

# CHANGING SYSTEMS, CHANGING OURSELVES

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*To celebrate the publication of Richard Delgado, Juan Perea, and Jean Stefancic's *Latinos and the Law*,<sup>1</sup> the editors of the *Harvard Latino Law Review* invited participation in this symposium. They generously encouraged me to write about the rebellious vision—a vision that reflects and shapes a particular approach to lawyering, to working together, to living together in radically democratic and egalitarian communities. Accepting permits me to honor, at once, Delgado, Perea, and Stefancic, and the Latinas and Latinos about whom they write. Thank you for the privilege.*

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In *Latinos and the Law*, Richard Delgado, Juan Perea, and Jean Stefancic describe how Latinas and Latinos improved our lives by transforming systems. Yet Delgado, Perea, and Stefancic grasp that—whatever a “post-Obama world” signifies—race and racism continue to define all we confront in the United States. They write about the evolving challenges we face. In particular, they focus upon altering overlapping systems (education, criminal justice, employment, immigration) that reveal patterns resembling and diverging from their historical ancestors.

In thinking about transforming systems, I find myself returning to events earlier in my life. I admit I am nostalgic. I often reach back to my Dad and Mom and grandfather and brother and for so much more still. But I reminisce for particular reasons. I want to highlight certain ideas and attitudes that came to feel central to a rebellious vision: the inevitable intermingling and mutually defining character of obedience and rebellion, of lay and professional problem solving, of the way we work and the way we live.<sup>2</sup>

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\* Professor of Law, UCLA School of Law. To Tom Adler, Roy B. Cazares, and Napoleon Jones. How blessed I am to have you as law partners, mentors, friends. Thanks to Abbi Coursolle, Robin Lee, Patrick Morales-Doyle, Juan Carlos Ochoa, and Fabián Rentería for wise help.

<sup>1</sup> RICHARD DELGADO, JUAN F. PEREA & JEAN STEFANCIC, *LATINOS AND THE LAW: CASES AND MATERIALS* (2008). The casebook includes a range of material on rebellious lawyering and related topics. See *id.* at 809-71.

<sup>2</sup> For illustrative literature suggesting, exploring, developing the rebellious vision, see, for example, Muneer I. Ahmad, *Interpreting Communities: Lawyering Across Language Difference*, 54 *UCLA L. REV.* 999 (2007); Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 *CLINICAL L. REV.* 355 (2008); Gary Bellow, *Steady Work: A Practitioner's Reflections on Political Lawyering*, 31 *HARV. C.R.-C.L. L. REV.* 297 (1996); Luke W. Cole, *Empowerment as the Key to Environmental Protection: The Need for Environmental Poverty Law*, 19 *ECOLOGY L.Q.* 619 (1992); Luke W. Cole, *Macho Law Brains, Public Citizens, and Grass-roots Activists: Three Models of Environmental Advocacy*, 14 *VA. ENVTL. L.J.* 687 (1995); Bill Ong Hing, *Coolies, James Yen, and Rebellious Advocacy*, 14 *ASIAN AM. L.J.* 1 (2007); Bill Ong Hing, *Nonelectoral Activism in Asian Pacific American Communities and the Implications for Community Lawyering*, 8 *ASIAN PAC. AM. L.J.* 246 (2002); Bill Ong Hing, *Raising*

Let me share three experiences that, together, suggest why I believe changing systems inevitably entails changing ourselves.

### THREE FORMATIVE EXPERIENCES

In one, I am about eight years old. I already felt bewildered and infuriated by the overlapping systems that all too powerfully and, thankfully, all too imperfectly limited the lives of those of us who called East Los Angeles home. I'm talking about the educational system. The health care system. The criminal justice system. The electoral system. I'm also talking about the racial and cultural and class systems that shaped and reflected housing and

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*Personal Identification Issues of Class, Race, Ethnicity, Gender, Sexual Orientation, Physical Disability, and Age in Lawyering Courses*, 45 STAN. L. REV. 1807 (1993); Shin Imai, *A Counter-Pedagogy for Social Justice: Core Skills for Community-Based Lawyering*, 9 CLINICAL L. REV. 195 (2002); Shauna I. Marshall, *Mission Impossible?: Ethical Community Lawyering*, 7 CLINICAL L. REV. 147 (2000); Ascanio Piomelli, *Appreciating Collaborative Lawyering*, 6 CLINICAL L. REV. 427 (2000); Ascanio Piomelli, *The Democratic Roots of Collaborative Lawyering*, 12 CLINICAL L. REV. 541 (2006); Ascanio Piomelli, *Foucault's Approach to Power: Its Allure and Limits for Collaborative Lawyering*, 2004 UTAH L. REV. 395; William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 OHIO N.U. L. REV. 455 (1994); Dean Hill Rivkin, *Lawyering, Power, and Reform: The Legal Campaign to Abolish the Broad Form Mineral Deed*, 66 TENN. L. REV. 467 (1999); Laura L. Rovner, *Disability, Equality, and Identity*, 55 ALA. L. REV. 1043 (2004); Ann Shalleck, *Constructions of the Client Within Legal Education*, 45 STAN. L. REV. 1731 (1993); Clyde Spillenger, *Elusive Advocate: Reconsidering Brandeis as People's Lawyer*, 105 YALE L.J. 1445 (1996); Julie A. Su, *Making the Invisible Visible: The Garment Industry's Dirty Laundry*, 1 J. GENDER RACE & JUST. 405 (1998); Lucie E. White, *Collaborative Lawyering in the Field? On Mapping the Paths from Rhetoric to Practice*, 1 CLINICAL L. REV. 157 (1994); Lucie E. White, *Mobilization on the Margins of the Lawsuit: Making Space for Clients to Speak*, 16 N.Y.U. REV. L. & SOC. CHANGE 535 (1987-88); Lucie White, *Paradox, Piece-Work, and Patience*, 43 HASTINGS L.J. 853 (1992); Lucie White, *Representing "The Real Deal"*, 45 U. MIAMI L. REV. 271 (1990-1991); Lucie E. White, *To Learn and Teach: Lessons from Driefontein on Lawyering and Power*, 1988 WIS. L. REV. 699; Christine Zuni Cruz, *[On The] Road Back In: Community Lawyering in Indigenous Communities*, 5 CLINICAL L. REV. 557 (1999). For discussion of progressive law practice in the context of public defender work, see CMTY. JUSTICE INST., BRENNAN CTR. FOR JUSTICE, TAKING PUBLIC DEFENSE TO THE STREETS (Raising Voices Series, 2001), available at [http://www.brennancenter.org/page/-/download\\_file\\_34975.pdf](http://www.brennancenter.org/page/-/download_file_34975.pdf); Kim Taylor-Thompson, *Effective Assistance: Reconceiving the Role of the Chief Public Defender*, 2 J. INST. FOR STUDY LEGAL ETHICS 199 (1999); Kim Taylor-Thompson, *Individual Actor v. Institutional Player: Alternating Visions of the Public Defender*, 84 GEO. L.J. 2419 (1996); Kim Taylor-Thompson, *The Politics of Common Ground*, 111 HARV. L. REV. 1306 (1998) (reviewing RANDALL KENNEDY, RACE, CRIME, AND THE LAW (1997)). For some of my own contributions, see, for example, GERALD P. LÓPEZ, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE (1992); Gerald P. López, *Economic Development in the "Murder Capital of the Nation"*, 60 TENN. L. REV. 685 (1993); Gerald P. López, *Living and Lawyering Rebelliously*, 73 FORDHAM L. REV. 2041 (2005); Gerald P. López, *Reconceiving Civil Rights Practice: Seven Weeks in the Life of a Rebellious Collaboration*, 77 GEO. L.J. 1603 (1989); Gerald P. López, *Shaping Community Problem Solving Around Community Knowledge*, 79 N.Y.U. L. REV. 59 (2004); Gerald P. López, *Training Future Lawyers to Work with the Politically and Socially Subordinated: Anti-Generic Legal Education*, 91 W. VA. L. REV. 305 (1989); Gerald P. López, *The Work We Know So Little About*, 42 STAN. L. REV. 1 (1989); Gerald P. López, *A Declaration of War by Other Means*, 98 HARV. L. REV. 1667 (1985) (reviewing RICHARD E. MORGAN, DISABLING AMERICA: THE "RIGHTS INDUSTRY" IN OUR TIME (1984)).

labor markets and public and private and civic relations. How did such systems<sup>3</sup> (from gargantuan institutions to personal interactions) come into being and maintain themselves?

I realized that systems of every sort knew both how to target and how to neglect residents of East L.A. They seemingly tracked our every move through law enforcement practices and truancy policies and immigration laws, for example. And they apparently never cared about our lack of access to quality health care, K-12 public education, and financial services, to name only some obviously important means of everyday survival and social mobility. If the systems in L.A. appeared at times to carry forward robotically or naturally, their patterns revealed human bias in operation.<sup>4</sup>

These biased systems traced their origins—as do all systems—to a mix of deliberate design, capricious choice, and accidental rites. To target us and to neglect us reflected and reinforced accepted wisdom about how you get the most out of, and maintain control over, a people with an especially limited capacity to contribute.<sup>5</sup> The stock stories and arguments that shaped law and life in the 1950s defined Mexicans (Mexican-Americans, Mexicanos, Chicanos) as genetically and culturally inferior. Regarded as unworthy of the fully equal citizenship that in principle defined membership in the na-

<sup>3</sup> “System” parallels “institution” as employed by early twentieth century economists—including prominently Thorstein Veblen, John R. Commons, and Robert Hale. See, e.g., JOHN R. COMMONS, *INSTITUTIONAL ECONOMICS: ITS PLACE IN POLITICAL ECONOMY* (1934).

