from Stringfellow, the fierce defender of the first women ordinands in the Anglican communion, prophetic scorn. Stringfellow's outrageous address to the powers of his denomination ended with his calling on the presiding bishop to step down rather than find the ordinations "illegal" within his Church.<sup>35</sup> What would lawyer-theologian Stringfellow ask of us? He would reiterate that a Christian jurisprudence and a Christian theology are both impossible -- and also, in their fallen-and-redeemed wholeness, they constitute the only gifts of our life-worship that we have to give to and through the Word of God.

Stringfellow, Wallace, Derrida and Tracy are not the only ones resisting, rebelling. From the literal grass roots,<sup>36</sup> women have begun to bring their images into the public through their own writing, something

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33. Please note that I do not question their good will, nor the tremendously complex task confronting one in particular of those editors, whose long history of inspired work for the poor, the dispossessed, and particularly the poor African-Americans of Atlanta, is rightly legendary.

34. MARY DALY, *BEYOND GOD THE FATHER: TOWARD A PHILOSOPHY OF WOMEN'S LIBERATION* (1974).

35. Mary Lour Suhor, *Bill – Recollections of an Editor*, in *RADICAL CHRISTIAN AND EXEMPLARY LAWYER* 82-84 (Andrew W. McThenia, Jr. ed., 1995).

36. At the Latina Letters conference at St. Mary's University in the summer of 2003, the grasses and herbs of south Texas were strewn in a room in the University Center by Elise Garcia, Maria Antonietta Berriozabel and Carol Costan of Santuario Sisterfarm for their presentation - including lemon balm, lupine, and basil.



privatized until only very recently.<sup>37</sup> The open secret of earth consciousness is being simultaneously globalized and Balkanized. Woven through with the evils of colonization, the retrieval of particular pasts (by both women and men) still contributes to synthetic discourse, to "talking across difference," a movement that can contribute to a new pervasive, complex world conversation. Within that evolving conversation, the literary, geographical, legal and spiritual Borderlands/borders become simultaneously reinforced and breached. In the emerging discourse of Latina Borderland writers, "new and strange texts and stories" proliferate, conveying the fragmented, explosive beauty of some of those texts such as Patrisia Gonzales' *THE MUD PEOPLE*,<sup>38</sup> texts both engaging the fragments and bringing into an unlikely milieu (the legal academy) the very shattered wisdom that David Tracy has named.

### III. BORDERING STORIES

For some years, "outsider" scholarship movements have used personal narrative as well as constructed dialogue to pursue truth in law.<sup>39</sup> The use of *testimonios* began almost as soon as there were Latina legal scholars, with voices such as Elvia Arriola,<sup>40</sup> Laura Padilla,<sup>41</sup> Margaret Montoya and Trina Grillo.<sup>42</sup> Although the work of Latino writers also broke powerfully into the desiccated discourse of the usual law review patter and Richard Delgado's Rodrigo-and-Professor were barely removed first persons,<sup>43</sup> the

37. Voices of women of the Southwest who claim or describe indigenous roots include the following: Deena J. González, *Women Under Siege: Sexuality and the Gendered Economies of Colonization, 1840-52*, in *REFUSING THE FAVOR: THE SPANISH-MEXICAN WOMEN OF SANTA FE 1820-80* at 39 (1998); EMMA PEREZ, *THE DECOLONIAL IMAGINARY: WRITING CHICANAS INTO HISTORY* (1999); MIRIAM CHING YOON LOUIE, *SWEATSHOP WARRIORS: IMMIGRANT WOMEN TAKE ON THE GLOBAL FACTORY* (2001).

38. GONZALES, *supra* note 27.

39. The decision to bring forward more of the actual voices of indigenous women into the text was fostered at the Symposium on Law, Globalization and Democracy, Claremont Graduate School and Hamline Law School, and particularly by Hilary Charlesworth's suggestion. Hilary Charlesworth, *Does Cosmopolitan Democracy Work for Women?*, paper for Globalization, Democracy, and Law Conference, Fall 2002 (focuses on the conundrums of an international human rights law that recapitulates categories of domination such as the public(male)/private(female)); and RICHARD FALK, *EXPLORATIONS AT THE END OF TIME: THE PROSPECTS FOR WORLD ORDER 10* (1992) (attends to the plight of the indigenous).

