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BORDER CROSSINGS IN AN AGE OF BORDER PATROLS: *CRUZANDO FRONTERAS METAFORICAS*

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This volume is being produced as the issues for the 1996 presidential election are being defined. Issues involving immigration, free trade, illicit drugs, affirmative action for Latinos and the English-only movement have pushed relations with Mexico, Mexicanos, and Chicanos into a prominence in the political discourse that is unusual for recent national elections. No issue is more prominent and more hotly debated by both the Democrats and the Republicans than the legal and illegal migration of low-skilled persons from Mexico into the Southwestern portions of the United States.

Concerns about transborder movement of people, goods, capital, languages, and accompanying legal claims have become global. People throughout the globe are moving from the southern regions with their relative poverty into the northern countries in search of employment and political stability. Within this current political environment borders are embedded with symbolic meaning about national sovereignty, a desired clarity about who "belongs" and who does not, and employment security. Border crossers become media symbols and political scapegoats.

The articles in this volume have been selected using the United States-Mexico border as the point of perspective. Allow me to provide some context for this symposium volume first by describing briefly how the border itself was defined, then by explaining how borders have become a ubiquitous metaphor for cross-disciplinary scholarship as well as for the multiple identities associated with a decentered self, and finally pre-viewing the articles that are included in this volume.

THE BORDER

The U.S./Mexico border was defined, as many international borders have been, by war, political intrigue, and river morphology. The 1848 Treaty of Guadalupe Hidalgo ended the United States' war with Mexico and established the Rio Grande as the border from the Gulf of Mexico to El Paso. Moving west, the Gila River that runs from New Mexico through Arizona at a point above Tucson and into the Colorado River was the negotiated boundary. From the Colorado River, a straight line was drawn to the Pacific Ocean at a point just below San Diego.

By 1853, Mexico, and its President Santa Anna, had land and needed money; the United States had money and wanted land for a transcon-

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tinental railroad system.¹ So James Gadsden, the minister to Mexico, bargained to have the United States buy large portions of northern Mexico. Originally hoping for Baja California and parts of Sonora and Chihuahua, he eventually settled for a smaller section of land, approximately 30,000 acres for which the United States paid \$10 million.² With the so-called Gadsden Purchase, the border was now drawn below Nogales and Douglas, Arizona.

The border measures 1,951.36 miles from the Gulf of Mexico to the Pacific, with the Rio Grande accounting for 1,253.69 miles, the Colorado for 23.72 miles, and the land border for 697.67 miles.³ Even after the border had been officially defined, both the meandering of the alluvial channels of the Rio Grande⁴ and the cartographic mistakes in the maps which formed the basis for the Treaty of Guadalupe Hidalgo⁵ created ongoing disputes between the two governments.

Nonetheless, what has characterized the border for most of its one hundred and fifty year history has been the lack of open hostility among the people who inhabit the territory along the border.⁶ According to historians, the process of cultural lending and borrowing began almost immediately⁷ with the flows of people, capital, and ideas largely disregarding the political boundary.

During most of the past century, the United States actively encouraged the movement of workers from Mexico. In the late 1800s, miners were recruited from Sonora and Jalisco, and those immigrant laborers were responsible for the feasibility and profitability of open pit copper mines in Arizona and New Mexico.⁸ Later as the Imperial and Mesilla Valleys were irrigated, farm labor from Mexico became critical for the planting, weeding and harvesting of crops. Immigration laws were specifically

1. LEON C. METZ, *BORDER, THE U.S.-MEXICO LINE* 81 (1989).

2. *Id.* at 81-4.

3. *Id.* at unnumbered preface.

