

## University of Miami Law School Institutional Repository

---

University of Miami Law Review

---

7-1-1999

# "Suppressing the Mother Tongue"-Anti-Subordination and the Legal Struggle Over Control of the Means of Communication

Madeleine Plasencia

Follow this and additional works at: <http://repository.law.miami.edu/umlr>

---

### Recommended Citation

Madeleine Plasencia, *"Suppressing the Mother Tongue"-Anti-Subordination and the Legal Struggle Over Control of the Means of Communication*, 53 U. Miami L. Rev. 989 (1999)

Available at: <http://repository.law.miami.edu/umlr/vol53/iss4/25>

This Article is brought to you for free and open access by Institutional Repository. It has been accepted for inclusion in University of Miami Law Review by an authorized administrator of Institutional Repository. For more information, please contact [library@law.miami.edu](mailto:library@law.miami.edu).

## “Suppressing the Mother Tongue”—Anti-Subordination and the Legal Struggle Over Control of the Means of Communication

I came to explore the wreck.  
The words are purposes.  
The words are maps.  
I came to see the damage that was done  
and the treasures that prevail.

Adrienne Rich<sup>1</sup>  
*Diving into the Wreck*  
1972

MADELEINE PLASENCIA

My comments address the engagement between language, identity and self-esteem. I would like to comment directly on Drucilla Cornell and William W. Bratton’s piece, *Deadweight Costs and Intrinsic Wrongs in Nativism: Economics, Freedom, and Legal Suppression of Spanish*.<sup>2</sup> In their piece, *Costs and Wrongs of Nativism*, Cornell and Bratton highlight the infirmities of English Only laws from an economic and ontological perspective. The authors demonstrate the infirmities of arguments advancing the position that English Only laws are necessary to prevent a threat and cost to American society. *Costs and Wrongs of Nativism* also speaks to the role and status of English Only laws within a moral theory. Cornell and Bratton argue that the implementation of English Only laws in the United States results in moral slavery.

Undoubtedly we shape language and language shapes us. For Cornell and Bratton, identity is a matter of ancestry.<sup>3</sup> The term “Latino” as used in their piece refers to “Americans born in or descended from Americans born in Spanish-speaking countries in North and South America, in addition to the descendents of the Mexicans native to the southwestern states.”<sup>4</sup> “Anglo” means native-born — born in the United States.<sup>5</sup> Identity can be linked to non-volitional acts because where one

---

1. ADRIENNE RICH, *DIVING INTO THE WRECK POEMS 1971-1972*, 22,23 (1973).

2. Drucilla Cornell & William W. Bratton, *Deadweight Costs and Intrinsic Wrongs of Nativism: Economics, Freedom, and Legal Suppression of Spanish*, 84 *CORNELL L. REV.* 595 (1999). Comments made herein are responsive to the draft presented at the LatCrit III conference held in Miami, Florida.

3. Cornell & Bratton, *supra* note 2, at 598 n.7.

4. *Id.*

5. *See id.*

is born is non-volitional. The U.S. Census Bureau (the Census) uses the following methodology to identify race and origin: "Race is defined as a concept used by individuals as a self-identification of 'biological stock.'"<sup>6</sup> That would include "White, Black, American Indian, Eskimo, Aleut, Asian or Pacific Islander."<sup>7</sup> With respect to "Hispanics", the Census instructs individuals to identify themselves in terms of *origin* including "ancestry, nationality, lineage, or country of birth of the person or person's parents or ancestors before their arrival in the United States."<sup>8</sup> Consequently, individuals of Hispanic origin can be of any race. Accordingly, Census data categorizes Hispanics separately to prevent double counting. Thus, under the new regime of identity, the categories are White Non-Hispanic, Black Non-Hispanic, and American Indian Non-Hispanic. Cornell and Bratton share this methodology of identity based on ancestry.<sup>9</sup> Identity based on ancestry is identity without choice.

The second part of Cornell and Bratton's piece discusses how one acts or how one speaks. That is a matter of volition. So which language one speaks or how one acts is the second part to being Latino/a.<sup>10</sup> The predicate to being Latina is ancestry. I agree with Cornell and Bratton that it is fascinating that there is no equivalent for Angla to Anglo.<sup>11</sup> That state of being able to claim to be Latino/a triggers the moral and legal right to speak Spanish *as a Latino/a*. Without the right to speak or act in a particular manner, you have lost the first predicate, which is who you are.

