

The Dialogic Criticism of Richard Delgado:

Chicano/a Literature, Equality, and the Rhetoric of Form

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cuando lleguemos, cuando lleguemos, ya, la mera verdad estoy cansado de llegar. Es la misma cosa llegar que partir porque apenas llegamos y . . . la mera verdad estoy cansado de llegar. Mejor debería decir, cuando no lleguemos porque esa es la mera verdad. Nunca llegamos.¹

- Tomás Rivera

The word "discourse" derives from the Latin *discursus*, which means "running to and fro."² Discourse can be understood as a conversation, a series of repetitions that simultaneously produce and contain difference.³ Discourse emphasizes the metaphorical origin of discrete disciplines in movement and difference.⁴ Names represent a series of repetitions. Disciplinary names such as "law" or "literature" thus signify dynamic processes, formations and exchanges, rather than static or fixed entities.

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1. TOMAS RIVERA, . . . Y NO SE LO TRAGO LA TIERRA 114 (Herminio Rios trans., Editorial Justa Publications, Inc. 4th ed. 1980) (1978). The passage is translated in the text as :

When we arrive, when we arrive. At this point, quite frankly, I'm tired of always arriving someplace. Arriving is the same as leaving because as soon as we arrive . . . well, quite frankly, I'm tired always arriving. Maybe I should say when we don't arrive because that's the plain truth. We never really arrive anywhere.

Id. at 115.

2. THE OXFORD DICTIONARY OF ENGLISH ETYMOLOGY 272 (1966).

3. See MICHEL FOUCAULT, THE HISTORY OF SEXUALITY: AN INTRODUCTION 100-02 (Robert Hurley trans., Vintage Books 1990) (1977).

4. See MICHEL FOUCAULT, DISCIPLINE AND PUNISH 135-94 (Alan Sheridan trans., Vintage Books 2d ed. 1995) (1978).

Law and literature differentiate themselves by policing the borders of what gets discussed (and thus repeated) under their names.⁵ Conversations about law and literature found a certain image of, and thus a certain reality of, social relations.⁶ The discourses of law and literature establish and circulate the myths, tropes and metaphors that structure social interaction.⁷ As a result, any examination of law or literature ultimately explores the discussion around those objects and the conditions that enable the conversation, rather than the objects themselves.⁸

In this Article, I explore the dialogues written by Richard Delgado. Delgado's work, though formally different from that of other critical race theorists, exemplifies the dialogic nature of legal and literary discourse at the heart of critical race theory's critique of legal discourse.⁹ Delgado eschews the tone of authoritative narration typical of legal discourse. There is neither an objective description of the facts nor a section specially dedicated to persuasion, as in a legal brief or memorandum. Rather than adopt a position of expert and persuader, Delgado presents a conversation between two scholars who "repeat" the law in ways that question the fictions founding legal discourse.¹⁰

Delgado's style exemplifies and criticizes Gloria Anzaldúa's influential articulation of the borderlands.¹¹ According to

5. See HAYDEN WHITE, *TROPICS OF DISCOURSE: ESSAYS IN CULTURAL CRITICISM* 230-60 (1985).

6. See RICHARD WEISBERG, *POETHICS AND OTHER STRATEGIES OF LAW AND LITERATURE* (1992); *LEGAL CANONS* (J.M. Balkin & Sanford Levinson eds., 2000).

7. See ROBIN WEST, *NARRATIVE, AUTHORITY, AND LAW* (1993).

8. See RICHARD POSNER, *LAW AND LITERATURE: A MISUNDERSTOOD RELATION* (1988). While he is skeptical about the value of such intellectual work and its usefulness for lawyers in particular, Posner nonetheless examines the discussions around law and literature.

9. See generally, DERRICK BELL, *AND WE ARE NOT SAVED* (1987); LANI GUINIER, *THE TYRANNY OF THE MAJORITY* (1994); MARI MATSUDA, *WHERE IS YOUR BODY?* (1996); PATRICIA WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* (1991); *CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT* (Kimberlé Crenshaw et al. eds., 1995); Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color*, in *AFTER IDENTITY: A READER IN LAW AND CULTURE* 332 (Dan Danielson & Karen Engle eds., 1995); Charles Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 *STAN. L. REV.* 317 (1987); *WORDS THAT WOUND, ASSAULTIVE SPEECH, AND THE FIRST AMENDMENT* (Mari Matsuda et al. eds., 1993).

10. See DERRICK BELL, *AND WE ARE NOT SAVED* (1987); DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL* (1992); RICHARD DELGADO, *THE RODRIGO CHRONICLES*, at ix (1995). Although Delgado makes extensive and creative use of the dialogue form, he is not the first legal scholar to do so. Derrick Bell has recently resurrected the genre in several books and articles.

11. See GLORIA ANZALDÚA, *BORDERLANDS/LA FRONTERA: THE NEW MESTIZA* (1987).

Anzaldúa, "a borderland is a vague and undetermined place created by the emotional residue of an unnatural boundary."¹² The borderland has become a common metaphor for the experiences of dislocation and displacement as a result of the effects of late capitalism and postmodernism.¹³ Despite her valorization of the borderlands, Anzaldúa nonetheless relies on a very traditional and romantic conception of literature¹⁴ by imagining the writer as a solitary agent who looks deep into her soul and produces artistic works.¹⁵

Delgado refuses to accept the fiction of the autonomous author within literary discourse. Rather, he illustrates how academic disciplines, such as law or literature, may work as borders with their own set of fences and border guards that control access, thereby insuring inequality.¹⁶ Delgado uses critical race theory to stake out the interstitial territory between law and literature in order to criticize the racial fictions that found each of them. Law and literature, in Delgado's reformulation of the field, may be an attempt to establish a liminal space in the borderlands from which to engage in acts of social reform.¹⁷

12. *Id.* at 3.

13. See Ruth Behar, *The Vulnerable Observer: Anthropology That Breaks Your Heart* (1996); Judith Butler, *Bodies That Matter: On The Discursive Limits of "Sex"* (1993); Rosa Linda Fregoso, *The Bronze Screen: Chicana and Chicano Film Culture* (1993); Carl Gutiérrez-Jones, *Rethinking the Borderlands* (1995); Lucy Lippard, *Mixed Blessings: New Art in a Multicultural America* (1990); Trinh T. Minh-ha, *Woman Native Other* (1989); Cherríe Moraga, *The Last Generation* (1993); Chon Noriega, *Shot in America: Television, the State, and the Rise of Chicano Cinema* (2000); Jose David Saldivar, *Border Matters: Remapping American Cultural Studies* (1997); Roberto Suro, *Strangers Among Us* (1998); Ronald Takaki, *A Different Mirror: A History of Multicultural America* (1993); Jenny Lind, *Is the United States Postcolonial? Transnationalism, Immigration, and Race, in Postcolonial America* 103 (C. Richard King ed., 2000); Ann E. Reumon, *Coming into Play: An Interview with Gloria Anzaldúa*, 25 *Melus*, at 3-46 (Summer 2000).

14. See RAMÓN SALDÍVAR, *CHICANO NARRATIVE: THE DIALECTICS OF DIFFERENCE* 103-31 (1990) (not discussing Anzaldúa specifically, but examining the limitations of romantic literary forms for Chicano/a writers).

15. Cf. ANZALDÚA, *BORDERLANDS/LA FRONTERA: THE NEW MESTIZA* 69-71 (1987).

16. See Elizabeth Villiers Gemmette, *Law and Literature: Joining the Class Action*, 29 *VAL. U. L. REV.* 665 (1995) (providing a compilation of law school courses on the topic of Law and Literature). Gemmette's study reveals that law and literature has been generally used to avoid discussion of race and ethnicity or limit it to a few canonized novels. See *id.*

17. Compare GARY MINDA, *POSTMODERN LEGAL JURISPRUDENCE AT CENTURY'S END* 149-66 (1995), and Jane Barron & Julia Epstein, *Language and the Law: Literature, Narrative, and Legal Theory*, in *THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* 662 (David Kairys ed., 1998), with Delgado's literary-legal texts that subvert the neat boundaries that these three authors try to draw between law, literature and critical race theory.

The turn to the fiction of dialogue enables Delgado to make explicit what is elided in the production of legal texts. Delgado argues that to attack discrimination means to attack the metaphors and fictions on which the law relies, especially those that mask social relations.¹⁸ But literature, as a disruption of logic, cannot succeed in social transformation unless it intervenes in cultural-legal practices. Delgado's dialogues deconstruct the position of the author by writing in a style that effaces its authority. Unlike Foucault's monovocal, authority-laden text with its singular, authoritative voice,¹⁹ Delgado's dialogues emphasize translation, transferring across, a variant of the movement implicit in discourse.²⁰ Working for change through the institution of law necessarily means engaging in cultural critique and engaging in the exercise of translation, transferring meaning across the borderlands.²¹ This transfer may involve multiple borders. Delgado accomplishes this transgression of multiple boundaries by blending the insights and narrative strategies of critical race theory and by citing and reinscribing the strong tradition of dialogic texts within Chicano/a culture.