4. JERRY E. MUELLER, *RESTLESS RIVER: INTERNATIONAL LAW AND THE BEHAVIOR OF THE RIO GRANDE* 19 (1975). The problem with a meandering river is described by Mueller: [T]he treaty [of Guadalupe Hidalgo] designated the channel of maximum depth as boundary along those reaches where the River had more than one channel. Although used sparingly along the Rio Grande . . . , such practice of marking the deepest channel is commonly referred to in international law as "the Principal of Thalweg." In alluvial streams such as the Rio Grande, the thalweg channel shifts position in time and place in response to varying flow regimes. *Id.*

5. *Id.* at 23. The most significant mistake incorrectly located the river north of Juarez. Specifically, "Disturnell's map showed El Paso del Norte (Juarez) at 32 deg., 15 min. north latitude, when it is actually at 31 deg., 45 min., or approximately 34 miles farther south. The city's longitude was given as 104 deg., 39 min. west, when in fact it is 106 deg., 29 min., or approximately 130 miles farther west. The question arose as to whether or not the boundary should leave the River at 8 miles above Juarez, as shown on the map, or 42 miles above Juarez, as indicated by the incorrect grid." *Id.* Subsidiary treaties to locate the border have been necessary up through the 1970s.

6. Michael C. Meyer, *Introduction* to CHARLES H. HARRIS III & LOUIS R. SADLER, *THE BORDER AND THE REVOLUTION* 1 (1988).

7. *Id.*

8. See RONALD T. TAKAKI, *A DIFFERENT MIRROR: A HISTORY OF MULTICULTURAL AMERICA* 186-88 (1994); CAREY MCWILLIAMS, *NORTH FROM MEXICO: THE SPANISH-SPEAKING PEOPLE OF THE UNITED STATES* 144 (1948).

drafted to protect the Mexican labor supply for agribusiness in California and elsewhere.

Much of the current political debate centers on the "violations" and "transgressions" of the border by undocumented workers who cross to work in the United States or who overstay their visas. This debate is in sharp contrast to the original desire of the two countries to facilitate trans-border interactions. A series of "sister-cities" were established along the border—Mexicali and Calexico; Nogales, Arizona and Nogales, Sonora; El Paso, Texas and El Paso del Norte (now called Ciudad Juarez); Laredo, Texas, and Nuevo Laredo, Tamaulipas—with the explicit intent, at the time, to create a population along the border with facility in both cultures, a borderlands in which both languages would be spoken and goods, labor, and capital would move fairly freely. These hopes have largely been realized. Current proposals to fortify the border by building impenetrable concrete walls, electrified fences, or a human fence of border guards fail to take into account the considerable advantages of these historic connections, especially those advantages offered by a hybrid population that navigates easily through both societies.

Rep. Duncan Hunter (R-El Cajon, Ca.) has proposed the building of a triple fence along the 14-mile stretch of border from the Pacific Ocean to Otay Mesa, known colloquially as "Smugglers Alley."⁹ According to the Los Angeles Times, the idea for the fence is based on a study prepared by the Sandia National Laboratory in New Mexico, which "concluded that if one fence was good, three fences were better."¹⁰ The triple fence idea is opposed by nearly everyone, the Clinton administration, both senators from California, the Immigration and Naturalization Service, the labor union for the Border Patrol, and even the conservative San Diego newspaper, the Union-Tribune.¹¹ Nevertheless, the border continues to serve the political fortunes of jingoistic politicians.

BORDER AS METAPHOR

More recently, the border has been imbedded with metaphoric and tropic meanings. Applicable to disciplinary, cultural, and epistemological spaces, the border is seen as site, intersection, bridge, and membrane. Borders have been transformed from bilateral national boundaries to borders representing cultural and epistemic sites of contestation.¹²

In her classic book, *Borderlands, La Frontera: The New Mestiza*,¹³ Gloria Anzaldúa transformed the concept of the "border" from geo-

9. Tony Perry, *Rep. Hunter Defends Plan to Erect Triple Fence Along Mexican Border*, L.A. TIMES, May 5, 1996 at A3.

10. *Id.* at A22.