40. Elvia Arriola, *Queering the Painted Ladies: Gender, Race, Class and Sexual Identity at the Mexican Border in the Case of the Two Paulas*, 1 SEATTLE J. SOC. JUST. 679 (2003).

41. Laura Padilla, *Latinas and Religion: Subordination or State of Grace?*, 33 U.C. DAVIS L. REV. 973 (2000).

42. Margaret Montoya & Trina Grillo, *The Mediation Alternative: Process Dangers for Women*, 100 YALE L.J. 1545 (1991).

43. Richard Delgado, *Rodrigo's Second Chronicle: The Economics and Politics of Race*, 91 MICH. L. REV. 1183 (1993); Richard Delgado, *Rodrigo's Third: Care, Competition, and the Redemptive Tragedy of Race*, 81 CALIF. L. REV. 387 (1993); Richard Delgado, *Rodrigo's Fourth Chronicle: Neutrality and Stasis in Antidiscrimination Law*, 45

intersection of the traditional roles of Latinas with their new professions as academics and journalists cracked open a unique space. Gloria Anzaldua and Cherrie Moraga called women of color in *This Bridge Called My Back* to create what Sonia Saldivar-Hull in the introduction to the second edition of *Borderlands/LA Frontera: The New Mestiza* called a *transfronterista* consciousness, a "transnational feminist" consciousness.<sup>44</sup> The women writing in *This Bridge* created a new classical discourse: Audre Lorde's "*The Master's Tools Will Never Dismantle the Master's House*" became a mantra akin to "Give me liberty or give me death" for women who had always, by social designation, inhabited the margins, the borders and the in-betweens.<sup>45</sup>

The move to writing for many of these women is deliberately *un movimiento de rebeldía*, a movement of rebellion<sup>46</sup> in which Anzaldua remains an academic but an undomesticated one. She and others write to explode, in order to illuminate with their brilliance the ruined landscape of Western thought. The notion of the "universal" or "global", and thus the traditional face of the very aspiration of philosophy -- the Western love of wisdom -- is radically sundered by difference, plurality and particularity. Yet as Derrida chronicles, that falling-apart, the center not holding, is not some nihilistic, quasi-suicidal attack on a coherent tradition: from the outset, deconstruction has often reveled in the "classical" texts because they also contain the peripatetic tensions that keep dialogues, poems, novels and plays vital.

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STAN. L. REV. 1133 (1993); Richard Delgado, *Rodrigo's Fifth Chronicle: Civitas, Civil Wrongs, and the Politics of Denial*, 45 STAN. L. REV. 1581 (1993); Richard Delgado, *Rodrigo's Sixth Chronicle: Intersections, Essences and the Dilemma of Social Reform*, 68 N.Y.U. L. REV. 639 (1993); enlightenment political theory: Richard Delgado, *Rodrigo's Seventh Chronicle: Race, Democracy, and the State*, 41 UCLA L. REV. 721 (1994); Richard Delgado, *Rodrigo's Eighth Chronicle: Black Crime, White Fears -- On the Social Construction of Threat*, 80 VA. L. REV. 503 (1994); racial discrimination and the rule of law: Richard Delgado, *Rodrigo's Ninth Chronicle: Race, Legal Instrumentalism, and the Rule of Law*, 143 U. PA. L. REV. 379 (1994); Richard Delgado, *Rodrigo's Tenth Chronicle: Merit and Affirmative Action*, 83 GEO. L.J. 1711 (1995); clinical practice: Richard Delgado, *Rodrigo's Eleventh Chronicle: Empathy and False Empathy*, 84 CAL. L. REV. 61 (1996); Richard Delgado, *Rodrigo's Twelfth Chronicle: The Problem of the Shanty*, 85 GEO. L.J. 667 (1997); Richard Delgado, *Rodrigo's Thirteenth Chronicle: Legal Formalism and Law's Discontents*, 95 MICH. L. REV. 1105 (1997); Richard Delgado, *Rodrigo's Fifteenth Chronicle: Radical Mixture, Latino-Critical Scholarship, and the Black-White Binary*, 75 TEX. L. REV. 1181 (1997); and Richard Delgado, *Rodrigo's Bittersweet Epiphany: White Interests and Civil Rights Realism*, 101 MICH. L. REV. 1201 (2003).