The authors refer to Jorge Luis Borges who said, "I am inseparable from the Spanish language;"<sup>12</sup> and they refer to "The Bluest Eye" by Toni Morrison. She asked, "what, in fact, may make me a black writer?"<sup>13</sup> and replied: "The ways in which I activate language and

---

6. Census Bureau methodology most recently posted in *Falling Through the Net II: New Data on the Digital Divide*, U.S. BUREAU OF THE CENSUS, U.S. DEPARTMENT OF COMMERCE, (visited June 7, 1999)(posted July 28, 1998). The 1998 Census Report updates NTIA's findings from its earlier study, "Falling Through the Net: A Survey of the 'Haves' and 'Have Nots' in Rural and Urban America" (July 1995). See *infra* note 8.

7. *Id.*

8. "Falling Through the Net, A Survey of the Have Nots in Rural and Urban America", National Telecommunications and Information Administration, U.S. BUREAU OF THE CENSUS, U.S. DEPARTMENT OF COMMERCE (July 1995).

9. Cornell & Bratton, *supra* note 2, at 598 n.7.

10. See *id.* at 612-16 and accompanying notes.

11. *Id.* at 598, n.7.

12. *Id.* at 676 n.347 (citing and quoting Jorge Luis Borges in an interview by Sonia Moria, Buenos Aires, Argentina (May 1985)).

13. *Id.* at 677 (citing and quoting Toni Morrison, *Unspeakable Things Unspoken: The Afro-American Presence in American Literature*, in 11 THE TANNER LECTURES ON HUMAN VALUES 121, 146 (Grethe B. Peterson ed., 1990)).

ways in which that language activates me.”<sup>14</sup> In each of the instances mentioned, the speaker considers the relationship between language and identity. The interdependent nature of language and *logos* is essential to the speaker.<sup>15</sup> This was the case in *Yniguez*.

In the case of *Yniguez v. Arizonans for Official English*,<sup>16</sup> the issue presented to the Court of Appeals for the Ninth Circuit involved Article XXVIII, which amended the Arizona constitution to provide that English is the official language of the state of Arizona (“Amendment”). Further, the Amendment provided that the state and its political subdivisions—including all government officials and employees performing government business—must “act” only in English.<sup>17</sup> State employees who failed to comply with the Amendment could be sanctioned for failure to obey the law. For this reason, the state employees, for fear of disciplinary action, or worse, losing their jobs, immediately ceased speaking Spanish on the job.

At the time of the passage of the Amendment, Maria-Kelley F. Yniguez, a Latina, was employed by the Arizona Department of Administration where she had handled medical malpractice claims asserted against the state.<sup>18</sup> She was bilingual—fluent and literate in both Spanish and English.<sup>19</sup> Before the passage of the Amendment, she communicated in Spanish with “monolingual Spanish-speaking claimants” and in a combination of English and Spanish with bilingual claimants.<sup>20</sup> In her affidavit, Yniguez described the way she communicated at work:

[She] spoke English to persons who spoke only English, Spanish to

---

14. *Id.*

15. *See id.* at 599 n.12 (citing Benjamin Franklin as a nativist linking failure of German immigrants in Pennsylvania to adopt “our Language or Customs” as threatening to survival of “American” civilization).

16. 69 F.3d 920 (9th Cir. 1995). The Ninth Circuit of Appeals, sitting *en banc*, declared the Amendment unconstitutional. The Ninth Circuit of Appeals, sitting *en banc*, declared the Amendment unconstitutional. On March 3, 1997, the United States Supreme Court vacated the order of the Ninth Circuit, with directions to dismiss Yniguez’s action for lack of standing. The seventy odd page opinion of the Court focused on issues of mootness (by the time the case was tried Yniguez had taken a job in the private sector). The Arizona Supreme Court directly disposed of the question of the constitutionality of the English Only Amendment in *Ruiz v. Hull*. In this opinion, the Supreme Court of Arizona found the English Only Amendment unconstitutional in two respects: 1) the Amendment violates the First Amendment by depriving “limited-English-proficient and non-English-speaking Arizonans of First Amendment of meaningful communication with elected officials; and (2) the Amendment impinges upon the fundamental right to petition the government for redress of grievances as secured to all persons via the Fourteenth Amendment. *Ruiz v. Hull*, 957 P.2d 984, 996, 999 (Ariz. 1998)(*en banc*).