11. *Id.*

12. See Melissa Harrison and Margaret E. Montoya, *Law Teaching in the Borderlands: Knowing Does Not Always Make a Difference That Matters*, 5:2 COL. J. OF GENDER AND LAW 1 (forthcoming 1996); Margaret E. Montoya, *Bordered Identities*, in LAW AND SOCIETY ASSN. ANTHOLOGY (William O'Barr ed., forthcoming 1997).

13. GLORIA ANZALDÚA, *BORDERLANDS, LA FRONTERA: THE NEW MESTIZA* (1987).

graphic and physical spaces to one applicable to psychological, sexual, and spiritual sites, "present wherever two or more cultures edge each other, where people of different races occupy the same territory, where under, lower, middle and upper classes touch, where the space between two individuals shrinks with intimacy."¹⁴ What follows is intended to give the reader who is not initiated into this literature an idea of how the border has been transformed into trope and an entry point into this body of scholarship about boundaries and about border crossers.

The border as an epistemic space for the exploration of cultural production has proven particularly salient to ethnographers. In 1989, the anthropologist Renato Rosaldo observed:

[O]ur everyday lives are crisscrossed by border zones, pockets and eruptions of all kinds. Social borders frequently become salient around such lines as sexual orientation, gender, class, race, ethnicity, nationality, age, politics, dress, food or taste. Along with "our" supposedly transparent cultural selves, such borderlands should be regarded not as analytically empty transitional zones but as sites of creative cultural production that require investigation.¹⁵

Dwight Conquergood extended the notion of contested sites to the self, exploring the reframing of borders for purposes of epistemology and identity formation:

Borders bleed, as much as they contain. Instead of dividing lines to be patrolled or transgressed, boundaries are now understood as crisscrossing sites inside the post-modern subject. Difference is resituated within, instead of beyond, the self. Inside and outside distinctions, like genres, blur and wobble. . . .

. . . The major epistemological consequence of displacing the idea of solid centers and unified wholes with borderlands and zones of contest is a rethinking of identity and culture as constructed and relational, instead of ontologically given and essential. This rethinking privileges metonym, "reasoning part-to-part" over . . . synecdoche, "reasoning part-to-whole"; it features syntax over semantics. Meaning is contested and struggled for in the interstices, *in between* structures. Identity is invented and contingent, not autonomous: "'I' is, therefore, not a unified subject, a fixed identity, or that solid mass covered with layers

14. See *Preface* to ANZALDÚA, *supra* note 13.

Sidonie Smith writes:

For Anzaldúa the topography of the borderland is simultaneously the suturing space of multiple oppressions and the potentially liberatory space through which to migrate toward a new subject position. The geographical trope is at once psychological, physical, metaphysical, and spiritual since it functions as a space where cultures conflict, contest, and reconstitute one another.

SIDONIE SMITH, *SUBJECTIVITY, IDENTITY, AND THE BODY: WOMEN'S AUTOBIOGRAPHICAL PRACTICES IN THE TWENTIETH CENTURY* 169 (1993). See also Sonia Saldivar-Hull, *Feminism on the Border in Criticism in the Borderlands: Studies in Chicano Literature, Culture, and Ideology* 210-17 (Hector Calderon and Jose Saldivar eds., 1991).

15. RENATO ROSALDO, *CULTURE AND TRUTH: THE REMAKING OF SOCIAL ANALYSIS* 207-08 (1989).

of superficialities one has gradually to peel off before one can see its true face. 'I' is, itself, infinite layers."¹⁶

My personal favorite is Ruth Behar's *Translated Woman: Crossing the Border with Esperanza's Story*.¹⁷ The centerpiece story about an indigenous Mexican woman is told by Behar in her ethnographic voice, but the multilayered translation of Esperanza's story requires Behar to tell her own story. Here the border is integral to the identities of both the Cuban ethnographer and her Indian informant, but, more importantly, both Behar and Esperanza use their relation to the border to create their identity, to name themselves as illegal, as "literary wetbacks," thereby robbing the popular discourse of its power to define epithets, to construct identities, and to stigmatize experience:

Esperanza has given me her story to smuggle across the border. Just as Mexican laborers export their bodies for labor on American soil, Esperanza has given me her story for export only. Her story, she realizes, is a kind of commodity that will have a value on the other side that it doesn't have at home—why else would I be "using up" my life to write about her life? She has chosen to be a literary wetback, and I am to act as her literary broker, the border crosser who will take her story to the other side and make it be heard in translation. The question will be whether I can act as literary broker without becoming the worst kind of coyote, getting her across, but only by exploiting her lack of power to make it to *el otro lado* any other way.¹⁸

[T]here is a special burden that authorship carries if you have ever occupied a borderland place in the dominant culture, especially if you were told at some point in your life that you didn't have what it takes to be an authority on, an author of, anything. It means writing as a "literary wetback," as the Chicana poet Alicia Gaspar de Alba puts it, without "the 'right' credentials . . . to get across."

It is not just Esperanza, then who is a literary wetback. Even though I have borne her story across to this side of the border, I recognize that I, too, in a quite different way, am a literary wetback in the world of academic letters, a wetback despite the papers that tell me I'm okay, I'm in, I'm a legal alien.¹⁹

THE ARTICLES

The first article by Guadalupe Luna, "*Agricultural Underdogs*" and *International Agreements: The Legal Context of Agricultural Workers*

16. Dwight Conquergood, *Rethinking Ethnography: Towards a Critical Cultural Politics*, 58 COMMUNICATION MONOGRAPHS 179, 184 (1991) (citing STEPHEN A. TYLER, *THE UNSPEAKABLE: DISCOURSE, DIALOGUE, AND RHETORIC IN THE POSTMODERN WORLD* 151 (1987) and quoting THI MINH-HA TRINH, *WOMAN, NATIVE, OTHER: WRITING POSTCOLONIALITY AND FEMINISM* 94 (1989).

17. RUTH BEHAR, *TRANSLATED WOMAN: CROSSING THE BORDER WITH ESPERANZA'S STORY* (1993).

18. See BEHAR, *supra* note 17, at 234.

19. *Id.* at 340.

within the Rural Economy is excellent both as a historical overview of the movements of agricultural workers and the legal controls on those movements and as a specific proposal for using land trusts to increase landownership by agricultural workers. Luna explicitly uses the border in demographic and geographic contexts, examining relations between the United States and Mexico from the Treaty of Guadalupe Hidalgo up to the North American Free Trade Agreement (NAFTA).

Luna's paper is distinguished by the number of sources she cites in her footnotes. The value of such a paper to other researchers is not only in the analysis she offers in her text but also in the authorities she identifies. Interestingly, she uses the work of many Latino/a scholars from other disciplines, in many cases introducing lawyers and law professors to salient materials. In doing so, Luna is crossing disciplinary borders to import information into legal scholarship.

I have sometimes felt that browsing through a well-read person's book titles can provide an unexpected and intimate peek into another's private intellectual life. Or perhaps it's that I think my library would reveal much about me. In a similar way, footnotes cue us about the author's literary tastes and academic breadth. Luna's text and footnotes are rich in information, provoking us to think about the border between the two, our eyes darting above and below the five inch line that demarcates and denotes the text and its context. Luna includes appellate cases, critical race theory, Chicano cultural critiques, historical and demographic analyses, newspaper stories, and scores of federal documents, constructing a fascinating conversation between her text and footnotes.

The next two articles, Walter Wright's *Mediation of Private U.S.-Mexico Commercial Disputes: Will It Work?* and Renee Harton's *Comparison of Worker's Compensation in United States and Mexico* use the border with its political and cultural meanings as the reference point for their respective analyses. Both articles begin with the assumption that the legal structures of the two countries have been formed by different historical processes and disparate cultural characteristics.

Wright explains that the cultural basis of mediation as used in the United States could impede the resolution of cross-border commercial disputes. Similarly, Harton focuses on the historical, cultural, and theoretical differences that have led to the formulation of different workers' compensation systems in Mexico and the United States with New Mexico serving as the specific statutory exemplar. Both articles suggest that processes of cross-border lending and borrowing require particular attention to social and historical experiences.