44. Sonia Saldivar-Hull, *Introduction*, in GLORIA ANZALDUA, *BORDERLANDS/LA FRONTERA: THE NEW MESTIZA* 1 (1999).

45. VIRGILIO ELIZONDO, *A GOD OF INCREDIBLE SURPRISES: JESUS OF GALILEE* 53, 98-99 (2003).

46. ANZALDUA, *supra* note 44, at 37.

I inserted into an earlier text<sup>47</sup> the fragments of Reynaldo Valencia's *cholo-virgen* (a striking painting of a gang-weary Chicano of the street with the Virgin of Guadalupe shining out of his chest)<sup>48</sup> and Howard Lesnick's print of Fritz Eichelburg's Christ of the Breadlines. Now I add, from Patrisia Gonzales, some fragments of *testimonios*, her revelations and insights and her embodied retrieval of the ways of her *antepasados*, her ancestors – along with the reflections of theologian Ivone Gebara and the reference to the women gathered in Gloria Anzaldua and Analouise Keating's *this bridge we call home*. These may seem incongruous, even incomprehensible, to some readers – but I submit they are no more so than James Joyce's *Finnegan's Wake* or passages from Martin Heidegger or Emmanuel Levinas. The remembrances and reflections from Latinas promise in their initial inaccessibility to draw the non-Chicana reader into the embodied, lived truth of daughters of the earth-dwellers who have left and returned and will leave and return again, as we all do. The "home" from which they come is the landscape visible to anyone who looks for the widows and orphans, for the "rejected" of globalization; that is, those that the major world spiritualities tell us are the first face of what some call God.<sup>49</sup>

#### IV. ENCHANTING IRRUPTION

If I could have, I would have begun this article as I first heard Patrisia Gonzales begin – with a shaking rattle and fierce chant from the traditions of the indigenous of Mexicans from whom she springs. Ringing in the halls of our University Center, her beginning invocation was startling, strong and compelling. I had not intended to attend any of the lunch-time readings during the Latina Letters conference, but to rush over to my office to do footnotes. Those spectral podiatric appendages to academic texts had no chance against the chanting, dancing feet of this Chicana story-teller.

Ironically, the most prominent of such story-telling in the era of the turn of the century reads as somewhat more attuned to the academy: *This Bridge Called My Back*<sup>50</sup> now seems to some commentators almost tame. Yet at its inception, this book could not have been more discordant. In its heart, the tome's fragments -- like Audre Lord's clarion "[t]he master's tools will never dismantle the master's house" -- gestated and rattled, making unavoidably explicit that it was not written in the dominant discourse, but was instead intended to break with the dominant "master's" discourse. Yet a fair amount of the volume was in the predominantly domesticated

47. Emily Albrink Hartigan, *Globalization in a Fallen World: Redeeming Dust*, 22 *MISS. C. L. REV.* 215, 223 (2003).

48. Reynaldo Anaya Valencia, *On Being an "Out" Catholic: Contextualizing the Role of Religion at Latcrit II*, 19 *CHICANO-LATINO L. REV.* 449 (1998).