<sup>4</sup> For a small sample of literature illuminating these times and such phenomena, see OSCAR ZETA ACOSTA, *THE AUTOBIOGRAPHY OF A BROWN BUFFALO* (Vintage Books 1989) (1972); OSCAR ZETA ACOSTA, *THE REVOLT OF THE COCKROACH PEOPLE* (Vintage Books 1989) (1973); RODOLFO F. ACUÑA, *A COMMUNITY UNDER SIEGE: A CHRONICLE OF CHICANOS EAST OF THE LOS ANGELES RIVER, 1945-1975* (1984); ALBERT CAMARILLO, *CHICANOS IN CALIFORNIA: A HISTORY OF MEXICAN AMERICANS IN CALIFORNIA* (1984); MARIO T. GARCÍA, *MEXICAN AMERICANS: LEADERSHIP, IDEOLOGY, AND IDENTITY, 1930-1960* (1989); MARTHA MENCHACA, *RECOVERING HISTORY, CONSTRUCTING RACE: THE INDIAN, BLACK, AND WHITE ROOTS OF MEXICAN AMERICANS* (2001); ALFREDO MIRANDÉ & EVANGELINA ENRÍQUEZ, *LA CHICANA: THE MEXICAN-AMERICAN WOMAN* (1979); RICARDO ROMO, *EAST LOS ANGELES: HISTORY OF A BARRIO 163-71* (1983); GEORGE J. SÁNCHEZ, *BECOMING MEXICAN AMERICAN: ETHNICITY, CULTURE, AND IDENTITY IN CHICANO LOS ANGELES, 1900-1945* (1993); Neil Foley, *Becoming Hispanic: Mexican Americans and the Faustian Pact with Whiteness*, in *REFLEXIONS 1997: NEW DIRECTIONS IN MEXICAN AMERICAN STUDIES* 53 (Neil Foley ed., 1998); Ariela J. Gross, “*The Caucasian Cloak*”: *Mexican Americans and the Politics of Whiteness in the Twentieth-Century Southwest*, 95 *GEO. L.J.* 337 (2007). Until very recent years, scholarly and popular literatures largely ignored or diminished the importance of *Hernandez v. Texas*, 347 U.S. 475 (1954), the Supreme Court decision that perhaps best reflected and expressed the subordinated racial status of Mexicans in the United States. For modern recognition, see, for example, Ian Haney López & Michael A. Olivas, *Jim Crow, Mexican Americans, and the Anti-Subordination Constitution: The Story of Hernandez v. Texas*, in *RACE LAW STORIES* 273 (Rachel F. Moran & Devon W. Carbado eds., 2008).

<sup>5</sup> For popular and scholarly interpretations in full conflict with my own interpretation of past and present circumstances, see LINDA CHAVEZ, *OUT OF THE BARRIO: TOWARD A NEW POLITICS OF HISPANIC ASSIMILATION* (1991); OCTAVIO PAZ, *THE LABYRINTH OF SOLITUDE* (Ly-sander Kemp trans., Penguin Books 1985) (1961); PETER SKERRY, *MEXICAN AMERICANS: THE AMBIVALENT MINORITY* (1993).

tional community, we Mexicans instead got what we merited, what a mixed-race mongrel breed deserved.<sup>6</sup> No more and no less.

Not everyone bought into these stereotypes, of course. Mexicanos and Mexican-Americans I knew challenged them. So did Blacks and Asians in other parts of L.A., and so did Natives who had worked alongside my grandparents in Arizona mining towns. So did White teachers and merchants and nuns and priests and coaches. We Mexicans might well be mixed-race mongrels (even more mixed than many then imagined).<sup>7</sup> But notable numbers refused to agree that our genes or our culture justified our status and condition in L.A.<sup>8</sup>

Surrounded by such staunch oppositionists, I found it all the more confusing that the diverse systems that considered Mexicans everlastingly inferior appeared to engender remarkably broad allegiance. I saw pronounced loyalty in those contentedly benefiting all the way to those painfully subordinated. Some formally defended the status quo; others would not openly confront systems that they perceived as so deeply ingrained as to be virtually unchangeable; others still seemed to smilingly stomach dreadful disrespect.<sup>9</sup>

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<sup>6</sup> For my initial study of how these views triggered and fed upon undocumented Mexican migration, see Gerald P. López, *Undocumented Mexican Migration: In Search of a Just Immigration Law and Policy*, 28 UCLA L. REV. 615 (1981). For other revealing accounts, see, for example, ARNOLDO DE LEÓN, *THEY CALLED THEM GREASERS: ANGLO ATTITUDES TOWARD MEXICANS IN TEXAS, 1821-1900* (1983); ERNESTO GALARZA, *MERCHANTS OF LABOR: THE MEXICAN BRACERO STORY* (1964); ABRAHAM HOFFMAN, *UNWANTED MEXICAN AMERICANS IN THE GREAT DEPRESSION: REPATRIATION PRESSURES, 1929-1939* (1974). For broader coverage of the effects of such views on all Latinas and Latinos, see, for example, *BORDERLESS BORDERS: U.S. LATINOS, LATIN AMERICANS, AND THE PARADOX OF INTERDEPENDENCE* (Frank Bonilla, Edwin Meléndez, Rebecca Morales & María de los Angeles Torres eds., 1998); *BORICUAS: INFLUENTIAL PUERTO RICAN WRITINGS – AN ANTHOLOGY* (Roberto Santiago ed., 1995); *THE COLUMBIA HISTORY OF LATINOS IN THE UNITED STATES SINCE 1960* (David G. Gutiérrez ed., 2004); *THE LATINO/A CONDITION* (Richard Delgado & Jean Stefancic eds., 1998); *LATINOS REMAKING AMERICA* (Marcelo M. Suárez-Orozco & Mariela M. Paéz eds., 2002); PEDRO A. MALAVET, *AMERICA'S COLONY: THE POLITICAL AND CULTURAL CONFLICT BETWEEN THE UNITED STATES AND PUERTO RICO* (2004); ANA MENÉNDEZ, *IN CUBA I WAS A GERMAN SHEPHERD* (2001); CECILIA MENJÍVAR, *FRAGMENTED TIES: SALVADORAN IMMIGRANT NETWORKS IN AMERICA* (2000); MIGUEL PIÑERO, *LA BODEGA SOLD DREAMS* (1980); RENATO ROSALDO, *PRAYER TO SPIDER WOMAN / REZO A LA MUJER ARAÑA* (2003); Juan F. Perea, *Buscando América: Why Integration and Equal Protection Fail to Protect Latinos*, 117 HARV. L. REV. 1420 (2004); Ediberto Román, *Empire Forgotten: The United States's Colonization of Puerto Rico*, 42 VILL. L. REV. 1119 (1997).

<sup>7</sup> See, e.g., Gary B. Nash, *The Hidden History of Mestizo America*, 82 J. AM. HIST. 941 (1995).

<sup>8</sup> For a sample of thinkers who challenged these dominant stories, see, for example, STOKELY CARMICHAEL & CHARLES V. HAMILTON, *BLACK POWER: THE POLITICS OF LIBERATION IN AMERICA* (1967); HAROLD CRUSE, *REBELLION OR REVOLUTION?* (1968); ROGER DANIELS, *THE POLITICS OF PREJUDICE: THE ANTI-JAPANESE MOVEMENT IN CALIFORNIA AND THE STRUGGLE FOR JAPANESE EXCLUSION* (1962); MANUEL GAMIO, *MEXICAN IMMIGRATION TO THE UNITED STATES: A STUDY OF HUMAN MIGRATION AND ADJUSTMENT* (1930).

<sup>9</sup> Amélie Oksenberg Rorty offers a portrait of how people justify to themselves resistance to signs of rebellious thinking in others. See Amélie Oksenberg Rorty, *How to Harden Your Heart: Six Easy Ways to Become Corrupt*, in *THE MANY FACES OF EVIL: HISTORICAL PERSPECTIVES* 282 (Amélie Oksenberg Rorty ed., 2001).

I witnessed many who combined these behaviors, accustomed, if not attached, to the way things were.

Fortunately for me, my parents raged against degrading stereotypes. They understood the connection between these stereotypes and the systems that at once unfairly targeted and neglected those of us who lived in places like East L.A. My Dad and Mom raged in the dignified way they carried themselves. In the bold manner they confronted racist (and other ignorant) classifications and the hypocritical systems to which these classifications gave rise. Through their active political involvement, helping to mobilize registration and get-out-the-vote campaigns for state and national elections, and leading efforts to incorporate East Los Angeles.

My Mom and Dad proudly celebrated the defiant—the mundane and not-so-mundane efforts on the part of others to stand up to systems that denied in practice the very principle of democratic equality central to our country's professed convictions.<sup>10</sup> At their best, my Mom and Dad treated each moment as a potential opportunity to live out a largely counterfactual world, one they could now and then glimpse, but only by behaving as if the world they imagined were already in place.

Every bit as fortunately for me, my parents raged while struggling to get by day-to-day. They coped with those jobs they could get, without the health insurance we needed, and with the many individuals and institutions refusing to afford them the basic decency and honor that lies at the heart of justice. In coping well, they compromised plenty. Compromised. Plenty. They submitted in ways they realized and in ways they probably never noticed. In this sense they were like everyone else, across generations. We can never confidently detect all we want to know, especially about ourselves.

How I wish my parents had never been forced to give in—had not been routinely demeaned and damaged. But precisely because my Dad and Mom compromised plenty, and precisely because I regarded them as extraordinarily resourceful and brave and effective, I started to appreciate that the very people who with all their hearts hope to change a system simultaneously live within its jurisdiction. Certainly appreciative of how stereotypes still dominated perceptions, and sometimes forced to grovel for a roof and a meal and care for their families, my Dad and Mom nonetheless aimed to obliterate the limits and conditions they found unacceptable.<sup>11</sup>

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<sup>10</sup> Of Duncan Kennedy's extraordinary work, I include high on the must-read list his unpublished manuscript on opposition, Duncan Kennedy, *Notes of an Oppositionist in Academic Politics* (1982) (unpublished manuscript, on file in Harvard Law School Library).

<sup>11</sup> For illuminating accounts of such complex processes, see, for example, GLORIA ANZALDÚA, *BORDERLANDS/LA FRONTERA: THE NEW MESTIZA* (3d ed. 2007) (1987); JOSÉ ANTONIO BURCIAGA, *SPILLING THE BEANS: LOTERÍA CHICANA* (1995); *CHICANA LESBIANS: THE GIRLS OUR MOTHERS WARNED US ABOUT* (Carla Trujillo ed., 1991); LAURA E. GÓMEZ, *MANIFEST DESTINIES: THE MAKING OF THE MEXICAN AMERICAN RACE* (2007); RAMÓN A. GUTIÉRREZ, *WHEN JESUS CAME, THE CORN MOTHERS WENT AWAY: MARRIAGE, SEXUALITY, AND POWER IN NEW MEXICO, 1500-1846* (1991); IAN F. HANEY LÓPEZ, *RACISM ON TRIAL: THE CHICANO FIGHT FOR JUSTICE* (2003); *THE LATINO/A CONDITION: A CRITICAL READER* (Richard Delgado & Jean Stefancic eds., 1998); ALFREDO MIRANDÉ, *GRINGO JUSTICE* (1987); DAVID MONTEJANO, *ANGLOS AND MEXICANS IN THE MAKING OF TEXAS, 1836-1986* (1987); KENJI

