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ARTICLE

Ethical Breach and the Schizophrenic Process: Theorizing the Judge and the Teacher

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As the title of this piece suggests, we theorize some of the similarities and differences between the judging and teaching profession. At first glance, the differences seem more apparent than any similarities. As we've discussed this text with colleagues and friends, overwhelmingly, the first question asked is: A judge and teacher, what do they have in common? However, we believe that the judge and teacher are uniquely positioned as fraternal partners across the labor/cultural landscape; we see more similarities than differences.

In choosing which professions to analyze, we have rejected seemingly natural classifications (such as doctor and lawyer or teacher and nurse), as these over-determined categories flow along various competing discourses of capitalism and sexism. In fact, by choosing to compare the professions of judge and teacher, we are trying to reject the sexist pairings of, for example, nurse and teacher (the helping professions—usually coded as female) and doctor, politician, judge (the powerful professions—usually coded as male). Instead, we will focus on the functional goals, i.e., *desires*, of professional identity: the actual performance and context of laboring. In this sense, the public professions of teacher and judge are strikingly similar. Both are charged with a duty to act as neutral, objective figures in order to normalize and examine individual subjects for the public good. In each profession, contemporary tensions between competing desires are located at the site of examination. Indeed, a *trial* is defined by the most widely used legal dictionary as "[a] formal judicial examination of evidence" (Garner, 2004). And, as we will explain more thoroughly, the colonization of capitalist concepts follows similar veins of thought through both professions. A review of how similarly situated professions have been able to take advantage (or not) of these lines of flight provides not only an interesting comparison, but hopefully a generative space for the development of new and better ways of teaching and judging. We will theorize that judges have been able to find and pursue, in small but meaningful ways, a line of flight. We wish to examine the professions of judge and teacher in order to think through the various histories and issues that have come into play which have allowed a line of flight for judges, but not for teachers. So, what is a line of flight? What does it look like? What is the process of finding and traversing this line of flight and into what realm or alterity?

We borrow from Deleuzian theory in order to explore the schizophrenic process inherent in capitalism, and the ways this process potentializes cyclical repression or the possibility of a line of flight or escape. In this analysis, we take up the Deleuzian concepts of *immanent ethics* and *ethical breach*. Deleuze's theories are helpful because they allow us to explore the ethical breach as a concurrence of impediment and opportunity. Deleuze also allows us to theorize these two professions, that of judge and teacher, without relying on power relations as the beginning/end game of all capitalist flows. For Deleuze, desire is the key force and animator of all machines, bodies, representations, and flows. It "invades and invests the productive forces and the relations of production. *There is only desire and the social, and nothing else*" (Deleuze & Guattari, 1983, p. 29; emphasis in the original). It is because of the democratic way in which desire infects, produces and invades all discourses and all positionalities that we can effectively theorize the judge as a counterpoint to the teacher. Before we begin, more should be said on the laboring bodies of judges and teachers; the landscape of labor, and representational positioning within that landscape, of both judge and teacher.

Representations and Labor

As laboring bodies, judges and teachers are similar. First, let us focus on the actual space of practice for these professions. Both judges and teachers labor in a technically public but functionally private space. On the one hand, there is a cultural understanding and actual practice of a publicly-accessible classroom and courtroom. Most schools, even private schools, have a policy of open-door classrooms. That is to say, teachers should be prepared for members of the public to view their classrooms at just about any time. Identically, for the judge, court proceedings are nearly always open to the public. However, in both judging and teaching, most of the actual labor goes on outside the public eye, for teachers, administrators and parents rarely come to the classroom. The teacher closes the classroom door and does the business of teaching in what is usually a fairly private (behind closed doors) space. The same can be said for the judge. Though the courtroom is open to the public, the public is present only for extraordinary cases.

Second, public consciousness perceives significant power held by judges and teachers. In the cultural imaginary, through experience and media, both teachers and judges are positioned as law-givers, heads of their respective spaces. Public trust

in the power of each profession imposes strict neutrality on both teachers and judges. For judges, this position of neutrality has been recently popularized by Chief Justice John Roberts' analogy of a judge to an umpire, which was echoed again and again in Justice Sotomayor's confirmation hearings (Moore, 2009). Parents, and the public in general, are angered and alarmed when they perceive that a judge or a teacher brings personal politics and values into a classroom/courtroom. This imposed neutrality not only requires teachers and judges to censor certain views, beliefs, and values while teaching and judging, but also spills over into their nonprofessional activities. Accordingly, teachers are singled out when they act or express views that violate a perception of neutrality, such as attending a pride parade. The same applies to judges. In fact, the American Bar Association's Model Code of Judicial Conduct specifically limits a judge's participation in certain "educational, religious, charitable, fraternal organizations," and even for permitted activities cautions the judge to avoid activities in these organizations that "that reflect adversely upon a judge's independence, integrity, and impartiality" (American Bar Association, 2007).