49. See generally ELIZONDO, *supra* note 45.

50. *THIS BRIDGE CALLED MY BACK: WRITINGS BY RADICAL WOMEN OF COLOR* (Gloria Anzaldua & Cherrie Moraga eds., 1983).

intellectual voice that women of color had had to affect, in a way that the newer *this bridge we call home* moves yet further beyond. Thus Anzaldua's final essay in the second book spans thirty-six pages with prayer, ritual, poetry, and fewer footnotes than pages.<sup>51</sup> Shedding capitalization, the book also brings to page the form/region/consciousness Anzaldua has helped construct, that of *nepantha*, which she uses to theorize liminality<sup>52</sup>. Gonzales' liminality manifests in her *Buddhalupe*, the syncretism of her Mexican devotion to *La Virgen de Guadalupe* and her spiritual refuge in the fusing of her spirit "with Life itself, what others call God and what I understand as the Great Spirit."<sup>53</sup> The threshold, in-between, transforming space in which the fragmentary coheres of its own spirit, is the medium of shape-shifting that the shamanistic cultures have never lost and the after-modern cultures require, whether they know it or not.

Thus, how this article coheres depends on the reader's situation in the Borderlands, at least as much as it does on the "text" itself.

For feminist theologians, the transcendence of God does not lie in the fact that someone proves rationally that the action of God is good. This analysis means nothing in face of the web of violence and injustice in which we live. It is not necessary to prove the paternity or the maternity or the goodness of God. One must accept that God is God, that is, that the mystery is mystery, that meaning is meaning beyond the prison of our speech. By adopting this perspective, feminist theology works with more modesty, with more distance than rational patriarchal discourse, as if we were speaking of something we do not really know. It adopts a certain existential silence, even if speech makes itself heard when crossing the threshold of interpretations and publications.<sup>54</sup>

## V. FRAGMENTS AND RUINS

One way to see David Tracy's call for "explosive fragments" is to acknowledge that our culture is already in ruins. Part of that dissolution is the loss of hegemony by white male European culture in even our own Anglo-American-dominated United States. Another part, I suggest, is that the very European-male discourse reached the point of realization that the God of whom we spoke was no longer present in the way our predecessor European ancestors thought, and that absence forever changed our speech. Wittgenstein's famous "about that of which nothing can be said, we must

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51. *Id.* at 540-78.

52. *Id.* at 1.

53. GONZALES, *supra* note 27, at 122.

54. IVONE GEBARA, *OUT OF THE DEPTHS: WOMENS EXPERIENCE OF EVIL AND SALVATION* 162 (2002).

remain silent" was a terminal incapacity to give words to what is most important – but he put that admission at the end of his very word-filled book, paragraph-numbered (and subnumbered), *Tractatus Logico-Philosophicus*. We no longer credit voices from burning bushes or even from under banyan trees in any universal way. We do not anticipate directory revelations. Critical Legal Studies law professor Roberto Unger cried at the end of *Knowledge and Politics*, "Speak, God" but no self-authenticating answer followed.<sup>55</sup> Richard Elliott Friedman's *Disappearance Of God*<sup>56</sup> chronicles a socio-cultural-spiritual journey that culminates in the death of God, but many "objective" commentators have been trying to fill the gap through foundation-less houses of intellectual and scientific cards that flare briefly in the academic and sometimes popular imagination, and sputter out.

Gebara claims for feminists the ultimate wisdom in the Socratic universe, the wisdom to realize that we do not know. There is inherent irony in this "more modesty" she claims, but the irony itself leaves room in the text for the Other, for the previously silenced and for the emerging reformations of old and new. Derrida meditates that the irony in which women are steeped is a counterpoise to the law, to its always-false generality.<sup>57</sup> The use of the "Socratic" method in law teaching is not accident, but at its best a reminder that students should not think they are learning anything that truly explains, or even describes, with any adequacy. It should remind students that one often does not really know how to say what would need to be said.