The mix of obedience and rebellion I saw in my parents led me to look to everyone, in all corners, for guidance about how to change systems. In the *pachucos* and *pachucas* and the *pintos* and *pintas* who, with my big brother central in their midst and often at the lead, could break their parents' hearts and sometimes even their own code of honor while brawling to belong to a parallel space of their own creation. In the cops and prison guards and judges and wardens who collectively helped make my brother's life and so many others' lives hellish. In the Church faithful who often seemed to be submitting to degradation here on earth in the expectation that eternal life would reward their suffering. In the Church hierarchy who appeared to fear the incorporation of East L.A. almost as much as they condemned the Communist threat they saw everywhere. In the steady everyday types whose responsible attention to the daily grind could easily be interpreted as enduring contentment with indignity, lack of opportunity, and material want.<sup>12</sup>

I began to practice seeing in others, and all around me, the rebelliousness that otherwise might escape my notice. Even the blindly faithful could be provoked. Some explicitly challenged sweeping assumptions and aspirations; others defied particular conventions and beliefs; others still would surprise everyone (perhaps including themselves) by acting out even when they had no belief that they could affect the way things were. The range of mutinous behavior helped teach me to find the makings of a world transformed in the behavior of the ostensibly obedient.<sup>13</sup>

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In another experience, I'm twenty-one, a few months into the first year of law school. A brute fact is dawning on me for the first time: legal education has incredibly little to do with lawyering—the dynamic problem solving dwelling within what every lawyer does. Instead, the focus of law school is

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YOSHINO, COVERING: THE HIDDEN ASSAULT ON OUR CIVIL RIGHTS (2006); Ariela J. Gross, *Texas Mexicans and the Politics of Whiteness*, 21 LAW & HIST. REV. 195 (2003); Kevin R. Johnson, "Melting Pot" or "Ring of Fire"?: Assimilation and the Mexican-American Experience, 85 CAL. L. REV. 1259 (1997), 10 LA RAZA L.J. 173 (1998); Guadalupe T. Luna, "Agricultural Underdogs" and International Agreements: The Legal Context of Agricultural Workers Within the Rural Economy, 26 N.M. L. REV. 9 (1996); Margaret E. Montoya, *Máscaras, Trenzas, y Greñas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse*, 17 HARV. WOMEN'S L.J. 185 (1994); Thomas J. Phelan & Mark Schneider, *Race, Ethnicity, and Class in American Suburbs*, 31 URB. AFF. REV. 659 (1996); Marta Tienda, *Latinos and the American Pie: Can Latinos Achieve Economic Parity?*, 17 HISP. J. BEHAV. SCI. 403 (1995); Francisco Valdes, *Queers, Sissies, Dykes, and Tomboys: Deconstructing the Conflation of "Sex," "Gender," and "Sexual Orientation" in Euro-American Law and Society*, 83 CAL. L. REV. 1 (1995); Russell Robinson, *Uncovering Covering*, 101 NW. U. L. REV. 1809 (2007) (reviewing KENJI YOSHINO, COVERING: THE HIDDEN ASSAULT ON OUR CIVIL RIGHTS (2006)). For a discussion of Americanization programs by the preeminent immigration lawyer in the United States, see BILL ONG HING, *TO BE AN AMERICAN: CULTURAL PLURALISM AND THE RHETORIC OF ASSIMILATION* 18-22 (1997).

<sup>12</sup> Even extraordinarily gifted thinkers apparently draw such conclusions. See, e.g., AMARTYA SEN, *RESOURCES, VALUES, AND DEVELOPMENT* (1984) (portraying the poor in ways that suggest acceptance of existing circumstances).

<sup>13</sup> For an essay about the Constitution through my thoroughly race-conscious East L.A. eyes, see Gerald P. López, *The Idea of a Constitution in the Chicano Tradition*, 37 J. LEGAL EDUC. 162 (1987).

law or, more particularly, a stylized parsing of edited appellate judicial opinions. When legal educators do talk about lawyering, they talk typically in terms of “doing legal analysis,” “reasoning legally,” “thinking like a lawyer.” And when they use these terms they refer to an elusive and perhaps even indescribable way of thinking, apparently different from and superior to how humans otherwise think, certainly fundamentally different from and superior to how people who hail from places like East L.A. think.<sup>14</sup>

At the time, in the fall of 1970, I did not realize that my assessment of legal education hardly amounted to a novel insight.<sup>15</sup> For decades, others had been making related points in lamenting the system of legal education that first took hold in 1870 at Harvard.<sup>16</sup> That my perception felt new should itself have been a source of considerable embarrassment. The assumptions and aspirations that together defined the curricular ambitions and professional paths of legal education obviously should have been something I researched and assessed before entering, or even applying to, law school.

I had explanations for why I knew so little—legitimate explanations that provide evidence for the notion of “structural racism.” I knew only one lawyer growing up and only several law students while I was in college. Information was relatively scant and inaccessible, especially from today’s perspective. Better still, the number of lawyers and law students I knew and the amount of information I could tap mirrored racial, cultural, and class dynamics. Stressing these points *alone*, however, masked another painful truth. I had simply failed to try to learn about the graduate institution I had committed to attending and the profession I was training to enter.

My own failures, though, did not immunize legal education. I had expected law school to introduce me to and provide the means for me to advance toward a deep understanding of what lawyers do, of what lawyers do when they do it well, and of what lawyers do to improve over the course of a

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<sup>14</sup> For examples of the many diverse efforts to define afresh what it means to think like a lawyer, see, for example, FREDERICK SCHAUER, *THINKING LIKE A LAWYER: A NEW INTRODUCTION TO LEGAL REASONING* (2009); KENNETH J. VANDELDELDE, *THINKING LIKE A LAWYER: AN INTRODUCTION TO LEGAL REASONING* (1996); Peggy Cooper Davis & Aderson Belgarde François, *Thinking Like a Lawyer*, 81 N.D. L. REV. 795 (2005); James R. Elkins, *Thinking Like a Lawyer: Second Thoughts*, 47 MERCER L. REV. 511 (1996); John O. Mudd, *Thinking Critically About “Thinking Like a Lawyer”*, 33 J. LEGAL EDUC. 704 (1983).

<sup>15</sup> Critiques of post-1870s legal education began decades earlier. See, e.g., Albert M. Kales, *Should the Law Teacher Practice Law?*, 25 HARV. L. REV. 253 (1912); Leon H. Keyserling, *Social Objectives in Legal Education*, 33 COLUM. L. REV. 437 (1933); Harlan F. Stone, *The Importance of Actual Experience at the Bar as a Preparation for Teaching Law*, 3 AM. L. SCH. REV. 205 (1912). Some trace written critiques of modern legal education to Oliver Wendell Holmes Jr., Book Review, 14 AM. L. REV. 233 (1880) (reviewing C.C. LANGDELL, *A SELECTION OF CASES ON THE LAW OF CONTRACTS* (2d ed. 1879)).

<sup>16</sup> Legal realists ranked as perhaps the most prominent scholars offering such critical views of the case system first established by Christopher Columbus Langdell as Dean of Harvard Law School in the 1870s. See, e.g., Felix S. Cohen, *Transcendental Nonsense and the Functional Approach*, 35 COLUM. L. REV. 809 (1935); Jerome Frank, *A Plea for Lawyer-Schools*, 56 YALE L.J. 1303 (1947); K.N. Llewellyn, *On What Is Wrong with So-Called Legal Education*, 35 COLUM. L. REV. 651 (1935).

career.<sup>17</sup> In my early years, that was how a variety of people had launched me toward mastery of diverse endeavors. Naïve and ill-informed as I was about legal education, I did not believe I was asking too much. Shouldn't an elite law school teach me as ambitiously about what lawyers do as underpaid or volunteer East L.A. coaches had taught me about what point guards and halfbacks and shortstops do when they, at once, cooperate and compete with others on a playing field?

While studying law principally through edited appellate judicial opinions seemed like an extremely limited way of studying lawyering, talking about how lawyers think as something discontinuous from how humans otherwise think was perplexing. Initially I found the incomplete explanation of and enigmatic aura surrounding "thinking like a lawyer" outrageous, pompous, and silly. Who regards themselves that way? I found myself recalling the most pretentious of Catholic clergy, those who contaminated the formal education and religious training I received for my first seventeen years.

But I saw another reaction in those surrounding me, one that contrasted with my own but that also reinforced the image of haughty cardinals, bishops, and Monsignors. Like so many forced to deal for the first time with the legal system or with the traditions of the big-classroom Socratic method, I had found the idioms and rituals foreign, unintelligible, mysterious. To regard thinking like a lawyer as special, ineffable, even unique, made a certain symmetrical sense. An entirely separate way of thinking would account for what we could not initially fathom and what we might someday master as insiders.

That reconciliation proved powerfully seductive for many. I watched as some students embraced this notion. I realized many faculty members and practicing lawyers did too. The test seemed obvious: If you are willing to put to the side who and what you are, including how you think and feel, you can perhaps enter the ranks of those who can operate comfortably within and even command what otherwise cannot be fully described and yet informs so much of those very systems that together rule our lives.<sup>18</sup> You too can become influential clergy.

The closer I looked, however, the more I doubted this story. More than anything else, the cultivated foreignness of the legal culture seemed to reflect certain historical arcs, institutional efficiencies, and profession-protect-

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<sup>17</sup> Stylish allusions to the ineffability of law schools to teach the type of judgment lawyers exercise can be found in everything from practical guidebooks, *see, e.g.*, RONALD COLEMAN, *PRE-LAW COMPANION: WHAT LAW SCHOOL GRADS WISH THEY KNEW BEFORE THEY STARTED* (1996), to cognitively sophisticated scholarship, *see, e.g.*, Paul Brest & Linda Krieger, *On Teaching Professional Judgment*, 69 WASH. L. REV. 527 (1994).

<sup>18</sup> This conviction persists, even among those who champion the transformation of legal education. *See, e.g.*, ROY STUCKEY ET AL., CLINICAL LEGAL EDUC. ASS'N, *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP* (2007), available at [http://www.cleaweb.org/documents/bestpractices/best\\_practices-full.pdf](http://www.cleaweb.org/documents/bestpractices/best_practices-full.pdf); WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007).

ing aims.<sup>19</sup> Lawyers talked insider talk and behaved in insider ways as shorthand and as a signal. They satisfied ceremonial demands, sped up processing, and kept outsiders from thinking they could do what only licensed practitioners do. Hardly a system I found immediately appealing. But I realized that this was one answer to complex demands. And, whatever my objections, the legal system—including its cultural peculiarities—appeared credible enough.