The conference dragged on. While the papers presented still offered refreshing ideas, my ears could no longer listen. The papers seemed smart, but their use of poststructural and postcolonial theory made my eyes glaze over after awhile. As I got up to leave the conference and maybe find a coffee shop, I spied an old friend out of the corner of my eye.

"Terry!"

"Rich!"

We hug.

"It's been years! How are you doing? What have you been up to? The last I knew you were moving back to Detroit to be closer to your family."

"It's true. We moved back to Detroit so that we could be

18. See Richard Delgado, *Images of the Outsider in American Law and Culture: Can Free Expression Remedy Systemic Social Ills?*, 140 U. PA. L. REV. 1258 (1992).

19. See Michel Foucault, *What is an Author?* (Josué Harari trans.), in *THE FOUCAULT READER* 101 (Paul Rabinow ed., 1984). The writing performance of Foucault may work to reinforce the very position of the "author" that he is criticizing.

20. See generally HOMI BHABHA, *THE LOCATION OF CULTURE* (1994).

21. See RICHARD DELGADO, *Rodrigo's Final Chronicle*, in *THE RODRIGO CHRONICLES* 194 (1995) (discussing counterstories which seek to translate the experience of marginalized people into a language that can contest the tenets of "majoritarian faith").

closer to our parents, our siblings, and our friends. I just never felt connected to any of the other places that I lived after law school. What about you?"

"I'm back here in Chicago, like I always wanted to be. But I'm not practicing law anymore."

"What are you doing?"

"After law school, I went to grad school and got a Ph.D. in American Studies. I got frustrated practicing law. My aspirations as a public defender clashed with the reality of the criminal justice system. The daily subversion of my legal ideals drove me crazy . . . so I went back to school. What about you?"

"When we moved back to Detroit, I couldn't find a job that I wanted practicing law. So I dusted off my teaching certificate and went back to teaching high school. I shared some of your discomfort with law."

"You taught before we were in law school, right?" I asked.

"Yeah, I taught in and around Detroit for about six years before I went to get my law degree," Terry replied.

"Was it hard to go back to the high school classroom?"

"No, it was remarkably familiar. What surprised me the most is how receptive high schoolers are to critical thinking. My students are just as frustrated with the gap between how things are and the ideals they've been taught to value. They want to understand their experiences, but they don't want to be limited by the language of their textbooks. Once I began discussing with my students the politics that structure how textbooks are written, they became much more interested in learning and deconstructing received narratives. They weren't interested in memorizing the narratives for the sake of memorization. Once they could see how these narratives function, how they give authority to some voices and not others, my students became much better readers and thinkers."

"Wow! What subject are you teaching?" I asked. "It sounds like a combination of history and literature."

"The school where I teach has developed what they call an integrated curriculum. Instead of students taking five or six unconnected courses, students take courses in blocks so they can see the connections between disciplines. The theory is that students learn more when they can see how different types of knowledge relate to one another. I teach a combination of American history and literature that also relies on anthropology and sociology. For instance, the students read Toni Morrison's

*Beloved*²² when studying about the Fugitive Slave Law of 1850. Reading Morrison enables students to understand the emotional struggles faced by slaves and the psychic harm that has been slavery's legacy."

"Sounds great! I want to talk more, but I'm starving. Would you be willing to break bread with me?" I asked.

"Sure," Terry responded with a warm smile.

"Great. If you don't mind a cab ride, I can take you to one of my local favorites."

Terry and I left the hotel and caught a cab. We left the downtown with its skyscrapers, fancy hotels, and posh eateries and found my favorite neighborhood diner. It was a weekday between lunch and dinner, and the place was empty. We found a booth overlooking Halsted and resumed our conversation.

Terry said, "I've been thinking about you a lot. I recently read some books by a critical race theorist I thought would interest you."

"I'm all ears."

"His name is Richard Delgado. He writes dialogues, instead of articles or books. Each dialogue focuses on a socio-legal problem."

"I know his work. I read his essay *The Imperial Scholar*.²³ It caused quite a stir a few years back. I also remember reading an essay of his about hate speech in that book written by a bunch of CRT²⁴ scholars, *Words That Wound*.²⁵

"That's him," Terry continued. "His work since those essays has taken a detour of sorts. While he still writes some articles and essays in a more traditional format, the bulk of his work has been devoted to developing an ongoing dialogue between two characters."

"Kind of like Derrick Bell's dialogues?"²⁶

22. TONI MORRISON, *BELOVED* (1987). The novel examines the emotional scars of slavery in one family. Shifting between past and present, Morrison relies on *lo real maravilloso* (or magical realism) to explore how those psychic wounds continue to haunt African Americans long after slavery has ceased.

23. Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 U. PA. L. REV. 561 (1984).

24. CRT is an acronym for critical race theory.

25. See Richard Delgado, *Words That Wound: A Tort Action for Racial Insults, Epithets, and Name Calling*, in *WORDS THAT WOUND* (Mari Matsuda et al. eds., 1993).

26. The first version of Bell's chronicles appeared in the *Harvard Law Review*. See Derrick Bell, *The Civil Rights Chronicles, Foreword to The Supreme Court, 1984 Term*, 99 HARV. L. REV. 4 (1985). Bell revised his *Foreword* into *AND WE ARE NOT SAVED* (1987). Since then, Bell has continued to produce short stories that

Terry thought a minute before he said, ““Hmmm, yes and no.”
“What do you mean?”

“Delgado clearly builds on Bell’s work. Bell used storytelling to describe the limitations of legal discourse, but his chronicles deal almost exclusively with a black/white paradigm of race.”

“Has Delgado become a Lat-Crit?” I wondered aloud.

“I don’t know. What is a ‘Lat-Crit’?”

“Lat-Crit, or Latino critical theory, argues that legal discourse has accepted and fostered a paradigm of race based on a black/white binary. There have been several Lat-Crit conferences that have produced a wide array of articles examining the ways in which the black/white binary has worked to disregard racism faced by people of color other than African Americans.”²⁷

“I’m not sure whether Delgado considers himself a part of critical race theory or a Lat-Crit. I do think his dialogues suggest such a critique, though it may not be the focus of his writing . . . Anyway, I thought that you might be interested in his work because . . .”

The server, a middle-aged woman with dark skin, asked if we were ready to order.

“I’ll take a bacon cheeseburger,” Terry said with a grin.

“I’ll have some eggs, over-easy, and a toasted bagel.”

“Cream cheese?”

“Of course,” I replied with a smile. “Can I have a cup of coffee, too?”

The server finished jotting down our orders on a pad and walked back to the kitchen.

“Where were we?”

“Before we continue, I wasn’t very thoughtful. I know you keep kosher and I ordered a cheeseburger. Was that okay?”

“Of course. Is it all right that I’ll be drinking coffee?”²⁸

“It certainly smells delicious.”

We laugh.

“Anyway, I thought you would be interested in Delgado’s

explore the relationship between cultural fictions and legal discourse. See DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL* (1992); DERRICK BELL, *GOSPEL CHOIRS: PSALMS OF SURVIVAL IN AN ALIEN LAND CALLED HOME* (1996); DERRICK BELL, *AFROLANTICA LEGACIES* (1998).

27. For the 1996, 1997, and 1998 published papers and articles presented at the conference, see 85 CAL. L. REV. 1087 (1997); 19 CHICANO-LATINO L. REV. 1 (1998); 53 U. MIAMI L. REV. 683 (1999).

28. Terry is a practicing member of the Church of Jesus Christ of Latter Day Saints and thus does not consume coffee.

recent work because he offers his legal analysis in the form of dialogues. I use his dialogues as a way to assist my students in writing about social, historical, and cultural problems in U.S. History. Their understanding of those problems improves when they write in dialogue form. I know you're interested in the relationship between form and content in the practice of articulating claims for social justice and I thought this new methodology might exemplify the relationship between law and literature."

"How is Delgado's work different from Bell's?"²⁹ I asked. "From your brief description, it doesn't sound that different."

"Delgado certainly relies on Bell's work.³⁰ One of the participants in his conversations, Rodrigo, is the half-brother of Geneva Crenshaw."

"That's an interesting twist!"

"When Rodrigo is introduced, Delgado stresses his ethnic and racial hybridity.³¹ Rodrigo is the half-brother of Geneva. His mother was Italian and Rodrigo was raised in Italy."³²

"Delgado uses a multiracial character to deconstruct essentialized notions of race and ethnicity!"

"He cites Bell's deployment of the African-American tradition of storytelling,³³ but uses it to problematize the structure of Bell's stories."