The emergence of the voices of the previously silenced is not simple, nor simply good, in the law. As Barbara Stark notes, international human rights law has tended to seek a uniform notion of rights in order to liberate the "post-colonial" women of less developed countries, only to find that an ad hoc approach to rights is necessary.<sup>58</sup> As Stark emphasizes in an article punctuated with "Snapshots" of women, there is no one solution, no one theory of legal rights, even though the paradoxical notion of rights law continues to have power for those not in the dominant social positions.<sup>59</sup> This paradox, beautifully chronicled in Patricia Williams' *The Alchemy Of Race and Rights*,<sup>60</sup> is even for a "first world" woman of color in the law, extremely intricate, shifting and tenuous. The dangers of "reproducing the native" or appropriating the exotic power of the Other in post-colonialist

55. ROBERTO MANGIBERA UNGER, *KNOWLEDGE AND POLITICS* (1975).

56. RICHARD ELLIOTT FRIEDMAN, *DISAPPEARANCE OF GOD: A DIVINE MYSTERY* (1st ed. 1995).

57. DERRIDA, *supra* note 30, at 75-77.

58. Barbara Stark, *Women and Globalization: the Failure and Postmodern Possibilities of International Law*, 33 *VAND. J. TRANSNAT'L L.* 503 (2000).

59. *Id.* at 527-31

60. PATRICIA WILLIAMS, *THE ALCHEMY OF RACE AND POLITICS* (1991).

legal strategies, explored by law professor Ratna Kapur,<sup>61</sup> haunt the filigreed convolutions of the syncretic flows we have been experiencing, and we must be mindful that we will never "get it right" – but that is the other side of Gebara's mystery, and it is a forgiving side.<sup>62</sup>

## VI. BUDDHALUPE

The divinities of earth, as if what we can touch, smell and breathe becomes the most concrete divine reality. This is something like a primitive experience, more fundamental than any description of it, the experience of being of the earth and of returning to the earth. The earth appears as our familiar, something we know, our own substance, mother, or primary source, capable of giving us peace and helping us to consent to the mystery of life.<sup>63</sup>

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61. Kapur aspires to recognize "different subjectivities and peripheral subjects" while avoiding the disempowerment that over-emphasis on the victim subjectivity of the less powerful Indian women for whom she seeks legal redress. Ratna Kapur, *The Tragedy of Victimization Rhetoric: Resurrecting the "Native" Subject in International/Post-Colonial Feminist Legal Politics*, 15 HARV. HUM. RTS. J. 1, 37 (2003).

62. One surprise came recently in the United States Supreme Court's resurrection of the Confrontation Clause of the Sixth Amendment to the U. S. Constitution. Particularly unexpected to progressive ears might be the role that Justices Thomas and Scalia played in that retrieval, much as law professor Richard Friedman, cited in the opinion, predicted:

The original principle that underlay the establishment of the confrontation right in the first place, the principle that ours is a system in which prosecution witnesses must testify face-to-face with the accused.

Finally, I do not agree that it is impractical to hope for a reconceptualization of this sort. Three justices -- Scalia, Thomas, and Breyer -- have explicitly indicated a willingness to rethink confrontation doctrine, and along lines that share at least significant aspects of the approach I have presented. And now the Court as a whole has given significant new grounds for hope. The Court has granted certiorari in *Crawford v. Washington*, in which one of the Questions Presented is: Whether this Court should reevaluate [the] Confrontation Clause framework established in *Ohio v. Roberts*, and hold that the Clause unequivocally prohibits the admission of out-of-court statements insofar as they are contained in "testimonial" materials, such as tape-recorded custodial statements. Obviously, I believe the answer should be resoundingly in the affirmative. The grant of certiorari gives reason to hope that the Court will soon recognize that the current doctrine offers little explanatory power because it fails to take into account what the confrontation right is really about, that patchwork solutions . . . will not solve the problem, and that a clear and robust sense of the confrontation right can be attained by insisting simply that a testimonial statement cannot be offered against an accused unless he has had an opportunity to confront the witness face-to-face.

Richard D. Friedman, *Confrontation As a Hot Topic: the Virtues of Going Back to Square One*, 21 QUINNIAC L. REV. 1041, 1045 (2003). The Court, in a March 8, 2004 opinion authored by Justice Scalia for eight justices, flatly abrogated its *Ohio v. Roberts* jurisprudence and rescued the confrontation clause from its dissolution into judicial notions of "reliability" rather than, well, confrontation. *Crawford v. Washington*, 541 U.S. 36 (2004).