What bothered me most, however, was that the exaggerated mysteriousness of the legal culture tended to obscure the connections between professional law practice and everyday problem solving. I began now and again to see that, for all its jargon and ritual and specialized knowledge, lawyering drew upon, acted in concert with, and redefined what everyone does in getting by day-to-day and in trying to change the world. In fact, I sensed but could not intelligibly describe how the seemingly strange and the utterly familiar defined one another. And I believed we should begin by understanding how we all solve problems and then understand professional lawyering as a variation on shared cognitive and cultural mechanics.<sup>20</sup>

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<sup>19</sup> For exploration of such themes, see, for example, RICHARD L. ABEL, *AMERICAN LAWYERS* (1989); RICHARD L. ABEL, *ENGLISH LAWYERS BETWEEN MARKET AND STATE: THE POLITICS OF PROFESSIONALISM* (2003); DEBORAH L. RHODE, *ACCESS TO JUSTICE* (2004); DEBORAH L. RHODE, *IN PURSUIT OF KNOWLEDGE: SCHOLARS, STATUS, AND ACADEMIC CULTURE* (2006); DEBORAH L. RHODE, *PRO BONO IN PRINCIPLE AND IN PRACTICE: PUBLIC SERVICE AND THE PROFESSIONS* (2005).

<sup>20</sup> For only a sample of literature that helped shape and deepen my thinking, see, for example, AUGUSTO BOAL, *THEATER OF THE OPPRESSED* (Charles A. McBride & Maria-Odilia Leal McBride trans., Theatre Communications Group 1985) (1974); JEROME S. BRUNER, *JACQUELINE J. GOODNOW & GEORGE A. AUSTIN, A STUDY OF THINKING* (1956); HAROLD CRUSE, *THE CRISIS OF THE NEGRO INTELLECTUAL* (1967); JOHN DEWEY, *LIBERALISM AND SOCIAL ACTION* (1935); JOHN DEWEY, *THE QUEST FOR CERTAINTY: A STUDY OF THE RELATION OF KNOWLEDGE AND ACTION* (1929); MICHEL FOUCAULT, *MADNESS AND CIVILIZATION: A HISTORY OF INSANITY IN THE AGE OF REASON* (Richard Howard trans., Vintage Books 1988) (1961); JOHN GAVENTA, *POWER AND POWERLESSNESS: QUIESCENCE AND REBELLION IN AN APPALACHIAN VALLEY* (1980); CLIFFORD GEERTZ, *Local Knowledge: Fact and Law in Comparative Perspective*, in *LOCAL KNOWLEDGE: FURTHER ESSAYS IN INTERPRETIVE ANTHROPOLOGY* 167 (1983); EUGENE D. GENOVESE, *ROLL, JORDAN, ROLL* (1974); TERENCE HAWKES, *STRUCTURALISM AND SEMIOTICS* (1977); THOMAS S. KUHN, *THE STRUCTURE OF SCIENTIFIC REVOLUTIONS* (1962); KURT LEWIN, *A DYNAMIC THEORY OF PERSONALITY* (Donald K. Adams & Karl E. Zener trans., 1935); KARL N. LLEWELLYN, *THE COMMON LAW TRADITION: DECIDING APPEALS* (1960); AUDRE LORDE, *I AM YOUR SISTER: BLACK WOMEN ORGANIZING ACROSS SEXUALITIES* (1985); AUDRE LORDE, *SISTER OUTSIDER* (1984); ALLEN NEWELL & HERBERT A. SIMON, *HUMAN PROBLEM SOLVING* (1972); FRIEDRICH NIETZSCHE, *THE WILL TO POWER* (Walter Kaufmann ed., Walter Kaufmann & R.J. Hollingdale trans., Vintage Books 1968) (1901); AMÉRICO PAREDES, *WITH HIS PISTOL IN HIS HAND* (1958); RICHARD RORTY, *Pragmatism, Relativism, and Irrationalism*, in *CONSEQUENCES OF PRAGMATISM* 160 (1982); RENATO ROSALDO, *CULTURE AND TRUTH: THE REMAKING OF SOCIAL ANALYSIS* (1989); FERDINAND DE SAUSSURE, *COURSE IN GENERAL LINGUISTICS* (Charles Bally et al. eds., Wade Baskin trans., 1959); STEVEN H. SHIFFRIN, *THE FIRST AMENDMENT, DEMOCRACY, AND ROMANCE* (1990); HERBERT A. SIMON, *ADMINISTRATIVE BEHAVIOR* (4th ed., Free Press 1997) (1947); ANN SWIDLER, *ORGANIZATION WITHOUT AUTHORITY: DILEMMAS OF SOCIAL CONTROL IN FREE SCHOOLS* (1979); *THIS BRIDGE CALLED MY BACK: WRITINGS BY RADICAL WOMEN OF COLOR* (Cherríe Moraga & Gloria Anzaldúa eds., 1981); ROBERTO MANGABEIRA UNGER, *FALSE NECESSITY: ANTI-NECESSITARIAN SOCIAL THEORY IN THE SERVICE OF RADICAL DEMOCRACY* (1987); Richard L. Abel, *A Comparative Theory of Dispute Institutions in Society*, 8 *LAW & SOC'Y REV.*

In any event, beginning to see the relationship between legal and everyday problem solving made me examine afresh my interpretation of the approach to law practice I already had found dismaying among the first wave of activist lawyers to hit East L.A.<sup>21</sup> In my limited experience, these lawyers too rarely worked with us—with individual clients, with families, with extended networks of diverse people, organizations, coalitions, and communities. They often appeared unable or unwilling to imagine how our knowledge of the problems we faced and the strategies we already employed might mesh well, enhance, or even potentially revolutionize what they did as professionals. I concluded that these activists, having explored a range of explicit options, consciously chose to practice the way they did.

I likely had figured wrong, however. In fact, my first few months of law school made me wonder exactly how these lawyers—or any lawyers—come to practice as they do. Even the best activist lawyer would seem to have been immersed in training that typically treated how lawyers think as different than—and superior to—how everyone else thinks. Such training made robust teamwork appear unrelated and perhaps antithetic to productive practice. Working with others as full equals felt vaguely ridiculous and certainly an impractical waste of time. Collaboration, though perhaps sometimes necessary, was to be conceptually separated from the real work at hand.

This message, to be sure, was more tacit than explicit. About law and not lawyering. About equating thinking like a lawyer with the doctrinal filtering of facts, rather than a remarkable range of ways of working with others to address situations that need changing. But the fact that so much of this passed unspoken may well have enhanced the capacity of law schools to

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217 (1973); Gary Bellow, *Turning Solutions into Problems: The Legal Aid Experience*, 34 NLADA BRIEFCASE 106 (1977); William L.F. Felstiner et al., *The Emergence and Transformation of Disputes: Naming, Blaming, Claiming . . .*, 15 LAW & SOC'Y REV. 631 (1980-81); Warren C. Haggstrom, *For a Democratic Revolution: The Grass-Roots Perspective*, in TACTICS AND TECHNIQUES OF COMMUNITY INTERVENTION 220 (John E. Tropman, John L. Erlich & Jack Rothman eds., 4th ed. 2001); Kenneth L. Karst, *Why Equality Matters*, 17 GA. L. REV. 245 (1983); Duncan Kennedy, *Form and Substance in Private Law Adjudication*, 89 HARV. L. REV. 1685 (1976); Duncan Kennedy, *The Structure of Blackstone's Commentaries*, 28 BUFF. L. REV. 205 (1979); Frank I. Michelman, *The Supreme Court, 1985 Term—Foreword: Traces of Self-Government*, 100 HARV. L. REV. 4 (1986); Frank I. Michelman, *Justification (and Justifiability) of Law in a Contradictory World*, in NOMOS XXVIII: JUSTIFICATION 71 (J. Roland Pennock & John W. Chapman eds., 1986); Dale Minami, *Asian Law Caucus: Experiment in an Alternative*, 3 AMERASIA J. 28 (1975); Herbert A. Simon, *Cognitive Processes of Experts and Novices*, 2 CAHIERS DE LA FONDATION ARCHIVES JEAN PIAGET 154 (1982); Herbert A. Simon, *The Structure of Ill Structured Problems*, 4 ARTIFICIAL INTELLIGENCE 181 (1973); Herbert A. Simon, *Theories of Bounded Rationality*, in DECISION AND ORGANIZATION (C.B. McGuire & Roy Radner eds., 1972); David M. Trubek, *Where the Action Is: Critical Legal Studies and Empiricism*, 36 STAN. L. REV. 575 (1984); Richard D. Parker, *Political Vision in Constitutional Argument* (Feb. 1979) (unpublished manuscript on file in Harvard Law School Library), quoted in HENRY J. STEINER, MORAL ARGUMENT AND SOCIAL VISION IN THE COURTS 205-06 (1987).

<sup>21</sup> See GERALD P. LÓPEZ, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE 1-5 (1992).

socialize future lawyers to this orientation.<sup>22</sup> Had the claim been made explicitly—had legal educators asked, “Should lawyers collaborate, with whom, in what ways?”—we all might well have dug down deep into our experiences and ideas, debated the descriptive accuracies and the prescriptive implications of various answers, and found ourselves appreciating the inevitable choices we make in designing systems and addressing problems of any sort.

Instead, the habits of mind and heart inculcated by law schools cast grave doubt on the very idea of systematic collaboration. This message encompassed lawyers working with a wide range of people filling diverse roles across the public, private, and civic sectors. Even if we could imagine that a financially powerful client could insist on close collaboration, we did not necessarily presume that the problem solving would improve. And legal education made deeply inconceivable (or at least absurdly utopian) the idea of regularly joining forces as equals with others, especially with those who live in places like East L.A. No matter how well-intentioned, the first wave of activist lawyers I had observed would have had to overcome legal education—on top of and mixed in with every other operable stereotype—if they were to team up as equals with us and with others like us.

I found myself at twenty-one beginning what would be a lifetime exercise—an exercise that worked from different directions toward the same aim. I tried to make the habitual unfamiliar again: to see what I could not typically see in our everyday problem solving by excavating and making explicit what we’ve made so routine that we no longer remain mindful of what we’re doing. At the same time, I tried to decode the law: to identify in what felt foreign about professional legal culture all that seemed rooted in ordinary life. Even in my early crude efforts to implement these exercises, even before discovering only several years later a range of social and biological scientists who had begun to build a formal body of knowledge about how we think and how we behave,<sup>23</sup> I could already discover the mundane

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<sup>22</sup> For the classic elaboration of this process, see DUNCAN KENNEDY, *LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY: A POLEMIC AGAINST THE SYSTEM* (critical ed., N.Y. Univ. Press 2004) (1983). See also Duncan Kennedy, *How the Law School Fails: A Polemic*, 1 *YALE REV. L. & SOC. ACTION* 71 (1970).