17. *See* ARIZ. CONST. Art. XXVIII, § 3 (repealed 1997). The particular language of the law states: “This State and all political subdivisions of this State shall *act in English* and in no other language.”(Italics added).

18. *See Yniguez v. Mofford*, 730 F. Supp. 309, 310 (D. Ariz. 1990).

19. *Id.*

20. *Id.*

persons who spoke only Spanish and a combination of both languages to persons who were able to communicate in both. [She] communicated in both Spanish and English to those whose command of English was not sufficiently well-developed to understand all the English language expressions and ideas [she] desired to communicate. At times during her job, [she] also communicated in Spanish to persons who spoke both English and Spanish because the emotive ideas and feelings she desired to express were most clearly expressed in Spanish. . . . [She] communicated in Spanish to express otherwise inexpressible concepts and ideas.<sup>21</sup>

In reading those papers, I asked myself: why someone would do that — shift between languages? You may want to exclude others, you may want to create privacy, but you drift into English because it, too, is familiar.<sup>22</sup> One drifts between both linguistic worlds— Spanish and English words, grabbing onto this or that word-buoy to sustain oneself. Yniguez could have spoken in English only, but chose not to. Therefore, language is inexorably linked to who she is.<sup>23</sup> Moreover, to take away her right to “act” in Spanish takes away her whole sense of identity.

The Court of Appeals for the Ninth Circuit recognized this relationship between identity and language.<sup>24</sup> Maria Yniguez’s statement that her reason for speaking Spanish with bilingual persons can signify “solidarity” or “comfortableness” was both political and personal in its nature and quality.<sup>25</sup> The Ninth Circuit noted that the Amendment singled out not one word but an entire vocabulary. “Words are not often chosen as much for their emotive as their cognitive force.”<sup>26</sup> Recognition of the power of language to activate awareness and knowledge, the Ninth Circuit refused to allow English only speaking Arizonans to erase Spanish (and Spanish speaking persons) from the lexicon of Americans. Nevertheless, the English Only movement in Arizona has escalated to a national platform of intolerance.

Democrat Representative George Miller of California used a simi-

21. Brief for Respondent, Maria-Kelley F. Yniguez, in *Opposition to Petition for Cert., Arizonans for Official English v. Arizona*, 520 U.S. 43 (1997)(No. 95-974).

22. *See id.* (referring to the testimony of Jane Hill, Ph.D., a linguistic anthropologist who testified that: “Language functions to represent emotions, manipulate social contacts, to represent aesthetic reactions and to represent personal identity.”).

23. *See id.*

24. The opinion of the Ninth Circuit although ultimately vacated for mootness has been frequently referred to as the substantive opinion of the case. The Arizona Supreme Court agreed with the result and reasoning of the Ninth Circuit in its review of the federal trial court’s findings and struck down the Amendment as unconstitutional. *See Ruiz v. Hull*, 957 P.2d 984 (Ariz. 1998) (*en banc*). For this reason, much of the discussion of *Yniguez* is discussed in the context of insights made by the Ninth Circuit.

25. *Yniguez v. Arizonans for Official English*, 69 F.3d 920, 935 (9th Cir. 1995).

26. *Id.*

lar argument to speak in favor of an exception to the English Only Empowerment Act of 1996, House Bill 123 (the "English Empowerment Act") exempting Native American languages.<sup>27</sup> Representative Miller did not believe that Native Americans should "lose themselves."<sup>28</sup> In addressing the House he stated:

The Native American exemption, which applies to languages spoken by the more than 557 American Indian and Alaska Native tribes in this Nation, is important for several reasons.