63. GEBARA, *supra* note 54, at 156.

If by "explosive fragments" Tracy includes tattoos, then Sandra Cisneros wears such a disruptive aesthetic incendiary device on her upper left arm. At a recent reading at the Esperanza Center for Peace and Justice in San Antonio, Cisneros wore one of her many resplendent huipiles, embroidered tops made by indigenous women, draped to display her Buddhalupe fully. Sitting in the lotus position, the Virgin of Guadalupe meditates while still emanating the rays of the traditional iconic version. Such a large tattoo on a woman of such verbal and poetic sophistication seems itself incongruous, upsetting cultural expectations, but the juxtaposition of the Western and Eastern religious symbolism is even more of an irruption of several discourses. Returning to her ancestral roots, telling the story of her family and drawing on the store of knowledge and wisdom of a San Antonio *anciana*, Cisneros flaunts the inked arm that not so long before she had told one reporter she was concerned about, because her mother hadn't seen it yet . . .<sup>64</sup> Challenging the patriarchy is one thing, but this -- what Tracy calls disruptive fragments -- one ten-year-old Chicana artist named Natalie who fashioned a Buddhalupe herself, says is an image that is "developing 'a little attitude.'"<sup>65</sup>

Cisneros and Natalie have attitude, but not necessarily any direct claim to knowledge. Cisneros' latest book, *Caramelo*, welcomes the fragmentary/fragmenting voice of The Awful Grandmother, a voice that interrupts the narrator herself.<sup>66</sup> Acknowledging that the voice was introjected into her own complex consciousness, Cisneros lets the incongruity of the power of the terrible old woman salt the text, much as the rap music Tracy cites salts our public milieu with backward-scratches of music mutated into motifs that become, finally, almost but never quite melodic. The counterpunctual Awful Grandmother demands textual attention, often unexpectedly, until this "enemy" of the story becomes necessary for the redemption of both the narrator and her beloved father -- and thus of course facilitates the Grandmother's own passage from the terrible world of in-between-death-and-the-other-side.<sup>67</sup> The reader, and it seems the narrator, never know when the Grandmother will appear until her (nearly) final apparition, bargaining with her granddaughter over the

64. Magaria Fichtner, *Mouth of the Border*, MIAMI HERALD, Nov. 17, 2002, at 1M.

65. Diakoneo, Pentecost 2003, NORTH AMERICAN ASSOCIATION FOR THE DIACONATE 5, available at <http://diakonoi.org/>.

66. SANDRA CISNEROS, *CAMELO* (2002). On the opening page of the text, page 3, Cisneros begins by describing a family photograph, "[t]he little kids, Lolo and Memo, making horns behind each other's heads; the Awful Grandmother holding them even though she never held them in real life." She is asserting in effect that the "cuento" or tale she is about to tell is more real than the photograph.

67. The crucial, final appearance is the Awful Grandmother, after her death, suddenly perched on the headboard of the narrator's father's hospital bed, trying to draw him to her while the narrator, Lala, fights to keep him. The animating power of the book itself becomes entwined in the terrible intimacy the two women share, and the displacement of story fragments begins to enchant the reader even more deeply. *Id.* at 204-09.

stricken father/son. The power of not-knowing is amplified by the narrator's seeming (and from Cisneros' account, actual) share in that ignorance as the story unfolds. This is the right relationship with mystery, the unexpected, the discontinuous, the unpredictable, the explosive. What then ties the narrative together is some more fundamental ground that can never be grasped, or in the words of Derrida, thematized or totalized. It represents the letting-go that produces stream-of-consciousness literature and true deconstruction, a becoming led by the Wholly Other, a making space for the God whom we can never, in this life, finally know.