<sup>23</sup> In addition to other influences, strands of social science literature proved particularly helpful to me, beginning in the early 1970s. See, e.g., KENNETH J. ARROW, *SOCIAL CHOICE AND INDIVIDUAL VALUES* (1951); CLIFFORD GEERTZ, *THE INTERPRETATION OF CULTURES* (1973); *JUDGMENT UNDER UNCERTAINTY: HEURISTICS AND BIASES* (Daniel Kahneman, Paul Slovic & Amos Tversky eds., 1982); CLAUDE LÉVI-STRAUSS, *THE ELEMENTARY STRUCTURES OF KINSHIP* (Rodney Needham ed., James Harle Bell & John Richard von Sturmer trans., Beacon Press rev. ed. 1969) (1949); RICHARD NISBETT & LEE ROSS, *HUMAN INFERENCE: STRATEGIES AND SHORTCOMINGS OF SOCIAL JUDGMENT* (1980); ROGER C. SCHANK & ROBERT P. ABELSON, *SCRIPTS, PLANS, GOALS AND UNDERSTANDING* (1977); THOMAS C. SCHELLING, *THE STRATEGY OF CONFLICT* (1960); HERBERT A. SIMON, *ADMINISTRATIVE BEHAVIOR* (4th ed. 1997) (1947); George A. Miller, *The Magical Number Seven, Plus or Minus Two: Some Limits on Our Capacity for Processing Information*, 63 *PSYCHOL. REV.* 81 (1956); Marvin Minsky, *A Framework for Representing Knowledge*, in *THE PSYCHOLOGY OF COMPUTER VISION* 211 (Patrick Henry Winston ed., 1975), available at <http://web.media.mit.edu/~minsky/papers/Frames/frames.html>; Amos Tversky & Daniel Kahneman, *Availability: A Heuristic for Judging Fre-*

in the structure of what I found foreign in law, and I could already perceive in professional ceremonies evidence of the commonplace.<sup>24</sup>

This new exercise was not an attempt to prove that professional lawyering was a fiction or that everyday people I knew in places like East L.A. were superhuman. I did not believe either was true then, and I do not believe either is true today.<sup>25</sup> I simply had not found persuasive the standard account of how lawyers think in ways disconnected from how everyone else thinks. And I needed to develop my own view of expertise, one that sorted through both my own experiences and other available evidence of how humans think and behave. To do so, I wanted to see as far as I could through the sumptuous trappings and cultivated awe that make the work of lawyers feel nearly beyond description to large numbers of law school teachers, students, and graduates. And I wanted to see as far as I could through the plainclothes wrap and nurtured dullness that make the problem solving ordinary people pursue appear to many (including most scholars) utterly unworthy of sustained study.

Searching for continuities helped me begin to appreciate—and strive to explicitly describe—both what we all do in solving problems and what lawyers (and other professionals) do in helping others solve problems. Particularly at twenty-one, I badly needed to begin making sense of the contrasting worlds I found myself straddling. With the help and encouragement of others, I found sustenance in trying to sketch a vision of practice where people I knew in places like East L.A. and lawyers I met at places like Harvard Law School could both be fully human, rather than smaller or larger than life.

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In the final experience, I'm now twenty-four. After taking time off, I chose to return to my third year.

My return did not signal a rejection or even a revision of my initial assessment of law school or my expectations for learning. I still wanted to learn what lawyers do when they do what lawyers do well. And, even more than before, I regarded legal education as, at best, a misdirected underachiever. Nor did my return indicate I had “grown up.” I knew I still had

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*quency and Probability*, 5 COGNITIVE PSYCHOL. 207 (1973); Amos Tversky, *Features of Similarity*, 84 PSYCHOL. REV. 327 (1977); Robert Oppenheimer, Book Review, 66 SEWANEE REV. 481 (1958) (reviewing JEROME S. BRUNER, JACQUELINE J. GOODNOW & GEORGE A. AUSTIN, A STUDY OF THINKING (1956)).

<sup>24</sup> This cultivated habit proved crucial to my earliest published portrayal of lawyering, Gerald P. López, *Lay Lawyering*, 32 UCLA L. REV. 1 (1984). For a wonderful rendering of law through a parallel perspective, see ANTHONY G. AMSTERDAM & JEROME BRUNER, MINDING THE LAW (2000).

<sup>25</sup> Such grotesque caricatures of the rebellious vision appear with remarkable frequency in the literature on lawyering. Now and then, I cannot avoid responding. See, e.g., Gerald P. López, *An Aversion to Clients: Loving Humanity and Hating Human Beings*, 31 HARV. C.R.-C.L. L. REV. 315 (1996). For a distinguished analysis of those who routinely distort the assumptions, aspirations, and methods associated with rebellious lawyering, see Ascanio Piomelli, *Appreciating Collaborative Lawyering*, 6 CLINICAL L. REV. 427 (2000).

lots of maturing to do. I certainly had lots of catching up to do. But I was ready enough, equipped with a point of view about how I planned to train.

From that point forward, I had promised myself I would treat law school the way my Grandfather, my Dad, and my Mom treated work. Work for them was not just a job, not even just a job they did honorably. For Grandpa, Dad, and Mom, work was a vocation.<sup>26</sup> They tried always to get better at what they did, better at collaborating with others, better at imagining how they might design what they did with others. Using whatever was available, making of their circumstances and of themselves what only imaginative bricoleurs might, Grandpa, Dad, and Mom aimed to enhance their capacity to solve problems in the course of carrying out orders.

Newly dedicated to treating legal education as a vocation, I brought back a modestly lucid portrait of what lawyers do. I understood more explicitly than when I began law school that what lawyers do well is an extension of, and should be connected to, what everyone does when trying to cope and thrive within overlapping systems they at once accept and challenge. Yes, that meant I chose those small number of electives that focused on the dynamics of problem solving, the connections between diverse problem solvers, and the politics of systems. (Gary Bellow's live-client clinic and Frank Sander's taxation course provide two examples.)<sup>27</sup> But even when I found myself registering for a conventional doctrinal course, I pledged to see each case and every discussion as an opportunity to examine what lawyers did with others in addressing particular problems within systems that could indeed declare truths and yet not entirely control perceptions, plans, and trajectories.<sup>28</sup>

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<sup>26</sup> For illustrative materials on work and vocation, see JOANNE B. CIULLA, *THE WORKING LIFE: THE PROMISE AND BETRAYAL OF MODERN WORK* (2000); AL GINI, *MY JOB, MY SELF: WORK AND THE CREATION OF THE MODERN INDIVIDUAL* (2000); BRIAN J. MAHAN, *FORGETTING OURSELVES ON PURPOSE: VOCATION AND THE ETHICS OF AMBITION* (2002); Carol M. Gregg, *Discover "Vocation": An Essay on the Concept of Vocation*, J. C. & CHARACTER, Dec. 2004, <http://www.collegevalues.org/articles.cfm?a=1&id=1365>. For a study of those entering the teaching profession, see STEVE FARKAS ET AL., *PUBLIC AGENDA, A SENSE OF CALLING: WHO TEACHES AND WHY* (2000), available at [http://www.publicagenda.org/files/pdf/sense\\_of\\_calling.pdf](http://www.publicagenda.org/files/pdf/sense_of_calling.pdf). For interpretations and evocations of vocation, see, for example, *HOW WE LIVED: A DOCUMENTARY HISTORY OF IMMIGRANT JEWS IN AMERICA, 1880-1930* (Irving Howe & Kenneth Libo eds., 1979); IRA SHOR, *CRITICAL TEACHING AND EVERYDAY LIFE* (1980); ROBERTO MANGABEIRA UNGER, *DEMOCRACY REALIZED: THE PROGRESSIVE ALTERNATIVE* (1998); Kenneth L. Karst, *The Coming Crisis of Work in Constitutional Perspective*, 82 CORNELL L. REV. 523, 530-33 (1997); Mary Romero, *Day Work in the Suburbs: The Work Experience of Chicana Private Housekeepers*, in *THE WORTH OF WOMEN'S WORK: A QUALITATIVE SYNTHESIS 77* (Anne Statham et al. eds., 1988); Renato I. Rosaldo, *Grief and a Headhunter's Rage: On the Cultural Force of Emotions*, in *TEXT, PLAY, AND STORY: THE CONSTRUCTION AND RECONSTRUCTION OF SELF AND SOCIETY 178* (Edward M. Bruner ed., 1984); Susan L. Lubeck, *Dealing Honestly with the Organizer's Needs: Lessons of Work with a Latina Girls Group* (1988) (unpublished manuscript, on file with author).

<sup>27</sup> For the pedagogical assumptions and aspirations that grounded Sander and Bellow, see, for example, GARY BELLOW & BEA MOULTON, *THE LAWYERING PROCESS: MATERIALS FOR CLINICAL INSTRUCTION IN ADVOCACY* (1978); Frank E.A. Sander, *Learning by Doing*, HARV. L. SCH. BULL., Apr. 1974, at 16.

<sup>28</sup> For one example of the literature that explores the power of law to ordain truth, see Jack M. Balkin, *The Proliferation of Legal Truth*, 26 HARV. J.L. & PUB. POL'Y 5 (2003). For mid-

I had bit off more than I could chew. I do not believe I lacked resolve. But my embarrassingly immature way of handling the first two years of law school (and the last two years of college) left me lacking what I needed to realize my ambitions. In fact, when I found myself having to relearn such basics as reading carefully in advance and showing up to every class eager to learn, I recognized I had some distance to travel before developing the ideas, skills, and sensibilities required to implement effectively my new approach. All my newfound seriousness could hardly instantaneously revamp how I dealt with my student work.

Predictably enough, my performance during my third year routinely lagged behind my promises. Beyond struggling to relearn the work ethic I so admired in others and emulated on manual labor jobs I held as a kid, I had to find guides to help me identify inside of law school what I had for some time been looking for outside of legal education. Luckily, I spotted some very good coaches: faculty members, fellow students, administrators, lawyers, court clerks, clients. And I began to tap the teacher in me to mimic and absorb and customize what others taught. I tried hard to blur the boundaries between legal education and everyday life precisely in order to recognize what connection each did have and could have to the other. If I succeeded, though, I did so not nearly as often as I would have liked.

In trying to see law school through lawyering eyes, at least now and then I understood a bit differently than before what I already had experienced in my first two years. I knew legal education mainly encouraged lawyers to believe they did not need to know much at all about the client communities and larger systems with which they dealt. But in my third year, I sensed law school training instilled in future lawyers the belief that what lawyers do does not typically require understanding how a wide variety of others frame problems, how to design and implement strategies, or how to monitor and evaluate feedback. How could such training promote respect for what others know, for making the most of limited resources, or for enabling collective growth about solving problems more effectively?