Alfredo Mirandé's piece, "*En la Tierra Del Ciego, El Tuerto Es Rey*" ("*In the Land of the Blind, the One-Eyed Person Is King*"): *Bilingualism as a Disability*, examines English-only rules in the workplace. Mirandé argues that such rules result not from business necessity but from racial discrimination and proposes that, because language is no less permanent or immutable than race, sex, and national origin, accommodation requirements that have been developed in the context of disability jurisprudence should be considered for bilingual workers.

Mirandé's analysis blurs the border between English and Spanish for the bilingual. Drawing on cognitive psychology, Mirandé argues that bilinguals do not make a conscious choice to speak Spanish or English but do so unconsciously and interchangeably.

The volume concludes with Jon'a Meyer and Paul Jesilow's *Research on Bias in Judicial Sentencing*. Written by sociologists, this article examines the quality of the research that has been conducted to determine whether factors such as race and gender affect the outcomes of criminal trials. Meyer and Jesilow fault researchers for having a greater concern with refining methodologies rather than adding to our understanding of judicial bias in sentencing.

This article is the most obvious example of cross-disciplinary scholarship in this volume, importing into a legal journal the methods, vocabulary, and other discursive tools of another discipline. The disciplinary border was crossed deliberately because of the salience of the topic to a legal readership but also because the article fit well with the theme of this volume.

A CAVEAT

Policing the southern border of the United States has become a central issue in the political agenda of both the Democratic and Republican parties in the presidential campaigns of 1996. As this introduction is being written, the House has considered and passed sweeping new immigration legislation, further restricting legal immigration and adding 5000 new border patrol agents.²⁰ In California, the Riverside police were recently videotaped in a high-speed chase that ended with them viciously billy-clubbing Enrique Funes Flores and Alicia Sotero, two Mexican nationals who put up no resistance when caught. The Mexican male driver had been transporting some twenty Mexican undocumented workers in the bed of a dilapidated truck.

And while the Mexicans were stereotyped as lazy, shiftless, passive siesta seekers, people who patronized *mañana*, those who knew them realized that just the opposite was true. The Mexican was one of the hardest working individuals on earth, and [s]he proved it just to get into the United States. [Sh]e walked for weary weeks, forded muddy and violent rivers, clung to the tenuous underside of trucks and trains, stuffed him[/her]self into the sizzling engine compartment of automobiles, slipped through and over jagged fences, risked being murdered by his own people, flattened by traffic as [s]he darted across the freeway, suffocated in tightly enclosed vans and railroad cars, arrested by the Border Patrol, all so [s]he could earn minimum wages toiling with a short hoe from dawn to dusk. If [s]he wasn't an illegal, [s]he would surely have deserved commendation for bravery, perseverance, and endurance. Such are the people whom we expel from our borders.²¹

20. See Perry, *supra* note 9, at A3.

21. See METZ, *supra* note 1, at 395-96.

As Peter McLaren reminds us, "Some people cross borders willingly, some people are forced to cross them, and others are shot in their attempts at crossing."²² So as we deploy the border as a metaphor, we need to remember that for many people throughout the world crossing borders is not cognitive or rhetorical; border crossings can be life-risking and life-losing endeavors.

We engage in disciplinary and discursive border crossings to ally ourselves with the millions in their diasporic searches for new homelands with their unfulfilled promise of work, food, security, and opportunity. We engage in disciplinary and discursive border crossings to construct new, more fluid, more complex identities, and in doing so we turn our gaze southward towards our ancestral homes. We engage in disciplinary and discursive border crossings to destabilize the meanings and inscriptions that the superordinate cultures, the Euro/Anglo/North American cultures with their Border Patrols, place on borders.

22. PETER MCLAREN, *CRITICAL PEDAGOGY AND PREDATORY CULTURE: OPPOSITIONAL POLITICS IN A POSTMODERN ERA* 113 (1995).