The conditions of labor for judges and teachers, representations in popular culture, and the depth of surveillance over teachers' or judges' views are likely a function of the similar public functions served by both judges and teachers. First and foremost, judges and teachers socialize subjects such as students, litigants, and collective groups. The teacher is tasked with preparing subjects to become effective, efficient, and docile workers. In the narrative of teaching, a productive laborer is ellided to mean the same thing as a productive member of society. The teacher is expected to teach a culturally-accepted version of morality: honesty, work, accountability, competition, but also kindness. Judges are similarly expected to create or rehabilitate subjects under cultural/political and market-driven norms. Judges must exercise judicial discretion in numerous contexts, and each exercise of discretion must match a culturally-accepted version of justice: avoiding harm, keeping promises, and balancing competing claims. Through discourses of rehabilitation and justice, judges are assigned the task of reforming criminal perpetrators into job-holding members of society. Similarly, judges are tasked with constituting, recognizing, and defining certain types of collective subjects, e.g., corporations, governments, agencies, and trusts, and also play a role in rehabilitating dysfunctional collective subjects and sometimes even industries, such as big tobacco. For both judges and teachers, molding the subject is of primary importance.

However, neither the teacher nor the judge may stop at simply molding a subject: They must each measure, report, and mark individual subjects through a process of examination. At the end of a course, a teacher must judge the skills and performance of each student. The teacher's decision marks the student and provides signals to larger social and economic structures, such as parents and employers, with respect to the subject. Similarly, through the process of *trial*, defined in legal dictionaries as an *examination*, a judge marks each subject that appears before him or her, and this decision marks the litigant providing signals to the same larger social structures. For both the teacher and the judge, the point of examination/trial has become a significant exception to our assertion that judges and teachers perform their labor in functionally private spaces. Technology has made the results of examinations and trials readily, even instantly, accessible, and contemporary political economy has re-imagined these results, to differing degrees, as the measure of professional success. In the cases of both teachers and judges, use of these measures has been colonized by capitalist discourses, modes, which have in turn deeply affected each profession.

Many theorists have explored the ways that the market has directed and infiltrated education, in educational issues such as curriculum development, pedagogy, and juridical practice surrounding schooling. For example, Freire (1997) has suggested that traditional education privileges the capitalist oppressor and is "designed to dissuade the [oppressed] people from critical intervention in reality" (p. 34). Michael Apple (2000) has taken up this theme as well and has advocated the idea that education has been integrated "into a wider set of ideological commitments. . . They include the dramatic expansion of that eloquent fiction, the free market" (pp. 84-85). Giroux (2009) also theorizes this issue and talks about the lack of spaces where children can engage in knowledge creation without the surveillance and invasion of the market. Similarly, the market has directed the judicial system, and judging itself. Many jurists, lawyers, and academics have explicitly, and often proudly, described litigation and its concomitant judging in market terminology: "[A] lawsuit represents a transaction and a legal system is a market(place) for such transactions. . . in a lawsuit, a plaintiff trades her claim for money and the defendant trades its money for finality" (Rubenstein 2006). In this reimagination, a judge becomes less a participant in the legal system and more a broker of legal services.

We will track the infiltration of capitalist discourse and economic models onto judging and teaching, its concomitant tensions with the labor conditions and professional identity of teachers and judges, and the development of lines of escape by judges. We choose to use a Deleuzian framework for our piece because Deleuze's accounting of the *schizophrenic process*, explored most clearly in Deleuze and Guattari's works *Anti-Oedipus* (1983) and *A Thousand Plateaus* (1987), allows us to focus on why and how systems and representations can change, even while functioning within a context of capitalism. Deleuze's theories allow us to focus on labor, the practice and context of labor. It allows us to focus on desire and the ways that desire infiltrates and fuels bodies and structures. With Deleuze, we can compare different knowledge

groups or performance structures based upon their desiring connections to each other, rather than their place on some sort of hierarchical grid of power and prestige.

This makes Deleuze an ideal choice when comparing the teacher to a judge. We realize that teachers and judges are hierarchically separated by power and prestige. However, as we have explained, both professions are invested with very similar desiring drives. For Deleuze, this provides room for even the most blasphemous comparisons: “From the point of view of libidinal investment, it is clear that there are few differences between a reformist, a fascist, and sometimes even certain revolutionaries.” (Deleuze & Guattari, 1983, p. 364). So why not compare the circulation of desire from the professions of teacher and judge? The ability to compare these two professions allows for some interesting insights into the schizophrenic process, and a great chance to reflect on how structures and practices actually change in a capitalist system.