In failing to develop a coherent approach to problem solving, though, law schools were not alone. Or at least that's the inference I tentatively drew from what I saw around me. Diverse problem solvers across metropolitan Boston behaved in much the same way as many activist lawyers. These problem solvers did what they habitually did. They remained largely unaware of what most others were doing and how well their own work meshed with what others did. And they did not reveal much interest in whether their interventions improved the circumstances of those whose lives they hoped to help improve. Formal and informal training apparently had prepared all these non-lawyers to practice their work in much the same way law school

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twentieth century examples of traditional casebooks reflecting and aspiring to teach a sophisticated idea of lawyering, see, for example, VERN COUNTRYMAN, *THE LAWYER IN MODERN SOCIETY* (1962); ADDISON MUELLER, *CONTRACT IN CONTEXT* (1951). See also Addison Mueller & Fleming James, Jr., *Case Presentation*, 1 J. LEGAL EDUC. 129 (1948).

groomed law students to picture their work in and for communities like East L.A.

Happily, that was not all I saw upon my return. On campus and in places like Roxbury and Dorchester and Somerville and Jamaica Plain, I found problem solving and problem-solving training that challenged the prevailing norms and paralleled what, in my very early years, I first saw in my parents and others. You could detect, I think, a partially articulated idea of how lawyers might work as equals with people historically regarded as inferior. Certainly, there was a shared sense that something much different from what dominated our training and our experiences could express how we just might team up. In circulation was a powerfully attractive and evocative image: lawyers within networks of collaborating problem solvers, learning from one another, taking on “all-powerful” systems, sorting through and naming what together they found themselves doing.

I toiled my third year to develop a respectable view of the work lawyers do and, as importantly, how that work fits within the larger world of problem solving, of which lawyering is an illustration and a part. At some point it dawned on me: Whatever I do will inevitably express how I want to work and live with others. I knew enough at this point to laugh at myself. What exaggerated earnestness. Besides, what I regarded as a big insight was undoubtedly already well understood by virtually everyone else around me and even well integrated into their behavior.

Still, I enjoyed comprehending how a way of working and a way of living mutually define one another. I liked being able to make even more sense than before of my Dad and Mom and Grandpa and mentors and, yes, my big brother and those he ran with, in and out of the joint. I liked being able to explain in a different fashion than I could earlier why I admired Pope John XXIII. I liked being able to describe why people utterly disparate along seemingly every dimension still evoked in me the desire to emulate them and still reminded me of one another. If only tenuously, Cambridge connected to East L.A.

#### REBELLIOUS VISION BRIEFLY SKETCHED

In several years time, the expanse between my performance and my aspirations had shrunk some. And, with the help of many, I already had begun to see two significant ways of living—the reigning vision and the rebellious vision. Within each way of living, I saw a corresponding idea of problem solving. And as one instance and one part of each respective way of problem solving, I pictured a corresponding vision of progressive law practice.

Consider only some questions to which regnant and rebellious visions offer opposing answers: Who qualifies as an expert? What counts as valuable knowledge? With whom do experts collaborate in framing problems and vetting strategies? Monitoring and evaluating interventions? In what ways do problem-solving and living practices define one another? On close in-

spection, these two ways of living and problem solving reveal conflicting empirical assumptions about human behavior and contrasting normative aspirations about future communal trajectories. Perhaps miniature sketches will stir up the contrasts that mold these two visions and our experiences.<sup>29</sup>

Experts rule in the reigning vision. They behave—and others come to rely upon them—as if they can see panoramically. In framing problems and choices, identifying and implementing worthy strategies, and deciding how much and whose feedback qualifies as necessary for effective monitoring and evaluation, these experts collaborate principally and often exclusively with one another. They issue mandates. Through diverse intermediaries, subordinates typically comply in order to be regarded as doing their jobs as workers and as citizens.

The reigning vision pervades most systems in which we work and live—across public, private, and civic realms. Through these systems, we learn and teach which people should be regarded as experts and which people should be regarded as worthy collaborators. Who gets classified as an expert and as a worthy collaborator can vary from context to context. But, across contexts, in the reigning approach we typically pick ahead of time those worth listening to and learning from. And in most systems, we pick elites.

It's not just elites selecting and defending the selection of elites. The reigning vision inclines us *all* to think and feel we should pick elites to collaborate with one another and to govern our lives. We sometimes insist it's the only practicable way to go. But that's not the entire story—or the most important justification. The reigning vision regards everyone other than elites and the narrow band of others with whom they join forces as unable, or at least unwilling, to contribute to expert problem solving. Pointed convictions about human nature and potential inform this theory.

The powerfully familiar models of human and organizational behavior that reflect and inform the reigning vision entail predictable (which is not to say inevitable) tendencies. Those who operate within its influence demonstrate too little interest in regularly adapting aims and means to what unfolding events and relationships reveal. They exhibit too little curiosity

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<sup>29</sup> Perhaps searching for likenesses, I find the rebellious and regnant visions evoked (if through other labels and analytical modes) in many fields. For only a very small sample, see, for example, Sandro Galea et al., *Collaboration Among Community Members, Local Health Service Providers, and Researchers in an Urban Research Center in Harlem, New York*, 116 PUB. HEALTH REP. 530 (2001); Susan Helper et al., *Pragmatic Collaborations: Advancing Knowledge While Controlling Opportunism*, 9 INDUS. & CORP. CHANGE 443 (2000); Bill Ong Hing, *Beyond the Rhetoric of Assimilation and Cultural Pluralism: Addressing the Tension of Separatism and Conflict in an Immigration-Driven Multiracial Society*, 81 CAL. L. REV. 863 (1993); Dani Rodrik et al., *Institutions Rule: The Primacy of Institutions over Geography and Integration in Economic Development*, 9 J. ECON. GROWTH 131 (2004); Shahid Yusuf & Joseph E. Stiglitz, *Development Issues: Settled and Open*, in FRONTIERS OF DEVELOPMENT ECONOMICS: THE FUTURE IN PERSPECTIVE 227 (Gerald M. Meier & Joseph E. Stiglitz eds., 2001); Anne Marie Goetz & John Gaventa, *Bringing Citizen Voice and Client Focus into Service Delivery* (Inst. of Dev. Studies Working Paper No. 138, 2001), available at <http://www.ids.ac.uk/ids/bookshop/wp/wp138.pdf>.

about the institutional dynamics through which routines and habits form. They spend too little energy discovering how well strategies work for diverse populations. They believe too little in our capacity to shape a future outside the limits of existing systems.

Yet these tendencies need not be understood as disturbing, at least from the perspective of the reigning vision. They may be interpreted as deviations that, over time, will self-correct. And they may well be targeted, at some point, for improvement. Most importantly, though, these propensities vindicate proponents' sober insistence that experts *should* rule. The limits of human capacity—and the differences between experts and everyone else in dealing with these limits—explain why we should continue to embrace the reigning vision as the best imaginable way of problem solving and of living.

In mounting a challenge to the reigning vision, the rebellious rival unites key fundamentals in pursuit of radical democracy, where equal citizenship is a concrete everyday reality and not just a vague promise. In the rebellious vision, everyone collaborates in problem solving, seeking out and sharing knowledge about existing problems, available resources, and useful strategies. Varied problem solvers connect those who face problems with those in public, private, and civic realms who help address them, building networks of valuable know-how among diverse problem solvers and helping shape and meet common goals.

Whenever problems remain unaddressed even after making such connections, problem solvers attempt to fill voids by scavenging around for resources, leveraging what is available with what may never have been tried, and assembling, as needed, one-time trouble-shooting squads or more permanent full-fledged partnerships. Committed routinely to monitoring and evaluating strategies, rebellious practitioners aim always to enhance problem-solving capacity. Problem solving rebelliously pursued melds street savvy, technical sophistication, and collective ingenuity into a compelling practical force.<sup>30</sup>

Working in this way aims to produce, and depends upon, networks of co-eminent institutions and individuals collaborating with one another. Such collaborators consistently engage and learn from one another, neither bottom-up nor top-down, but every which way at once. They revise, time and again, provisional goals and methods for achieving them; search constantly for how better to realize institutional, network, and individual aspirations; monitor and evaluate, “warts and all,” what’s working and what’s not; use

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<sup>30</sup> By aiming to enhance information-sharing and working to decrease asymmetries, the rebellious vision intersects the “economics of information.” For seminal work central to the development of the field, see JOSEPH E. STIGLITZ, *GLOBALIZATION AND ITS DISCONTENTS* (2002); JOSEPH E. STIGLITZ & CARL E. WALSH, *PRINCIPLES OF MACROECONOMICS* (3d ed. 2002); JOSEPH E. STIGLITZ, *WHITHER SOCIALISM?* (1994); George A. Akerlof, *The Market for “Lemons”: Quality Uncertainty and the Market Mechanism*, 84 Q.J. ECON. 488 (1970); Michael Spence, *Competitive and Optimal Responses to Signals: An Analysis of Efficiency and Distribution*, 7 J. ECON. THEORY 296 (1974).

feedback to shine new light upon both future possibilities and current practices.

In this way of working, problem solvers collaborate as equals both in response to known limitations (most centrally, bounded rationality)<sup>31</sup> and in pursuit of articulated aspirations (most pivotally, radically democratic and egalitarian life).<sup>32</sup> Problem solving so conceived does not presume that anyone knows so much or sees so well to make the calls alone about any or all problems. Not the street activist, not the president, not the quantitative analyst, not the lawyer. Nor does it presume the effective response to bounded rationality inevitably must be mindless institutional routines or individual habits. Numbing variations on Henry Ford's assembly line need not be how we organize work or life.

This way of problem solving aims to support and reinforce—and, now and then, take the lead in demonstrating—how we might live together in a fully robust democracy. That goal cannot be achieved easily, much less automatically. Ideology does not work in this way.<sup>33</sup> But rebellious variations of problem solving (lawyering, prominent among them) and radical democracy parallel and enrich one another. Trying collectively to secure cooperation in the midst of unavoidable complexity, difference, and vulnerability—a

<sup>31</sup> The literatures on bounded rationality are vast and deep. To discover the origins of and radical challenges presented by bounded rationality, we should turn to the work of Herbert Simon and his collaborations with Allen Newell. See, e.g., ALLEN NEWELL & HERBERT A. SIMON, *HUMAN PROBLEM SOLVING* (1972); HERBERT A. SIMON, *ADMINISTRATIVE BEHAVIOR* (4th ed., Free Press 1997) (1947). For those interested in how Simon's original idea of bounded rationality relates to the work of others, compare Simon's original formulation in *Administrative Behavior* with Chester Barnard's ideas of opportunism and strategic behavior, see CHESTER I. BARNARD, *THE FUNCTIONS OF THE EXECUTIVE* (1938), which, in turn, Barnard derived from John R. Commons' theoretical account of how behavior deviated from the neoclassical claims of maximization of subjective expected utility, see JOHN R. COMMONS, *INSTITUTIONAL ECONOMICS: ITS PLACE IN POLITICAL ECONOMY* (1934), a work Simon often praised.