"So it's an example of catachresis?"

29. See DERRICK BELL, *AND WE ARE NOT SAVED* (1987). Bell's conversations primarily consist of a discussion between a narrator, an African-American male who now works as a law professor, but labored for social change during the Civil Rights Movement with NAACP as a staff attorney, and a colleague from his days with the NAACP, Geneva Crenshaw. Geneva Crenshaw is a mysterious woman who has returned to the fight for social justice after an absence. Because of her connection with the Curia, a mysterious, supernatural group, Crenshaw demonstrates through her experiences, visions, and dreams the limitations of legal discourse for resolving the inequality for African Americans in the United States. See *id.* at 13-25.

30. See RICHARD DELGADO, *THE RODRIGO CHRONICLES*, at ix (1995) (giving "[s]pecial thanks . . . to Derrick Bell, who graciously lent me some of his personae along with his moral support"); see also *id.* at xviii ("Indeed, this is a good place for me to mention how grateful I am to Professor Bell for his permission to borrow Geneva's persona and develop her family tree a little further, as I have done.").

31. See *id.* at 1 ("[h]is tightly curled hair and olive complexion suggested that he might be African-American. But he could also be Latino, perhaps Mexican, Puerto Rican, or any of the many Central American nationalities that have been applying in larger numbers to my law school in recent years.").

32. See *id.* at 2; see also RICHARD DELGADO, *THE COMING RACE WAR?* 4 (1996).

33. See RICHARD DELGADO, *THE RODRIGO CHRONICLES*, at xviii (stating "Bell's book . . . builds on a legacy of storytelling by outsiders going all the way back to the slave narratives and even before.").

Terry stopped for a second. "Excuse me, cata-what?"

"In the paper that we just heard at the conference, the presenter talked about catachresis, the strategic mis-use of a word or a concept. If I understood the paper, catachresis in postcolonial parlance means turning the colonizing gaze back on itself through citation and reinscription."³⁴

"Oh definitely. Catachresis seems fundamental to critical race theory in general, and Delgado in particular. Delgado cites the work of Bell, but then mis-uses it. His dialogues exemplify how identity is performative and social, rather than simply a question of essence."

"Isn't that the heart of CRT's critique?" I asked.

"Yes, but Bell's work, like much writing in CRT, engages in writing practices that essentialize. Once Bell identifies the narrator and Geneva as African-American, their identities became fixed."

"I have to disagree! I know that Bell has written at least one story where his narrator meets up with a modern day Jesse B. Semple, the Langston Hughes character.³⁵ In that story, Bell explores divisions within the African-American community based on class. And I know that the dialogues between the narrator and Crenshaw frequently explore how African-American women and men experience race, love and gender in different ways.³⁶

"You're right! Bell is sensitive to the complexities *within* the African-American community."³⁷

The server returns with our meals, but doesn't say a word.

34. See BART MOORE-GILBERT, POSTCOLONIAL THEORY: CONTEXTS, PRACTICES, POLITICS 84 (1997); HOMI BHABHA, THE LOCATION OF CULTURE 184 (1994).

35. See DERRICK BELL, *Racial Symbols: A Limited Legacy*, in *FACES AT THE BOTTOM OF THE WELL* 15 (1992).

36. See Derrick Bell, *The Race-Charged Relationship of Black Men and Black Women: The Chronicle of the Twenty-Seventh-Year Syndrome*, in *AND WE ARE NOT SAVED* 198 (1987).

37. See PATRICIA WILLIAMS, THE ALCHEMY OF RACE AND RIGHTS (1991). Williams has criticized Bell's use of Geneva Crenshaw to "legitimize his own critique." Williams writes, "[s]he [Crenshaw] is an extension of Bell She is an opinion, no less than any judge's opinion, an invention of her author; an outgrowth of the text, a phantom." *Id.* at 199.

Williams's critique of Bell informs the choices I have made in the presentation of this Article. The dilemma I faced is how can I, a White, heterosexual, middle class Jew, present a conversation about race without appropriating voices who speak from positions quite different from my own. Rather than try to engage in a masquerade or ventriloquism by using my words to fill in the voice of the Other, I have chosen to present a discussion between two White men with frequent citation in the "margins" to quotations from people of color. This practice simulates the discursive nature of legal criticism in a visual manner, while destabilizing the border between margin and center.

As she places our food on the table, she scrutinizes Terry and me. Her eyes linger over us as if she were reading a book, but not believing what she was reading. She does not smile.

"But he does not discuss or mention that there are multiple racial positions that people perform."

"I don't follow."

"Bell's discussion of the 'elusive quest for racial justice' neglects anyone who isn't Black. He falls into the Black-White paradigm of civil rights analysis."

"So, if Delgado 'transcends' Bell's dialogues, how does he do it?"

Terry got to the heart of his point. "Delgado goes beyond Bell by focusing more on dialogue. Rodrigo embodies hybridity and dialogue, and Delgado mines this richness."

"So Delgado offers characters in conflict over their identity."

"Right. Bell, on the other hand, uses dialogue as a device among others, including time travel,³⁸ the supernatural,³⁹ and alien invaders.⁴⁰ The events spur conversation between Geneva Crenshaw and the narrator, rather than the dialogue creating the events."

"So, if I understand what you're saying, then Delgado relies almost exclusively on dialogue as form *and* content in his writing."

"Right. There is little to no prose explaining or describing anything. Everything must be filtered through dialogue."

"So, dialogue is a form of translation, of transferring meaning across borders or boundaries."

"Yep."

"Okay Terry, but why does such a rigorous use of the dialogue form constitute a transcendence of Bell's technique?"

"Because Delgado relies on Chicano/a cultural practices to construct his dialogues. One of the benefits of being a school teacher is that you get the summers 'off.' This past summer, I used my 'free' time to take classes on Chicano/a history, literature and culture because I am finding that I have more and more students who identify themselves as Mexican-American, Chicano/a, Latino/a and/or Hispanic. I knew so little about these histories and cultures because I was never required to know much

38. See DERRICK BELL, *The Real Status of Blacks Today: The Chronicle of the Constitutional Contradiction*, in *AND WE ARE NOT SAVED* 26 (1987).

39. See DERRICK BELL, *The Afrolantica Awakening*, in *FACES AT THE BOTTOM OF THE WELL* 32 (1993).

40. See DERRICK BELL, *The Space Traders*, in *FACES AT THE BOTTOM OF THE WELL* 158 (1993).

about them. I was fascinated and horrified to learn about the interactions between the United States and Mexico and between Anglos and Mexican-Americans after the United States-Mexico War.”

“I don’t remember, in Delgado’s earlier writing, much of an emphasis on Chicano/a or Latino/a culture, literature, or history. Does he ever identify himself ethnically?”

“Mmm . . . I think he identifies himself as a Chicano in *Words That Wound*.⁴¹ He wrote some early essays on legal issues facing Mexican Americans,⁴² and recently edited a reader on Latino/a identity.⁴³ In any case, Delgado differs from a writer like Bell, by demonstrating the complexity of racial hierarchy, particularly in his dialogues with Rodrigo.⁴⁴ The dialogues exemplify the complex structure of racial hierarchy.”

“I’m a little confused. Are you suggesting that Delgado’s recent dialogues take on a certain style because of the inequalities rooted in legal discourse, which is based on a black/white paradigm of race relations?”

“Exactly!” Terry exclaimed.

“I’m glad that I can follow you through all of your analyses!”

“But I would go even further. Delgado’s dialogic style may be related to the tradition of dialogue that runs through recent Chicano/a literature.”

“Very smart. You’re suggesting that Delgado cannot be viewed solely within the framework of critical race theory, a framework that has tended to consider race only through a Black/White paradigm.”⁴⁵

41. See Charles R. Lawrence III et al., *Introduction to WORDS THAT WOUND* 1, 2 (Mari Matsuda et al. eds., 1993).

42. See Richard Delgado, *The Imperial Scholar: Reflections on A Review of Civil Rights Literature*, 132 U. PA. L. REV. 561, 574-75 (1984) (“Once, early in my career, I co-authored a law review article about Mexican-Americans (as they were called then) as a legally cognizable class . . . [a]t that time a few decisions . . . had held that Chicanos could not sue collectively because of problems with class definition.”).

43. See *THE LATINO/A CONDITION: A READER* (Richard Delgado & Jean Stefancic eds., 1998).

44. See RICHARD DELGADO, *THE RODRIGO CHRONICLES* (1995); RICHARD DELGADO, *THE COMING RACE WAR?* (1996); RICHARD DELGADO, *WHEN EQUALITY ENDS* (1999).