First, we have a fiduciary duty, a binding trust responsibility, to preserve Indian cultures. An integral part of their culture is the ability to speak their own languages, many of which are disappearing or have even been lost. The tribes are making a concerted effort to revitalize their languages, and I believe that without this exemption, passage of this bill would frustrate those efforts.<sup>29</sup>

Notwithstanding the argument for the Native American exception, other members of the House stressed their support of the English Language Empowerment Act in tones echoing paternalism. Republican Representative Barbara Vucanovich of Nevada stated: "The English language empowers each generation of immigrants to access the American dream."<sup>30</sup> Perhaps Republican Representative Randy (Duke) Cunningham of California, the original proponent of the bill, makes the most paternalistic and personal statement in the debate of the English Language Empowerment Act records. He appeals to the sense of the "American family" that he perceives is threatened by overhearing languages other than English spoken in places outside the home—grocery stores, suburban shopping malls, restaurants, schools, libraries, bookstores, or the post office. He stated:

This [bill] is an honest attempt to *combine* and *empower the American people*, and especially those that have limited English skills to help them. . . .

We encourage *those folks* to learn, and I want Spanish-speaking or Chinese-speaking, I want *them* to speak those languages *at home*. This bill does not prohibit that. What the bill does, it says that the official language of the government, of the Federal Government,

---

27. English Language Empowerment Act of 1996, H.R. 123, 104<sup>th</sup> Cong., 142 CONG. REC. H9738, 9750 (1996). The bill was subsequently reintroduced January 7, 1997, named after the late Bill Emerson, former House member. Hence, the bill was again voted down under its new short name, the "Bill Emerson English Language Empowerment Act of 1997." The Emerson bill was tailored to exempt Native American languages from its coverage. See H.R. 123, 105<sup>th</sup> Cong, §167 (1997).

28. 142 CONG. REC. H9738, 9747 (1996).

29. *Id.*

30. English Language Empowerment Act of 1996, H.R. 123, 104<sup>th</sup> Cong., 142 CONG. REC. H9738, at 9747.

shall be in English. *That empowers people. . . .*<sup>31</sup>

As the Ninth circuit noted in *Yniguez*, this case reveals the tension between the “common bonds and a common language” and “the American tradition of tolerance.”<sup>32</sup> I think that it is also worth mentioning that the political rhetoric surrounding English Only laws assumes a dichotomy of “we” or “us” (English only speakers, synonymous with Americans) and “they” or “those folks” (synonymous with non-Americans).<sup>33</sup> Intolerance of diversity is not eliminated by recent technologies. Unlike the bright future bursting off the pages of *Fortune* magazine, the World Wide Web does not change everything.<sup>34</sup>

As we enter the computer and electronic wires age, I would like to consider the impact of English Only law on identity in telecommunications. Many use e-mail and list serves to communicate with family located all across the country. One may become frustrated when “speaking” in Spanish through the Internet and other computer-based technologies. In composing e-mail in Spanish, for example, one can not readily find the symbols necessary to communicate fully in Spanish. Of the various templates made available for computerized language production, Spanish accents and other symbols often do not match the font of the original text in which the document was composed. The e-mail I have drafted in Spanish often arrives to its addressee with circles where I had placed accents. Therefore, I look like some sort of chaotic writer. What happens to me when I write electronic mail? when I try to communicate the way I would if the addressee and I were face to face?; a destruction of my identity takes place. What is made available to me to communicate using words rather than pictures are only the primary colors of an artist’s pallet; and the colors may not be mixed. In that gap, one is left to the primary colors — crayons. A destruction of self takes place because one can not use the richness of colors available cognitively, but unavailable on the computer.

Who you are, who one is, “who I is”, is absolutely linked to how one speaks. The beginning point of this discussion grew from note 5 of Cornell and Bratton’s piece. Who am I? I need a word to describe who I am. At some point, I would like to revisit how words that define identity change. I would assess the effect those externally imposed identifiers have on self-identity and on self-esteem.

---

31. 142 CONG. REC. H9738, 9748 (italics added).

32. *Yniguez*, 69 F.3d at 923.

33. *Id.*

34. See J. William Gurley, *Banking the New Millenium; The Web Changes Everything, Again*, FORTUNE, June 6, 1997, at 194.