Virgilio Elizondo cites the persistent movement among the people of the Book as a "pattern of choosing the rejected of this world to begin the new creation," and cites the peasants to whom Mary has appeared as hallmarks of the divine enactment of just that pattern.<sup>68</sup> The revelation of a Marian apparition arising from an Asian lotus on the arm of a member of the high literati of humble Chicana origins is an explosive fragment woven of multiple strands, and something truly new. Although the constituent parts are ancient, the juxtaposition is startling and evocative. The lotus traditionally sits beneath the Buddha – and also beneath Quan Yin and Kannon, the Chinese and Japanese versions of the goddess/bodhisattva of compassion, a version of the most prominent female sacred figure in the Buddhist traditions.<sup>69</sup>

The green Madonna, Tara, the dark virgin, la Guadalupana, Quan Yin, Tonantzin – these are fragments of multiple pantheons, none entirely commensurate, all inclining toward the conundrum of the one and the many among the imaginations of the sacred feminine. Buddhalupe is one very concrete -- "embedded" even -- image of the generative collision and collusion of traditions of feminine power of the spirit. Sor Juana Inez de la Cruz shared a fascination with Isis, the Egyptian goddess, along with her love of things Egyptian, feeling herself drawn into a non-Christian sacred story not as transgression first but as repossession of something already almost known, almost remembered.<sup>70</sup> Sor Juana does not negate her Catholic faith but rather expands it to sing with the melodies of the Unknowable God that others have heard, when those melodies augment the sense of divine presence. Cisneros cannot rest within the confines of the Catholic Church as she saw it suffuse her culture in her youth, but she will not relinquish that which she knows is yet constitutive of her relationship with the divine. Similarly, Patrisia Gonzales writes with the cadences of the Hail Mary though she cannot remember the words, remaining secure that Mary will forgive her the words, and the boundary-crossing, and the

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68. ELIZONDO, *supra* note 45, at 53.

69. The rich complexity of these and other aspects of the divine feminine in those traditions is explored in CHINA GALLAND, *LONGING FOR DARKNESS: TARA AND THE BLACK MADONNA* (1990).

70. OCTAVIO PAZ, *SOR JUANA, OR THE TRAPS OF FAITH* (Magaret Sayers Peden, trans., The President and Fellows of Harvard College, 1988) 169-79.



exceeding of prior categories through abundance rather than negation. She delights in not-knowing the ritual words so that new ritual may effervesce into her new and ancient voice, a voice she is using to reclaim the *abuelas*, the grandmothers. Her movement is at once retrospective and prospective, "green and dying" and singing.<sup>71</sup>

In the name of the *Virgencita de Guadalupe* . . . I confess that I am a Guadalupana and a Buddhist . . . My ancient soul yearns for the sacred feminine energies inside the earth, the moon the universe, and I pray "the Indian way" of my ancestors for all these things . . . By honoring the feminine energies, I honor myself as woman. But when I pray to *la morenita*, I don't see her the way my mama did. I see Tonantzin, *madrecitea tierra*.<sup>72</sup>

When the dominant discourse can be thus dislocated, there is room for newness and difference. This is the globe with gaps, despite the deceptively smooth unity of a sphere. From the gaps, the new life can arise through the cracks, from the mud in which Gonzales has already located the Mud People, her *antepasados*, the indigenous. But when they sprout, they will have already spoken with Patrisia Gonzales, read Sandra Cisneros, perhaps already have learned law from my colleague Beto Juarez,<sup>73</sup> and so they will not be simply new or simply old. They will produce the kind of richly discordant fragments that disturb -- even alarm, perhaps -- but also create, educate and liberate.

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71. From the final lines of Dylan Thomas's *Fern Hill*: "time held me green and dying, Though I sang in my chains like the sea." DYLAN THOMAS, *DEATHS AND ENTRANCES* (1946).

72. GONZALES, *supra* note 27, at 119, 122.

73. See Jose Roberto Juarez, Jr., *The American Tradition of Language Rights, ¡Que Viva Texas!: The Forgotten Right to Government in a Known Tongue*, 1 SCHOLAR 45 (1999).