45. See Robert A. Williams, Jr., *Foreword to RICHARD DELGADO, THE RODRIGO CHRONICLES*, at xi-xv (1995) (explaining the role of the storyteller within “the Native American tradition”); see also Andrew Hacker, *Foreword to RICHARD DELGADO, THE COMING RACE WAR?*, at xi-xviii (1996) (emphasizing the limitations of the black/white paradigm of U.S race relations and stating “[t]he United States, however, remains the only country with no intermediate categories. Where the principal races are concerned you are either black or white.”). These forewords foreground how Delgado positions himself as a critic of Bell and other critical race

“YES!!! Delgado must be analyzed and read within developments of Chicano/a literature!”

“With writers like Valdez, Rudolfo Anaya, Ana Castillo and Sandra Cisneros?” I asked.

“Sure, and why not Américo Paredes, Tomas Rivera, Isabella Rios, Rolando Hinojosa, Oscar Zeta Acosta, Cherríe Moraga, and Gloria Anzaldúa?”

“Wow! That’s quite a claim! It’s not that it seems wrong, but now I need to alter my conceptions of the boundaries between legal and literary discourses!”

Terry nodded in agreement. “I know! What amazed me when I began reading Chicano/a literature was how almost every text I encountered addressed, in one way or another, the force of legal discourse in structuring social relations. I came to see that I was reading a tremendous body of cultural-legal criticism that had been written in a literary form.”

“One Chicano/a critic, Carl Gutiérrez-Jones, makes a similar point in his book, *Rethinking the Borderlands*.”⁴⁶

“We need to explore why such criticisms were offered under the banner of literature, rather than law. The writing of Delgado may indicate an opening in legal writing to explore the rhetoric of form that has been central to Chicano/a literature from its explosion in the late 1960s and early 1970s. The problem with this approach, including Anzaldúa’s theory of the borderlands, may be an excessive reliance on the transformative potential of an unreconstructed discipline of literature.”

“It seems like Delgado redefines the relationship of the law/literature binary.”

“Exactly. Law and literature work in a double movement, offering seemingly different languages to present social and cultural problems. These languages, however, do not enable the articulation of any and all claims. Modernism created the illusion that different discursive regimes, such as law and literature, could enable different truths.⁴⁷ Delgado’s fictional legal/cultural

theorists in terms of their binary approach to race.

46. See CARL GUTIÉRREZ-JONES, *RETHINKING THE BORDERLANDS: BETWEEN CHICANO CULTURE AND LEGAL DISCOURSE* 41 (1995):

[t]he judge and accepted legal procedure, of course, dictate to a great extent the rhetorical options of any given proceeding and thereby condition the processes of translation or mock dialogue. . . . It is for this reason in particular that Chicano [sic] artists often focus on legal interactions with the dominant culture; while their goal in re-creating legal events is often received as a form of historical “correction.”

Id.

47. See MAX WEBER, *Bureaucracy*, in MAX WEBER: *ESSAYS IN SOCIOLOGY* 196

criticism questions the distinctiveness of legal and literary languages. Instead, he emphasizes how the literature/law binary, in fact, works to suppress the voices of marginalized groups such as Latinos and Latinas.”

“Given his work, how would you narrate the history of this literature/law binary?”

“First of all, I think it is crucial to cite an essay written by Rosaura Sánchez about Rolando Hinojosa’s *The Valley*. In that essay, Sánchez argues, in part, that the dialogues and fragments of life that Hinojosa presents can be traced back to 15th and 16th century Spanish writing practices.⁴⁸ She shows how those writing practices and forms have evolved and been transformed over time into some of the forms that we see today in Chicano/a literature.”

“Does Sánchez really demonstrate that writing practices like Delgado’s, can be traced back to European sources from 300 or 400 years ago?”

“Yep!” Terry said with a satisfied smile.

“That kind of takes the wind out of the sails of Delgado’s critics who paint him as some sort of ‘radical’ who’s working in an ahistorical and nontraditional manner.”⁴⁹

“I thought that you’d get excited once you began to explore the connections between Delgado and Chicano/a literature!”

“I am! Tell me more!”

“As you know from your work on Luis Valdez, one significant element of the Chicano Movement was its reliance on theater. El Teatro Campesino’s actos constituted a series of cultural-legal criticisms through dialogue.⁵⁰ The criticism was the performance, and the performance was the criticism. Criticism of social institutions could be developed only through discussion and conversation. The discussion, in part, demonstrated or performed the critique.”⁵¹

Thinking and talking simultaneously, I blurt out, “So Delgado’s dialogues constitute a development and a demonstration of legal critique that is absent from most Chicano literature.”⁵²

(H.H. Gerth and C. Wright Mills trans., 1958).

48. See Rosaura Sánchez, *From Heterogeneity to Contradiction: Hinojosa’s Novel*, in *THE ROLANDO HINOJOSA READER: ESSAYS HISTORICAL AND CRITICAL* 78 (José David Salvidar ed., 1985).

49. See, e.g., RICHARD POSNER, *OVERCOMING LAW* 371-73 (1995).

50. See LUIS VALDEZ, *Notes on Chicano Theatre*, in *EARLY WORKS: ACTOS, BERNABE, AND PENSAMIENTO SERPENTINO* 6 (1990).

51. See Luis Valdez, *Introduction: La Plebe*, in *AZTLAN: AN ANTHOLOGY OF MEXICAN AMERICAN LITERATURE*, at xxxi (Luis Valdez & Stan Steiner eds., 1972).

52. An interesting counter-example that may contradict my point, but still

“Yes! Delgado interrogates the process by which legal criticism comes into being. More often than not, developments in legal theory come about from two people talking about a problem over dinner or lunch. There is only so much a person can learn from reading books on legal theory or doctrine and analyzing court decisions.”

“And, I might add, only so much a person can learn from hearing lectures at conferences. I need to digest what I read and hear through good, long talks over a meal or good cup of coffee.”

“You’re beginning to sound a little like the narrator in the dialogues yourself.”

We laugh.

“Now I’m serious. If you’re willing to stretch your legs and take a little bit of a walk, I know a fantastic bakery run by a Croatian couple who recently emigrated to the United States. They make phenomenal breads and desserts. The atmosphere in the café is nice as well; there are always lots of recent immigrants speaking in Croatian.”

“It sounds like a good space for dialogue. I’m game. Let’s get the check and we can walk over there.”

Terry motioned to the server to get the check.

She returns with the check. She turns to leave, but then faces us again. “I don’t mean to be nosy but I couldn’t help but overhear your conversation about Derrick Bell. I read one of his books for a class I took over at Truman College. He’s a smart man and his story *The Space Traders*⁵³ seems to me to be sadly prophetic. You can learn a lot from him. I’m glad to see two White folks talking about it. But, and I just have to get this off my chest, why do white folks feel so comfortable making grand pronouncements about race in this country? It frustrates me to no end to take classes with white professors trying to teach me about race. And I heard you talking about Chicano this and Chicana that, but you don’t even pronounce the names properly! I am sorry! I just had to get that off my chest. You two seem nice

needs to be highlighted, is Oscar Zeta Acosta’s description of some rather interesting lawyering techniques, including examining all of the judges in Los Angeles county for racial bias. See OSCAR ZETA ACOSTA, *THE REVOLT OF THE COCKROACHES* (1973). Acosta’s fictions, however, did little to transform the shape and direction of legal discourse, as critical race theory and Latino/a critical theory seem to be doing.

53. DERRICK BELL, *The Space Traders*, in *FACES AT THE BOTTOM OF THE WELL* 158 (1992). In the story, aliens offer to solve all of the United States’ problems and enrich the country in exchange for all the African Americans. White Americans accept, dooming African Americans to re-enslavement.

enough, but it just makes me angry.”

I sit, shocked by her brutal honesty.

Terry, always a quick thinker, jumps in. “You know, you’re right! That’s what we’re trying to talk about.”

“Excuse me?”

“You’re right. We’ve been talking about how to engage in a conversation about race. What we’ve been noticing is that most writers and scholars write and lecture in ways that shut down conversation, rather than open things up.”

“The problem is that most people just want to hear themselves talk, instead of listening to what anyone else has to say. White people in particular. No offense.”

“None taken.”

“Now, don’t give me this huge tip, just to ease your guilty liberal consciences or to prove your solidarity with people of color. I don’t need your charity. I don’t need your pity. I need you to shut up and listen, instead of talking like you know everything. Maybe you need to give people like me a chance to do the sitting and talking, while you work your tail off.” She walks away, not allowing Terry or me a chance to respond.

We pay and leave. Once out in the street, we walk for a while in silence.

After a few blocks, Terry resumes our conversation.

“I mentioned earlier that I read a lot of Chicano/a literature over the past summer.”

“I remember.”

“One book in particular, though it was hard to find, was the one that really made me think about the dialogic structure of many Chicano/a texts. *Victuum*,⁵⁴ by Isabella Rios, is a strange book. It consists solely of conversations. Rios, rarely if at all, identifies the speakers in the conversation.”