<sup>32</sup> For visions of and methods for achieving democracy and equality radically conceived, see, for example, JOHN DEWEY, *LIBERALISM AND SOCIAL ACTION* (1935); JOHN DEWEY, *THE QUEST FOR CERTAINTY: A STUDY OF THE RELATION OF KNOWLEDGE AND ACTION* (1929); FRANK I. MICHELMAN, *BRENNAN AND DEMOCRACY* (1999); HANNA FENICHEL PITKIN, *THE ATTACK OF THE BLOB: HANNAH ARENDT'S CONCEPT OF THE SOCIAL* (1998); HANNA FENICHEL PITKIN, *THE CONCEPT OF REPRESENTATION* (1967); STEVEN H. SHIFFRIN, *DISSSENT, INJUSTICE, AND THE MEANINGS OF AMERICA* (1999); ROBERTO MANGABEIRA UNGER, *FALSE NECESSITY: ANTI-NECESSITARIAN SOCIAL THEORY IN THE SERVICE OF RADICAL DEMOCRACY* (1987); ROBERTO MANGABEIRA UNGER & CORNEL WEST, *THE FUTURE OF AMERICAN PROGRESSIVISM: AN INITIATIVE FOR POLITICAL AND ECONOMIC REFORM* (1998); Warren C. Haggstrom, *For a Democratic Revolution: The Grass-Roots Perspective, in TACTICS & TECHNIQUES OF COMMUNITY INTERVENTION* 220 (John E. Tropman, John L. Erlich & Jack Rothman eds., 4th ed. 2001); Hanna Fenichel Pitkin, *The Idea of a Constitution*, 37 J. LEGAL EDUC. 167 (1987); Bernice Johnson Reagon, *Coalition Politics: Turning the Century, in HOME GIRLS: A BLACK FEMINIST ANTHOLOGY* 343 (Barbara Smith ed., 1983); Andrea Cornwall & John Gaventa, *From Users and Choosers to Makers and Shapers: Repositioning Participation in Social Policy* (Inst. of Dev. Studies, Working Paper No. 127, 2001), available at <http://www.ids.ac.uk/ids/bookshop/wp/wp127.pdf>.

<sup>33</sup> See generally CLIFFORD GEERTZ, *Ideology as a Cultural System, in THE INTERPRETATION OF CULTURES* 193 (1973). For an ambitious theory of ideology compatible with Geertz's views and my own, see J.M. BALKIN, *CULTURAL SOFTWARE: A THEORY OF IDEOLOGY* (1998).

synonym for rebellious problem solving—takes as its point of departure and declares as its goal engaging equals in understanding and enhancing life.

#### SOME THOUGHTS YOU ALMOST CERTAINLY HAVE ANTICIPATED

In thinking and speaking about transforming the world, Latinas and Latinos too often focus on the need to change people other than ourselves and practices other than our own. In this sense, as in others, we are like everyone else. “If we could only get rid of them.” “If we could only alter their ways of doing things.” “If we could only,” we’d be on our way to better days. In this way of thinking and talking, in this way of processing experiences and inventing possible pathways, changing people other than ourselves and practices other than our own passes for bringing into being the world we have so long imagined.

I understand the impulse. I can name plenty of people and practices we should banish. And I see no reason to pretend otherwise. Some people and practices impose great damage on humanity including, and sometimes especially, on Latinas and Latinos. I have worked with some. I have lived with some. I know their ways, even if I can never completely grasp their ruthlessly and relentlessly self-serving and self-excusing qualities. We should name these people and practices, call them out, minimize their formal authority and informal influence. And, if we do, we might well be on our way to better days.

But it’s a decisive mistake to think we can change systems without changing ourselves. We’re implicated in everything we may aim to alter. No news there, some would reply. I agree. Antonio Gramsci taught us the importance of exploring how we persuade one another of the legitimacy of the very institutions we should regard as deeply objectionable.<sup>34</sup> And, even without knowing the word hegemony, many in kitchens and factories and fields have pointed out our collective acquiescence in, and defense of, systems we otherwise claim to regard as deeply antihuman.

But we’re all better at acknowledging our collusion than embracing the implications of this admission. Even the best among us can deny our roles in maintaining the status quo. Some of us disavow our complicity only occasionally; others of us routinely; others still habitually deny obvious disavowals. Our stock of stories and arguments blame “them” and immunize “us” more than they do anything else. We emotionally distance ourselves from the involvement we formally acknowledge.

It’s not that we’re incapable of reflection. We know how to critique. We may even call into question our own decisions. The trouble is, we too often critique and then do nothing more. Like witnesses to the Holocaust, like the children of the witnesses, we seem unable or at least unwilling to

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<sup>34</sup> See generally ANTONIO GRAMSCI, SELECTIONS FROM THE PRISON NOTEBOOKS (1971). For insight into Gramsci’s role in modern critical thought and radical politics, see Duncan Kennedy, *Antonio Gramsci and the Legal System*, 6 ALSA F. 32 (1982).

face *in a sustained way* what we might have done differently. Familiar critiques serve as just another available rationalization of our own collusion. Through them, we anesthetize ourselves—and perhaps wish to immunize ourselves.

The troubles may run even deeper. We cannot be entirely certain if our denial reflects a choice, a reflex, or some entangled combination. Equipped with rapidly developing scientific insights, we increasingly recognize just how much stock cognitive and cultural mechanisms drive our perceptions and portrayals.<sup>35</sup> Powerful evidence of “automaticity” lead some to question—yet again—the very idea of consciousness or will.<sup>36</sup> Yet often enough we experience ourselves “choosing” to behave as we do, allowing us credibly to picture ourselves changing what otherwise can seem like life on autopilot.

Some may not much care whether or not our denial gets depicted as a choice, reflex, or some admixture. They simply find such an account of our involvement incredible. Why would we obstruct our own progress? Why would we cooperate—much less conspire—to strengthen the very systems that debase the lives of millions? Why especially would we Latinas and Latinos prop up a status quo deeply damaging to at least some of us and, almost always, to some of those we love?

I do not pretend I can point to a single explanation. I cannot even claim I search for one with the plot-resolving power such questions aim for in the often vain search for “motive.”<sup>37</sup> But the impossibility of providing an elegant answer to the question “why” does not make our cooperation any less potent or sustained. If anything, we dig ourselves deeper and deeper into our ruts by passionately rejecting that we contribute to the unthinkable, to the objectionable. In avoidable circumstances, we sustain precisely what we

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<sup>35</sup> With roots in the work of Jerome Bruner, AI Newell, and especially Herbert Simon, the modern required reading on these topics includes *HEURISTICS AND THE LAW* (Gerd Gigerenzer & Christoph Engel eds., 2006); *BOUNDED RATIONALITY: THE ADAPTIVE TOOLBOX* (Gerd Gigerenzer & Reinhard Selten eds., 2001); Daniel G. Goldstein & Gerd Gigerenzer, *Models of Ecological Rationality: The Recognition Heuristic*, 109 *PSYCHOL. REV.* 75 (2002); Anthony G. Greenwald et al., *A Unified Theory of Implicit Attitudes, Stereotypes, Self-Esteem, and Self-Concept*, 109 *PSYCHOL. REV.* 3 (2002); Daniel Kahneman & Amos Tversky, *Choices, Values, and Frames*, 39 *AM. PSYCHOLOGIST* 341 (1984); Daniel Kahneman & Amos Tversky, *On the Reality of Cognitive Illusions*, 103 *PSYCHOL. REV.* 582 (1996); Amos Tversky & Daniel Kahneman, *Extensional Versus Intuitive Reasoning: The Conjunction Fallacy in Probability Judgment*, 90 *PSYCHOL. REV.* 293 (1983); Amos Tversky & Daniel Kahneman, *Rational Choice and the Framing of Decisions*, 59 *J. BUS.* S251 (1986); Mark P. Zanna & John K. Rempel, *Attitudes: A New Look at an Old Concept*, in *THE SOCIAL PSYCHOLOGY OF KNOWLEDGE* 315 (Daniel Bar-Tal & Arie W. Kruglanski eds., 1988).

<sup>36</sup> Perhaps the most prominent scientist exploring such questions is John Bargh. See, e.g., John A. Bargh & Erin L. Williams, *The Automaticity of Social Life*, 15 *CURRENT DIRECTIONS PSYCHOL. SCI.* 1 (2006).

<sup>37</sup> Cf. STEPHEN GREENBLATT, *WILL IN THE WORLD: HOW SHAKESPEARE BECAME SHAKESPEARE* 323-25 (2004) (arguing that, in his later plays, Shakespeare excises (or at least obscures) motive, a major shift from earlier work where he prominently features knowable intentions).

may aim to change.<sup>38</sup> Our disclaimers of involvement serve torturous purposes.

I am never quite certain what we fear. Acknowledging our own cooperation with things as they are does not signal a complete failure to fight back. History—and our own experiences—tell us otherwise. We need not deny our complicity in order to regard ourselves as good people, as progressive Latinas and Latinos, as seriously taking on the world. If we more openly permitted one another—and more willingly expected one another—to admit our complex and contradictory entanglements, we might well begin to put an end to all-too-familiar (and often far-fetched) denials. The outrage we so often express at the very notion of being implicated in what we must modify might no longer fly.

I certainly am not encouraging us to substitute declarations of “I know, I know, what can I do?” for disclaimers of “Are you saying I am part of the problem?” Self-exonerating admissions and passionate denials are intimately related forms of irresponsible and damaging behavior. What we face is the need for a concerted effort to work with one another to learn how better to avoid reinforcing what we claim to want to transform. By vowing to meet this challenge, we would call ourselves to account in the way the best among us already do. And, in coming clean about our own mix of obedience and rebellion, we just might enable ourselves to be more fully human.

Effectively changing ourselves as part of changing systems turns out to be as gruelingly difficult as it is joyously rewarding. We take our stands, like everyone else, from within the very blend of forces that makes opposition uncertain and perilous. Deep biases pervade systems of every sort. Think only of how class, gender, and sexuality historically have altered interactions between individuals, groups, and neighborhoods. Particularly in celebration of *Latinos and the Law*, though, we should especially think of race.<sup>39</sup> Race and racism remain central.<sup>40</sup> Some will regard me as unable to let go of the past.<sup>41</sup> But I am talking about right now. The truth today about

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<sup>38</sup> Drawing upon and extending decades of cognitive science, and in an apparent nod to Gramsci, John Jost offers explanations of how we defend existing systems and justify the roles we play within them. For an illustration of what he labels “system justification theory,” see, for example, John T. Jost et al., *Non-Conscious Forms of System Justification: Implicit and Behavioral Preferences for Higher Status Groups*, 38 J. EXPERIMENTAL SOC. PSYCHOL. 586, 593 (2002).