“Interesting.”

“The reader learns about the life of this woman, Valentine, from childhood through adulthood, through her conversations with parents, friends, and eventually her spouse. As Valentine matures, she develops the power to predict the future. She knows when people are about to die, even if they are miles away. Rios stresses that this supernatural insight derives from her ‘being open to communication.’⁵⁵ The novel closes with a series of conversations with an alien who helps explain the mysteries of the

54. ISABELLA RIOS, *VICTUUM* (1976).

55. *Id.* at 316.

world.”

“What?”

“I know it sounds strange. But the use of the alien and the supernatural enables Rios to describe an alternative epistemology, one not rooted in Western conceptions of reality. Victuum, the alien, informs Valentine that sound is the most basic element in the universe.⁵⁶ According to Victuum, matter, which is produced through magnetic gravitation, can be best understood as sound, like those produced in a dialogue.”⁵⁷

“So, Rios, in effect, argues that what constitutes ‘matter’ derives from the relationships between things, rather than things themselves?”

“Right! Victuum offers the magnetic force between the sun and the planets as an example of a relationship that generates life and the meaning of matter. It’s not the sun or the earth that generates life and meaning, but the connection, the gravitational force between them.”⁵⁸

Contemplating Terry’s analysis, I say, “So, Rios’s alien reinforces the idea that nothing is just ‘natural,’ but rather that all knowledge is a result of discursive formation, produced through a series of relationships, that exist as historical processes.”

“Rios’s novel is fascinating because even the form demonstrates her thesis. The entire world of Valentine is produced through her discussions, i.e. her relationships, with people. The form of the writing matches the theme of her work!

56. *See id.* at 326:

“Sound is minimux. Minimux is the most minute element.”

“Sound consists of male and female.”

“Male sound and female sound mate”

...

“Victuum, it is so colorful. I hear a popping sound.”

Sound has color, and what you hear is the climactic, eruptive sound of mating and reproduction.”

Id.

57. *See id.* at 329.

58. *See id.* at 335.

“To know the existence of sound is to recognize the scientific knowledge of the human brain. For all creation is living sound. The creation of the human being may not be separated from the creation of the planet and the creation of the universe. Each formation consists of its own multiple minimux, mathematically in constant change and in constant motion.”

Id.

Moreover, Rios argues that healing, and by implication, decolonization and racial justice, can only be achieved by engaging in this dialogic, communicative process.”⁵⁹

“Wasn’t our server expressing some doubt about that process? She seemed to feel that dialogue on race still seems impossible.”

“Exactly!”

“She was saying that the discursive sphere in which many of us live and work is so narrow that we cannot hear what others have to say. We think of knowledge as somehow objective or absolute, rather than being produced through conversations. The problem is that most people are unwilling to maintain or enter into a dialogue with people who are different from themselves, and even if they are willing, structuring these conversations seems impossible.”

“I think,” I add, “she was also saying that the very structure of how academic knowledge is produced marginalizes some voices and then works to silence them. Disciplinarity has been one strategy to limit the number of dialogues any one scholar must maintain. Professionalization means that an academic need not discuss her theories with their lunch server because the server lacks the credentials to enter into that conversation.”

“That’s so true. Dialogue, because of the power dynamics that shape it, can pose as much of a problem as a solution.”⁶⁰

“Rios’s novel is significant precisely because it theorizes the problem of dialogue. It is no accident that it was one of the first novels by a Chicana. The Chicano movement tended to silence the

59. *See id.* at 337. “Through the use of magnetic-gravitation force, one may heal himself or another person.” *Id.*

60. In this Article, dialogue and discourse should not be confused with the Habermasian notion of the public sphere. *See* JURGEN HABERMAS, *STRUCTURAL TRANSFORMATION OF THE PUBLIC SPHERE: AN INQUIRY INTO A CATEGORY OF BOURGEOIS SOCIETY* (1991); JURGEN HABERMAS, *KNOWLEDGE AND HUMAN INTEREST* (Jeremy Shapiro trans., 1971). Delgado does not theorize the perfect conversation that can yield a just consensus; rather, he furthers Lyotard’s critique of Habermas. *See* JEAN FRANCOIS LYOTARD, *THE POSTMODERN CONDITION: A REPORT ON KNOWLEDGE* 66 (Geoff Bennington & Brian Massumi trans., 1984) (arguing that “[c]onsensus has become an outmoded and suspect value. But justice is neither outmoded nor suspect. We must thus arrive at an idea and practice of justice that is not linked to that of consensus”). Lyotard argues against Habermas, who posits justice as the endpoint of a carefully cultivated conversation that ends in consensus. Delgado, as I will argue, opts for dialogue without resolution or final synthesis and thus criticizes Lyotard’s theory of knowledge by way of his use and recitation of the Chicano/a literary tradition. *See also* RODOLFO ACUÑA, *SOMETIMES THERE IS NO OTHER SIDE: CHICANOS AND THE MYTH OF EQUALITY* (1998) (arguing that sometimes the dialogue form wrongly suggests that there are at least two defensible positions regarding a dispute and that sometimes there is only one defensible position).

voices of women. It makes sense that it is a woman who possesses supernatural insight translates the problem into a question of epistemology."

"Are you saying," I ask with a sudden burst of insight, "that Rios is a precursor to more popular Chicana writers, such as Ana Castillo, Gloria Anzaldúa, and Cherríe Moraga?"

"Definitely."

"Just like the changes that occurred in the early 1970s and 1980s with the explosion of writing by African-American women, such as Paule Marshall, Toni Morrison, Alice Walker, Gayl Jones, and Toni Cade Bambara,⁶¹ a similar shift took place within Chicano/a studies. Women who had been excluded from the conversation around Chicano/a culture demanded that their voices be included in any discussion.⁶² Given the exclusion of Chicanas from the discussion around Chicano/a culture, a critique based on dialogue became a central part of the insight of Chicana voices."

"I think I understand this shift in Chicano/a discourse, but how does that apply to Delgado's work? He doesn't seem to include any women's voices, Chicana or otherwise. And the portraits of Chicanas he does include seem problematic."⁶³

"There are moments when Delgado gestures to this lack in his work,⁶⁴ but the structural similarities between his work and

61. See Hortense Spillers, *Cross-Currents, Discontinuities: Black Women's Fiction*, in *CONJURING: BLACK WOMEN, FICTION, AND LITERARY TRADITION* 259 (Marjorie Pryse and Hortense Spillers eds., 1985).

62. See Norma Alarcón, *Chicana Feminism: In the Tracks of the Native Woman*, in *LIVING CHICANA THEORY* 371 (Carla Trujillo ed., 1998); Gloria Anzaldúa, *BORDERLANDS/LA FRONTERA: THE NEW MESTIZA* (1987); Cherríe Moraga, *Queer Aztlán: The Re-formation of Chicano Tribe*, in *THE LAST GENERATION: PROSE & POETRY* 145 (1993); Cynthia Orozco, *Sexism in Chicano Studies and the Community*; Alma García, *Studying Chicanas: Bringing Women into the Frame of Chicano Studies*, both in *CHICANA VOICES: INTERSECTIONS OF CLASS, RACE, AND GENDER* 11, 19 (Teresa Córdova et al. eds., 1993).

63. See Richard Delgado, *THE COMING RACE WAR?* 13-14 (1996).

"La Malinche was an Indian woman who served as Cortes's translator. She ended up helping him destroy her own people."

"I think that our Mexican friends have a phrase for it."

"They do," Rodrigo replied. "*La traducción es traición*. Translation is treason."

Id.; see also Norma Alarcón, *Traductora, Traditora: A Paradigmatic Figure of Chicana Feminism*, *CULTURAL CRITIQUE*, No. 13, Fall 1989, at 57 (demonstrating that this interpretation of La Malinche has been challenged by contemporary Chicanas.).

64. See RICHARD DELGADO, *Rodrigo's Sixth Chronicle: Intersections, Essences and the Dilemma of Social Reform*, in *THE RODRIGO CHRONICLES* 106 (1995) (exploring why Rodrigo upsets the women in the Law Women's Caucus when he tries to participate in a discussion about the relation between members of color and White members).

that of Chicana writers, especially Rios and Ana Castillo, abound. Whether consciously or not, he seems to have developed his form out of these Chicana critiques."

Thinking over what I knew about Delgado, I said "I don't remember any overt references to this connection."

"I don't know if you read any of Delgado's three introductions to his Rodrigo stories, but each offers multiple orders or strategies to reading the text.⁶⁵ Ana Castillo offers similar advice in her epistolary novel, *The Mixquiahuala Letters*.⁶⁶ Before the letters begin, Castillo alerts her readers of multiple ways to read the text. Castillo offers different sequences to read the letters depending if the reader is a 'conformist,' a 'cynic' or 'quixotic.'⁶⁷

Shaking my head with delight, I said, "That's great! She makes the reader take a position vis a vis the text."

"And makes it impossible to ever complete a reading of her text because the order, i.e. the context, is constantly shifting."

"Both Delgado and Castillo seem to acknowledge the structures that will be applied to their texts and to which their texts will in turn apply. In other words, they know that their texts never stand alone. Their work cannot simply be read, but rather must be rigorously applied to a particular set of conditions. Their suggestions about reading order make the reader choose a reading strategy. In doing so, the reader must think about him/herself and his/her relationship to how knowledge is produced."

"Hmmm . . . Even though I was just trying to make the point that Delgado seems to have borrowed this device from Castillo, I agree with you, Rich. Delgado's work, in a sense, is like the epistolary novel because the story is primarily discussed through dialogue. Moreover, because Delgado writes in the dialogue form,

65. See RICHARD DELGADO, *THE RODRIGO CHRONICLES*, at xviii (1995):

The events of *The Rodrigo Chronicles* form an integrated whole, with characters, a plot and intellectual discussions that build on chapters that came before. Thus, the best way to read this book is sequentially. Nevertheless, the reader with limited time or with particular interests may wish to pick and choose The reader interested in feminism may wish to note particularly chapter 6; the reader interested in law school and pedagogy, chapters 1 and 5.

Id.; see also RICHARD DELGADO, *THE COMING RACE WAR?* 2-3 (1996); RICHARD DELGADO, *WHEN EQUALITY ENDS*, at xiv (1999).

66. See ANA CASTILLO, *THE MIXQUIAHUALA LETTERS* (1986).

67. See *id.* at 7-9:

[I]t is the author's duty to alert the reader that this is not a book to be read in the usual sequence. All letters are numbered to aid in following any one of the author's proposed options For the reader committed to nothing but short fiction, all the letters read as separate entities. Good luck whichever journey you choose!

Id.

any proposed starting point or introduction is illusory.”⁶⁸

“Say that last part again.”

“Once you consider that law, literature or cultural studies are ongoing conversations, any starting point becomes illusory. In order to read any book or enter any conversation, worldviews and a bunch of technical knowledge must already be ‘in place.’ One insight of critical race theory is that legal discourse relies on a whole series of metaphors, tropes and images based in culture.”

Caught up in the excitement of intellectual discovery, I blurted out, “so the dialogues between Rodrigo and the professor acknowledge this frame and attempt to interrogate it. In this light, *The Rodrigo Chronicles* and the dialogues that follow struggle with how culture shapes the way we understand legal language. We use those metaphors, tropes and images and rely on them when applying legal discourse.”⁶⁹

“Delgado even insists that the self is a metaphor that has been filled by all sorts of narratives.”⁷⁰

“He really seems to apply his insight about discursive origins as far as it can go.”

“This insight and the extent to which Delgado applies it is based, whether acknowledged or not, on the criticism offered by Chicanas and other women of color.”

“It even sounds linked to postcolonial theory.”⁷¹

“Definitely. To think of the dialogues between Rodrigo and

68. The inclusion of an introductory section in this very text may work to produce such an illusion. Although I employ an introduction – a section that seems mandatory within the script of the Law Review – I hope the reader will not view this move as an unquestioning bow to convention. See *infra* note 94.

69. See RICHARD DELGADO & JEAN STEFANCIC, *FAILED REVOLUTIONS: SOCIAL REFORM AND THE LIMITS OF THE LEGAL IMAGINATION* 16 (1994) (“We subscribe to a stock of explanatory scripts, plots, narratives, and understandings that enable us to make sense of the world. Because we then live in that world, it begins to shape and determine us, who we are, what we see . . .”).

70. See RICHARD DELGADO, *THE RODRIGO CHRONICLES* 210 (1995) (stating “[w]e are all characters in a narrative, Professor. We just fool ourselves into thinking that things are otherwise. Perhaps we want to escape responsibility for our own stories.”).

71. See generally *KEY CONCEPTS IN POSTCOLONIAL THEORY* (Bill Ashcroft et al. eds., 1998); HOMI BHABHA, *THE LOCATION OF CULTURE* (1994); REY CHOW, *WRITING DIASPORA: TACTICS IN INTERVENTION IN CONTEMPORARY CULTURE STUDIES* (1993); FRANTZ FANON, *BLACK SKINS, WHITE MASKS* (Charles Lam Markmann trans., 1967); BART MOORE-GILBERT, *POSTCOLONIAL THEORY: CONTEXTS, PRACTICES, POLITICS* (1997); GAYATRI CHAKRAVORTY SPIVAK, *A CRITIQUE OF POSTCOLONIAL REASON* (1999); GAYATRI CHAKRAVORTY SPIVAK, *IN OTHER WORLDS: ESSAYS IN CULTURAL POLITICS* (1988); Ella Shohat, *Notes on the “Postcolonial,”* in *CONTEMPORARY POSTCOLONIAL THEORY: A READER* 321 (Padmini Mongia ed., 1996).

the narrator without reexamining theories of the border would be to decontextualize Delgado's work. Obviously, Rodrigo's immigration difficulties in *The Rodrigo Chronicles*⁷² and the deportation of the narrator in *The Coming Race War?*⁷³ demonstrate the significance of borders in American life. In their discussions of national borders, Rodrigo and the narrator emphasize how identity construction involves the negotiations of borders and border crossings"

"Wow! That's great Terry! You would connect these subtle, content-based events that sound like plot devices to the shift in Chicano/a discourse based on the writings of Chicanas like Gloria Anzaldúa!"

"Definitely! Let me cut to the chase. Speaking of a chase, are we close to the bakery? I'm ready for some dessert!"

"We're close, just a few more blocks."

"Where was I, Rich?"

"The border and the shift in Chicano/a discourse."

"Right! Delgado must be read through Anzaldúa's theory of the borderlands. She talks about the border being a long open wound, running through her body.⁷⁴ Dialogue establishes and materializes the borders between reader and writer and between text and context. Dialogue forces us to consider how negotiation with multiple discourses establishes identity."

"So, law develops an identity by negotiating a terrain for itself vis a vis other disciplinary formations. And so does literature."

"Oh definitely, the principle of identity is one of negotiation and difference, rather than essence.⁷⁵ Law, literature, or any

72. RICHARD DELGADO, *THE RODRIGO CHRONICLES* 19-21 (1995). The INS denied Rodrigo U.S. citizenship, even though his father was a citizen, because he served six months in the Italian army to pay back the country for his education. Rodrigo ultimately is able to return to the United States under a private bill, sponsored by an Irish Immigration Society, not realizing his hybrid ethnic identity, after Rodrigo moved to Ireland to work.

73. RICHARD DELGADO, *Citizenship: How Society Rejects the Very Person It Most Needs*, in *THE COMING RACE WAR?* 148 (1996). The professor learns that his parents may have been illegal aliens and, despite living in the United States his whole life and working toward racial justice there, he is being deported. This prompts a discussion about the way legal discourse elides notions of human rights in favor of citizen rights.

74. See GLORIA ANZALDÚA, *BORDERLANDS/LA FRONTERA* 2 (1987) ("1,950 mile-long open wound/dividing a *pueblo*, a culture,/running down the length of my body,/staking fence rods in my flesh,/ splits me splits me/*me raja me raja*") (spacing per the text).

75. See generally GILLES DELEUZE, *DIFFERENCE AND REPETITION* (Paul Patton trans., 1994).

other discipline for that matter, carves out a niche for itself by responding to both internal and external developments.”

“You know I read *Borderland/La Frontera* in graduate school, but I found it difficult. By connecting it to Delgado’s work, I think I understand both better because they criticize one another. Inhabitants of the borderlands must develop strategies for speaking and writing that demonstrate the tensions between the ways of thinking that have been developed.⁷⁶ Legal discourse cannot be adopted without some sort of repetition with a ‘difference’ in order for civil rights gains to be made.”

“I think that’s why critical race theorists, such as Delgado, Derrick Bell and Patricia Williams, have developed resistant writing strategies. Their turn to literary methodologies constitutes a repetition of legal discourse with a difference, like you said. It’s only by changing the form of discursive practices that characterize dominant legal thought and scholarship that the content of law can change. Because it’s the ideology of form that debates over doctrine cannot address.”⁷⁷

“Say more.”

“Okay. But, I’m going to change gears slightly on you. I hope that’s all right.

“Sure.”

“Do you remember studying Plato in Western Civilization or History class?”

“Of course.”

“Now Plato is a philosopher, who gets studied by other philosophers, right?”

“Right.”

“Does he write ‘like a philosopher’?”

“What do you mean?”