<sup>39</sup> Of course the most common phenomena we confront are at the intersections of such categories. See generally Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139.

<sup>40</sup> For a powerful evocation of race and the criminal justice system, see Dorothy E. Roberts, *Criminal Justice and Black Families: The Collateral Damage of Over-Enforcement*, 34 U.C. DAVIS L. REV. 1005, 1011-12 (2001).

<sup>41</sup> Influential scholars insist evidence does not support the existence of widespread and difficult-to-uproot bias. See, e.g., Amy L. Wax, *Discrimination as Accident*, 74 IND. L.J. 1129 (1999) (arguing that both the prevalence and significance of unconscious biases against women and racial minorities in employment settings are overstated and extant antidiscrimination

race and racism is both less sweet and more complicated than “colorblind” advocates acknowledge.<sup>42</sup>

I profoundly appreciate the great contrast between how race and racism work today and how race and racism worked in the mid-1950s. When I was eight, people all over L.A. regarded as justified the subordination of those of us who lived in places like East L.A., Watts, Pacoima, San Pedro, Gardena. When I was in my early twenties, a surprising number had absorbed the anger and passion and justice of the modern Civil Rights Movement, had downsized considerably (at least in mixed company) their racist name-calling, and considered remedying institutional discrimination against various targeted and neglected groups. Today, in 2009, the sophisticated stock account proclaims that race does not much matter and probably should not matter at all. Racism, in this popular portrayal, has diminished greatly and perhaps even vanished in everyday life, except of course for vulgar holdouts whose numbers are typically trivial and whose presence should not trouble us much.<sup>43</sup>

If, like me, you find today’s sophisticated stock account inconsistent with experience, you should know that modern science sides with us. A wide range of scholars have gathered evidence that reveals potent bias towards people of color and other outgroups.<sup>44</sup> Operating largely implicitly, this bias powerfully shapes behavior even as (or perhaps especially because)

laws are therefore misguided). For a response, see Michael Selmi, *Response to Professor Wax: Discrimination as Accident: Old Whine, New Bottle*, 74 IND. L.J. 1233 (1999).

<sup>42</sup> For a striking exploration of colorblindness in college and university admissions decisions, see Devon W. Carbado & Cheryl I. Harris, *The New Racial Preferences*, 96 CAL. L. REV. 1139 (2008).

<sup>43</sup> For revealing debate, we need look only at the observations made in anticipation of and response to the recent voting rights case before the Supreme Court. See Robert Barnes, *High Court to Weigh Relevance of Voting Law in Obama Era*, WASH. POST, Apr. 1, 2009, at A1 (“Is a law conceived in the time of Jim Crow still relevant in the age of Barack Obama?”); Adam Liptak, *Review of Voting Rights Act Presents a Test of History v. Progress*, N.Y. TIMES, Apr. 28, 2009, at A16 (“Obama inexorably shapes how we understand Section 5 [of the Voting Rights Act] today.” (quoting University of Michigan Law School Professor Ellen Katz)); *id.* (“Theodore M. Shaw, a law professor at Columbia and a former president of the NAACP Legal Defense and Educational Fund Inc., said . . . ‘We’ve had a profound moment, and we’re in a different place . . . But race still plays powerfully in electoral politics in this country. If it weren’t for the Voting Rights Act, there would be no President Obama.’”); David G. Savage, *Justices Question Voting Law: The Supreme Court Appears Poised to Strike Down a Provision that Requires Election Supervision for Southern States*, L.A. TIMES, Apr. 30, 2009, at A15 (quoting former Texas Solicitor General Gregory Coleman as saying that the Voting Rights Act is no longer necessary because “[t]imes have changed”); Peter Wallsten & David G. Savage, *Obama Win Used Against Rights Laws: Conservatives Say Black Victory Erases Need for Voting Act*, CHI. TRIB., Mar. 15, 2009, at C5 (“Does the election of a black president mean racism is no longer a factor in American politics? And are civil rights laws outdated in the age of Obama?”); see also Leslie Fulbright, *Civil Rights*, S.F. CHRON., Jan. 21, 2009, at A7 (“Since Obama won the election Nov. 4, there has been a renewed focus on the civil rights movement and the Rev. Martin Luther King Jr., who would have turned 80 this year. African Americans have compared the presidency to landing on the moon.”).

<sup>44</sup> To sample very high quality legal literature, see IAN AYRES, *PERVASIVE PREJUDICE?: UNCONVENTIONAL EVIDENCE OF RACE AND GENDER DISCRIMINATION* 12-13 (2001); Anthony G. Greenwald & Linda Hamilton Krieger, *Implicit Bias: Scientific Foundations*, 94 CAL. L. REV. 945, 955-58 (2006); Jerry Kang, *Cyber-Race*, 113 HARV. L. REV. 1130, 1138-47 (2000);

it contradicts conscious beliefs, attitudes, and intentions.<sup>45</sup> There are many willful racists, to be sure. But research suggests we often do not know our own minds and hearts—especially our heightened race-consciousness and our racial biases. Today, bias and discrimination and subordination sculpt the very same world in which so many insist “we’re over all that.”<sup>46</sup>

With science now telling us that carefully gathered and analyzed evidence confirms the prominence of race and racism, we may feel vindication. An increasingly maligned interpretation of the world finds confirmation in rigorous empirical studies. But this information may leave us feeling as disturbed as comforted. How can we root out mental processes that humans appear not to recognize and yet publicly deplore? If bias lies beneath our current awareness, if bias gets captured in stocks of stories and arguments routinely triggered at lightning speed by endless stimuli, what chances do we have for productive intervention?

Neither my own work, nor the experiences of others, nor the very best ideas offered by talented scholars amount to a proven “de-biasing” game plan. But not knowing exactly what to do about our current condition hardly argues for silence or denial or both. We can and should talk about race and racism—especially when others would have us regard them both as irrelevant. And we should consciously probe for ways in which we can not only formally condemn racism’s presence but clean up its pernicious consequences.<sup>47</sup>

Already, though, we can see how the pervasiveness of human bias—perhaps particularly racism—might explain our limited inclination toward the collaboration presupposed by and sought through the rebellious vision. How can we find compelling a vision of problem solving that insists we must team up with others we believe to be less than equal? Under some circumstances, we might tolerate working together as a ritualistic salute to ideological or financial demands. But if we believe some to be subordinate, why would we buy into systems that would revolve around and insist upon full partnerships? We would be sacrificing expertise, and our own collective health, to quixotic aims.

Roughly at this point in the debate about collaboration, those of us who espouse the rebellious vision often get turned into cartoon figures. Others

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Jerry Kang, *Trojan Horses of Race*, 118 HARV. L. REV. 1489 (2005) [hereinafter Kang, *Trojan Horses*].

<sup>45</sup> To gain some feel for the evolution of the idea of unconscious racism in modern legal literature, see Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987); Linda Hamilton Krieger, *The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity*, 47 STAN. L. REV. 1161 (1995). See also Jerry Kang & Mahzarin R. Banaji, *Fair Measures: A Behavioral Realist Revision of “Affirmative Action”*, 94 CAL. L. REV. 1063 (2006).

<sup>46</sup> For a superb elaboration of the perceptual differences between insiders and outsiders, see Russell K. Robinson, *Perceptual Segregation*, 108 COLUM. L. REV. 1093, 1127 (2008).

<sup>47</sup> Those leading our study of race see no reason to believe racist stock stereotypes are hardwired and unchangeable. See, e.g., Kang, *Trojan Horses*, *supra* note 44, at 1531-35 (responding to “correction is impossible” objection); Andreas Olsson et al., *The Role of Social Groups in the Persistence of Learned Fear*, 309 SCI. 785, 787 (2005).

accuse us of wanting to substitute street wisdom for elite knowledge—as if turning the hierarchy upside down is what we are really about. Let me try to set the record straight, again. What people like those I grew up with in East L.A. know often gets treated as if it is extraneous to sophisticated problem solving. And it is absolutely true that those of us who believe in, and try to live up to, the rebellious vision welcome this knowledge as central to getting better and better at dealing with problems and improving our lives.

But in the rebellious vision, those on the street can no more claim a panoramic view than the elite. Nor should we on their behalf. How can I have closely observed my Mom and Dad and Grandpa—let alone my big brother—and think any such thing? Or want to claim any such omniscience for anyone? What nonsense to insist I do. Or to maintain that others who champion the rebellious vision do. What pretext. What wickedness. What remarkably shrewd well-defendedness.

Perhaps a related force underlies this shamelessly unjustified attack. Admitting that we need others to understand and solve problems threatens the dominant idea of expertise. In the reigning vision, the more expert you become, the fewer people with whom you must regularly team up. This idea—this status—seduces many. To acknowledge that anyone might teach you, might even turn your ideas inside out, frightens those whose rule—whose identity—centers around supposedly knowing lots about what others supposedly know far less.

In the rebellious vision, even the best among us, especially the best among us, should want to learn from anyone. Indeed, the best among us ought to demonstrate the sort of confidence that would make learning easier and not harder to stomach. If someone proves us wrong, if anyone proves us wrong, we should shout, “Hallelujah!” If we cannot be wrong, we cannot learn. And if we cannot learn, we have renounced a central part of what it should mean to be human.

The difficulty is not finding instances of rebellious problem solving or living. We can find examples at all levels and in all quarters. Instead, the real challenge always has been “scaling up.” If we can find the rebellious vision in a classroom, can we spread it to several? And then to an entire school? And then to a cluster of schools? And then to a school district? And can that school district be located anywhere and for any people, including places like East L.A. and the people who live there?

That sort of radical transformation need not begin in the classroom. It might start with the principal. Or the school district. Or the federal government. Such transformation—of the public education system or the criminal justice system or the child welfare system—implicates us all, however. None of us can plausibly speak of “changing the system” as if systems are somehow out there, unrelated to us and what we know and what we do. None of us should desire to be so disentangled, so above it all, so panoramically positioned.

Some people mock the label “rebellious.” They insist the last thing we need in problem solving, or in living, is the experimentation of those who

have yet to outgrow their dreams. I dissent. In fact, to borrow from my wonderful friend Tom Elke,<sup>48</sup> I understand working to make dreams come true “as a job fit for grown-ups.” If young folks want to join us, great. But do not expect me to believe that adulthood requires abandoning or even limiting our imagination. I do not agree. In fact, I will rebel. And I hope you will with me. Time and again.

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<sup>48</sup> See Gerald P. López, *The Work We Know So Little About*, 42 STAN. L. REV. 1, 12-13 (1989).