76. See GLORIA ANZALDÚA, *BORDERLANDS/LA FRONTERA* 79 (1987):

La mestiza constantly has to shift out of habitual formations; from convergent thinking, analytical reasoning that tends to use rationality to move toward a single goal (a Western mode), to divergent thinking, characterized by movement away from set patterns and goals and toward a more whole perspective, one that includes rather than excludes.

The new *mestiza* copes by developing tolerance for contradictions, a tolerance for ambiguity.

Id.

77. See RICHARD DELGADO, *THE RODRIGO CHRONICLES* 192 (1995):

Critical race scholars do write chronicles, parables, and narratives. We use them to explore ideology and mindset. Stories are a great device for probing the dominant narrative. We use them to examine presupposition, the body of received wisdoms that pass as truth but actually are contingent, power-serving, and drastically disadvantage our people.

Id.

"If Plato were living today and writing the *Republic*, would philosophers recognize his work as philosophy?"

"I want to say, yes, philosophy would recognize it, but I have the feeling I'm being set up like one of Socrates' dupes."

We laugh.

"Okay, I'll stop grilling you, Rich. The writing style of Plato's text is the dialogue, a form that is pretty much unrecognizable to philosophy today. Just think of the scholars, besides Delgado, who have relied on dialogic forms. bell hooks, Cornel West, and Gayatri Spivak have all published books that consist primarily of dialogues and interviews.⁷⁸ Few philosophers seem to be actively engaging with their work."

"Are you saying that what counted as philosophy, no longer does?"

"Philosophy is a socially constructed discourse, like any other, but it tries to define itself as discussing certain questions, rather than as a style or form."

"You seem to be arguing that disciplinary knowledge may have more to do with the form of the writing than differences in content."

"I hadn't thought of it in exactly those terms, but, yes, I think that's exactly the critique that Delgado's dialogues are making. He argues that legal doctrine and legal reasoning necessarily implicate underlying cultural narratives, narratives that establish a foundation from which 'legal' stories and 'legal' claims can be made."⁷⁹

"Earlier, you suggested that Delgado worked in a similar way to Plato. That's a claim few people will want to believe. How can you convince them that Delgado and Plato share a certain writing style?"

"First, I would cite the words of critics who say that the 'mainstream texts of literary art themselves undermine virtually every sacred belief of Western culture.'⁸⁰ I would insist that these

78. See bell hooks & CORNEL WEST, *BREAKING BREAD: INSURGENT BLACK INTELLECTUAL LIFE* (1991); GAYATRI CHAKRAVORTY SPIVAK, *THE POST-COLONIAL CRITIC: INTERVIEWS, STRATEGIES AND DIALOGUES* (Sarah Harasym ed., 1990).

79. See RICHARD DELGADO, *THE RODRIGO CHRONICLES 194-95* (1995):
White folks tell stories, too. But they don't seem like stories at all, but the truth. So when one of them tells a story . . . few consider that a story, or ask whether it is authentic, typical, or true. No one asks whether it is adequately tied to legal doctrine, because it and others like it are the very bases by which we evaluate legal doctrine.

Id.

80. See RICHARD WEISBERG, *POETHICS, AND OTHER STRATEGIES OF LAW AND LITERATURE*, at xii (1992).

critics really mean what they say.”

“Nothing like repeating your opponents’ arguments! Those repetitions are catachreses because they mis-use your opponents’ arguments and draw attention to the way they’ve been used to support a colonizing project.”

“Your words are truer than you know, Rich. My second point would be that when Plato attempts to describe the perfect laws for the perfect state, he must first explore the geography of this ideal state.⁸¹ Plato then describes what people will fill this ideal geography. Colonization becomes a necessary step in producing the ideal legal state. The ideal laws result only from a colonizing project and the ideal legal state is a colony, isolated from the influences of ‘civilization.’⁸² No mention is made of the possibility that people may already dwell within that geography.”

“I can’t believe what you’re saying! So, Plato, in effect, argues for a colonial system. In a sense, an escape from Platonic thought is always already part of the postcolonial project.”

“Sure, but you have to be careful when abstracting postcolonialism or border theory from the material conditions out of which they spring. Nonetheless, postcolonial theory has insisted that the nation itself is always built upon a ‘founding violence.’ Spivak, in at least one article, argues that any constitution ultimately ‘begs the question of origins.’”⁸³

“So, the founding violence must always be negotiated when working within any discourse based on the constitution of any state?”

“Right. Law is fundamentally a discussion about acceptable behavior that is constantly being transformed into a monologue of the sovereign through the rules of precedent and legal interpretation.⁸⁴ All legal texts rely on a structure that is based on dialogue. Even Supreme Court opinions suggest dialogue. There is a majority opinion that states the argument with the most adherents. Concurring opinions agree with the holding of a case, but offer criticism of the majority’s arguments. Dissenting

81. See PLATO, THE LAWS 158-62 (Trevor Saunders trans., 1970) (describing the necessary geographic attributes of Plato’s ideal state).

82. See *id.* at 163-64 (1970) (explaining why the ideal state must be a transplanted population bringing the best of their legal tradition into the ideal geography).

83. Gayatri Spivak, *Constitutions and Cultural Studies*, in LEGAL STUDIES AS CULTURAL STUDIES 166, 168 (Jerry Leonard ed., (1995)) (“[a] Constitution is thus not an unquestioned teleological good, but a negotiation with enabling violence.”).

84. See Drucilla Cornell, *Time, Deconstruction, and the Challenge to Legal Positivism: The Call for Judicial Responsibility*, in LEGAL STUDIES AS CULTURAL STUDIES 231 (Jerry Leonard ed., 1995).

opinions argue with the holding of the majority and its reasoning. Most cases offer a discussion about the law, rather than a uniform rule based on oral arguments presented by multiple attorneys."

"To follow up your point, Terry, even legal memoranda and legal briefs are structured as dialogues. A good piece of legal writing puts various legal opinions in dialogue with one another and ultimately resolves them. The resolution of this dialogue, however, is not a synthesis . . ."

"Say that again?"

"The resolution of the dialogues embedded in legal discourse is rarely a synthesis."

"That's very smart. I wish I'd thought of it. That explains, in part, Delgado's critique of legal and literary discourse. Delgado refuses to allow legal discourse to resolve itself via any simplistic synthesis. His dialogues constitute a non-dialectical synthesis."

"I'm not sure I understand the insight you're attributing to me."

"Even though Delgado offers a series of dialogues in the place of traditional legal argumentation, his writing never resolves itself by presenting thesis-antithesis-synthesis. First of all, his mode of writing never just presents one thesis and one antithesis. By adopting a metaphorical tone, the literal and the figural meanings of his text always seem to conflict. Consensus or synthesis cannot be reached because the rules that establish the conversations must always be subject to a critique.⁸⁵ Legal discourse always finds a challenge in its reasoning from other discourses such as sociology, history, literature, Chicano/a studies or African-American Studies. This means that a dialectical synthesis is not possible, because multiple problems or challenges always limit the effectiveness of law."

"So, Delgado offers a model of legal discourse that refuses synthesis because it refuses the geography of a dialectical model of legal thought?"

"If you mean that Delgado displaces the simple two-party adversarial structure of much legal thought, the answer is yes."

"I think I'm finally understanding your excitement about Delgado's work."

"I'm glad to hear that!"

"Delgado's writings challenge legal discourse because they displace the displacement of dialogue in legal writing. His poetic

85. See *supra* note 60 and accompanying text (articulating how Delgado furthers Lyotard's critique of Habermas's public sphere).

is a displacement of displacement, not unlike the theory of catachresis that the speaker in that last panel was talking about.”

“So, you enjoyed that last paper?”

“Yes, I think Delgado, himself, offers a critique of legal and literary discourses. Rather than focus exclusively on the fictions that ground narrative authority, Delgado interrogates how we conceive of discourse. Not unlike Plato, who thought that each law should have a lengthy preamble that urges citizens through rhetoric, and not logic, to follow the law,⁸⁶ Delgado deconstructs the seemingly univocal style of most legal writing.

“In a sense, the extent to which a piece of writing furthers our understanding of a particular tradition constitutes its value.”⁸⁷

“Exactly! What makes critical race theory and Lat-Crit exciting is that they displace the foundations of legal discourse and make us reconsider how those foundations have been built.”

“Excuse me, Terry, but we’re here. This is it”

86. See PLATO, *THE LAWS* 178 (Trevor Saunders trans., 1970).

87. One of the criticisms of critical race theory is that it centers on the difficulty of evaluating the writings of its practitioners for purposes of tenure. This argument seems like a red herring. As Delgado points out, standards for review should be based on how this scholarship can re-contextualize legal texts by connecting to them to the discourses with which law is constantly in dialogue. One wonders if white writers, not tied with critical race theory or Lat-Crit who rely on the dialogue form, get criticized for it.

It is instructive, for instance, to note the response (or non-reponse) to PAUL CAMPOS, PIERRE SCHLAG, & STEVEN SMITH, *AGAINST THE LAW* (1996) for their discussion with Sanford Levinson. Paul Campos’s recent book, *Jurismania*, also offers abundant amounts of storytelling as legal analysis to argue for his position that legal discourse has infiltrated our lives to such a great degree that it hampers innovation and freedom. See PAUL CAMPOS, *JURISMANIA: THE MADNESS OF AMERICAN LAW* (1998). It is interesting to note the responses of Richard Posner, Daniel Farber, and Suzanna Sherry. See RICHARD POSNER, *THE PROBLEMATIC OF MORAL AND LEGAL THEORY* (1999). Posner specifically commends Schlag and Campos for their work, without mentioning their relation to the stories and dialogues of critical race theory. See *id.* at xii; see also Daniel Farber & Suzanna Sherry, *Beyond All Criticism?*, 83 MINN. L. REV. 1735 (1999). Farber and Sherry respond to criticism of their previous work, but do not examine the influence of the writing practices of the critical race theorists on contemporary legal scholarship. See *id.*; see also ARTHUR AUSTIN, *THE EMPIRE STRIKES BACK: OUTSIDERS AND THE STRUGGLE OVER LEGAL EDUCATION* (1998); Erik Jensen, Book Review, 53 Okla. L. Rev 515 (1999) (reviewing Austin’s book). Jensen echoes Austin’s thesis when he cites Campos as an example of an insider/empire scholar who is a critic of legal reasoning, but Jensen emphasizes that he relies on “dead, white, European male reason” to articulate his point. *Id.* at 520 n.3. Despite Austin’s despair over the state of contemporary legal scholarship (because of the work of critical race theorists), Austin does not even take critical notice of the work of Schlag, Campos and others who have employed storytelling and dialogues. Even Austin himself relies on dialogues and stories, italicized in his text, to illustrate his points. Does this seeming adoption of the style of critical race theory by conservative legal thinkers mean that critical race theory has ultimately convinced its critics unconsciously?

“Great, I was ready for dessert! Let’s go in and find a table.”

After we found a table in the back of the crowded café/bakery, we resumed our conversation while waiting for the server.

“I don’t remember exactly where we were, but Delgado’s dialogues exemplify much of what is exciting about postcolonial theory. By refocusing on the dialogic nature of legal discourse, Delgado forces his reader to come to terms with the way legal knowledge is produced. His writing style draws attention to the displacement of dialogue that’s made in the name of law. By displacing the displacing strategy of legal discourse, Delgado puts those founding displacements into view and makes them objects for criticism. Law and legal discourse may be most powerful where they are most invisible in structuring our lives. Delgado tries to focus his readers on the pervasiveness of legal discourse and its effects.”

“By reading Delgado within the framework of Chicano/a literature, his intervention into legal discourse seems to speak within and against that tradition. In my dissertation, I wrote about how Luis Valdez y El Teatro Campesino struggled against the constraints of literature in order to articulate a critique of social, cultural and political conditions.⁸⁸ I argued that Valdez’s critique failed in the sense that it failed to transform the categories of analysis used by legal discourse.⁸⁹ Valdez accepted legal discourse as a matrix that could be used as a tool for transformation because the Court of Appeals ultimately saved the day in the ‘Sleepy Lagoon’ case,⁹⁰ which is the basis of his play ‘Zoot Suit.’”⁹¹

“Delgado transcends Valdez’s synthesis of *acto* and *mito*⁹² in ‘Zoot Suit’ by reconstructing the borders of law and literature. In

88. See Richard Schur, *Luis Valdez, in Rites of Rhetoric: Toni Morrison, Luis Valdez, and Critical Race Theory* 49 (2000) (unpublished Ph.D. dissertation, University of Kansas) (on file with author).

89. See *id.* at 101-02.

90. See *generally* *People v. Zammora*, 152 P.2d 180 (Cal. Ct. App. 1944). The media in 1942 dubbed this case the “Sleepy Lagoon” case because the dead body was found at small swimming pond known as the “Sleepy Lagoon.” The name has stuck, particularly within Chicano/a culture and history. See, e.g., LUIS VALDEZ, *ZOOT SUIT AND OTHER PLAYS* (1992).

91. See LUIS VALDEZ, *ZOOT SUIT AND OTHER PLAYS* 21-94 (1992).

92. See JORGE HUERTA, *CHICANO THEATER: THEMES AND FORMS* (1982); Yvonne Yarbro-Bejarano, *From Acto to Mito: A Critical Appraisal of the Teatro Campesino*, in *MODERN CHICANO WRITERS: A COLLECTION OF CRITICAL ESSAYS* 176 (Joseph Sommers & Tomás Ybarra-Frausto eds., 1979). Huerta translates the Spanish *acto* to mean both an act of a play and an act of political action. See HUERTA, *supra* at 15. Yarbro-Bejarano translates the Spanish *mito* as myth which “explores the content of culture itself.” See YARBRO BEJARNO, *supra* at 177.

many ways, learning from criticism articulated by Chicanas, Delgado realizes that dialogue itself is not enough. Rather, we must be willing to interrogate the structure of that dialogue in order to see who is excluded by that structure. A dialogue is rarely a conversation of equals, and legal analysis must come to terms with the way legal discourse maintains inequality through its structure."

"Rich, you're correct. I would add, however, that Delgado's dialogues stress negotiation and hybridity in ways that correspond with developments in postcolonial theory. The use of storytelling in critical race theory, written by legal scholars of color, may be the flip side of the difficult prose of postcolonial theorists such as Gayatri Spivak and Homi Bhabha.⁹³ Both writing styles constitute disruptions in the logic of academic writing, one through storytelling, the other through a rewriting of academic language."

"One thing that has always bothered me is that I didn't discuss one of Valdez's plays, 'I Don't Have to Show You No Stinking Badges!' in my dissertation.⁹⁴ I didn't include it because the play went beyond the synthesis of 'Zoot Suit'. Now, I think I can understand the play as an early example of critical race theory."

"I'm not familiar with the play, but I am curious."

"In the play, the child of successful Chicano/a actors returns home after dropping out of Harvard with his new Japanese American girlfriend. The son, Sonnie, is trapped in the images produced by television about Mexican Americans. Rather than adopt the position that negates the influence of television and stereotypes about Chicanos and Chicanas, Valdez insists that these stereotypes must be altered through negotiation with the very media that produce those images!"

"Same thing with Delgado! His writing, particularly his many citations to legal decisions and legal articles, insists on maintaining a dialogue and negotiating with legal discourse, the discussion around law. Rather than abandoning the discourse, he insists that ongoing negotiation via communication with Chicano/a culture will be the only solution to the racism lodged within the narratives of legal discourse."

"So, the title of the play presents the very argument that must be deconstructed. You need a 'badge' in order to create a narrative with authority, the 'badge' must be transformed into

93. See *supra* note 72.

94. See Luis Valdez, *I Don't Have to Show You No Stinking Badges!*, in *ZOOT SUIT AND OTHER PLAYS* 155 (1992).

catachresis, a repetition that interrogates the usefulness of the endeavor and questions the metaphor of badges in the first place!"

"The dialogue form, particularly in Delgado's recitation of a classical form through the developments of Chicano/a literature, constitutes a hybrid negotiation of the very forms that are to be used for critique and reform. In the process, Delgado intervenes in legal discourse and Chicano/a literature, among other discourses, and re-maps the terrain that those discourses name."

"The dialogue form may enable the word "discourse," meaning running to and fro, to be destabilized. The 'to' and 'fro' are not fixed or determined locations, but positions forged in response to particular discursive conditions. In his writing, Delgado criticizes how legal, literary, and cultural positions are produced and then stabilized in order to maintain a colonizing project. Form cannot be severed from content and vice versa. Equality cannot be produced through the mechanical application of formulas. Equality is not just a political or social matter, but a cultural one. When speaking from the borderlands, that place between and beyond multiple social, political, and cultural systems, the adoption of any one of those systems necessarily does violence. The ideal of equality, if it to live up its name, must come to terms with that violence. The dialogue about equality must always be left open . . ."

With that last flurry of analysis, Terry noticed the time and realized that he was already late for another appointment. He said that he'd take a rain check on dessert, but that we should talk more soon. Lunch, the walk, and the discussion had been quite nourishing. Seeing and speaking with Terry had revived my spirits and renewed my strength in the struggle for social justice. After picking up some cookies for my daughter, I returned home. Terry raced out to catch a cab back to his hotel.

As I remember our conversation, the response of our server still haunts me. Her silence and then her speech can only hint at what remains unspoken and unspeakable. The work of de-territorialization and re-territorialization is never done. *Nunca llegamos*. We never fully arrive.