The Schizophrenic Process

In order to understand the schizophrenic process, it is important to understand the way that Deleuze talks about desire and the capitalist system. For Deleuze, desire is the underlying power that propels socially produced modes of being, productions that enunciate both subjects and the larger society. It is libidinous, to use Freudian terminology: Desire is the libidinous movement or flow of production and consumption (Deleuze, 1990,). Desire, when modulated by the market, is the force for social production. As Smith (2007) puts it, “your very drives and impulses, even the unconscious ones, which seem to be what is most individual about you, are themselves economic, they are already part of what Marx called the infrastructure” (p. 6). To expand on this, Smith (2007) notes,

Your drives have been constructed, assembled, and arranged in such a manner that your desire is positively invested in the system that allows you to have this particular interest. This is why Deleuze can say that desire as such is always positive. Normally, we tend to think of desire in terms of lack: if we desire something, it is because we lack it. But Deleuze reconfigures the concept of desire: what we desire, what we invest our desire in, is a social formation, and in this sense desire is always positive. Lack appears only at the level of interest, because the social formation—the infrastructure—in which we have already invested our desire has in turn produced that lack. (p.9)

So, for Deleuze, desire is always a productive force and it enunciates all social formations. The socius, that is, the collective social body, enacts the channeling of desire, which circulates through all, into frequencies or roads that benefit the capitalist system, that benefit the market. Desire is harnessed and modulated through state regulation into productivities for the market.

Perhaps an imperfect analogy will be of assistance as we come to terms with Deleuze's concept of desire and the market. Imagine a system of waterworks. Desire, in the Deleuzian sense, is the water: Its only aim is flow, -to continue to move. It is constant momentum, constant motion, and the capitalist system is the channeling of the water. In a waterworks system, the water is channeled to go into different tunnels or in different directions, toward different ends. The capitalist system channels desire just like a waterworks system channels water.

So, can desire ever escape this modulation, channeling, or repression in service of the market? According to Deleuze and Guattari (1983), the schizophrenic process, inherent to capitalism, provides a potential of escape: “the schizophrenic escape converts into a revolutionary investment” (Deleuze & Guattari, 1983, p. 341).

The schizophrenic process is inherent in capitalism because both capitalism and schizophrenia are perpetuated through the process of deterritorialization. Capitalism works, is flexible and exerts power, “insofar as it brings about the decoding of flows that the other social formations coded and overcoded” (Deleuze and Guattari, 1983, p. 246). This decoding results in what Attias (1998) refers to as the “generalized interchangeability” of anything (p. 100). Attias continues his analysis of the decoding and deterritorializing process by suggesting that,

[w]hile the precapitalist state machines tended to overcode the fluxes of desire with regulations, capitalism does the exact opposite, decoding and deterritorializing the fluxes by means of money. . . There may be a world of difference, for example, between three tons of lard and a Kalashnikov AK-47, but the logic of capital flattens out this difference through the mediatory abstraction of money. The rifle has the equivalent value on the market of three tons of lard. (p. 100)

According to Attias, this decoding process reaches more than just artifacts in the marketplace. Capitalism is “continually overturning and decoding various rituals, ways of life, and social organizations (p. 100). Thus, all information and desire

becomes free-floating and divorced from any concrete, or required, meaning or implication. However, according to Deleuze and Guattari (1983), “flows are decoded and axiomatized by capitalism at the same time” (p. 246). That is to say, while information and desire remain unattached to concrete meaning, desire and information are modulated by the market and come to represent meaning in the service of the market. This modulation, however, is not a perfect process.

This is where Deleuze's concept of the breach of ethics comes into play. For Deleuze, there is a very careful distinction between ethics and morality. “He uses the term 'morality' to define, in very general terms, any set of 'constraining' rules, such as a moral code . . . (this is good, that is evil)” (Smith, 1998, p. 252). Ethics, on the other hand, are “a set of 'facilitative' (facultative) rules that evaluates what we do, say, and think according to the immanent mode of existence that it implies” (Smith, 2007, p. 1). Ethics, for Deleuze, will evaluate the potential for something to act—to be empowered toward a desired end. *Immanent ethics*, which is Deleuze's term (1994) for ethics as a way of distancing himself from a transcendent notion of ethics, uses a criterion of action and ability. Deleuze suggests that immanent ethics evaluates a mode of existence or trajectory of desire “according to their tenor in 'possibilities’” (Deleuze, 1993, p. 171). Ethics, then, is about removing internal constraints bounding desire from action. According to Daniel Smith (2007), “what an ethics of immanence will criticize, then, is anything that separates a mode of existence from its power of acting” (p. 3). So, to go back to our analogy, while the Capitalist marketplace attempts to channel the water/desire in one direction or another, this is an imperfect process. There are moments in a waterworks where the water channel is suddenly dammed or gapped. If a new channel isn't opened within the waterworks system, eventually the water will explode or erupt out of the current waterworks system. The water will escape, onto the floor, into the sky, anywhere outside of the system. This explosion out of bounds marks the potential for newness or difference. The initial moment of the gap or the dam is what Deleuze would call an ethical breach.

An ethical breach occurs when the force of desire, which propels modes of existence, is not allowed the potential to act or fulfill or flow, as in the damming of the water. When desire is disconnected from its trajectory toward fulfillment, a breach or *schiz* is opened within the plain of capitalism. As Deleuze points out, desire, circulating in discourse, “is always and already complete as it proceeds, and as long as it proceeds” (Deleuze & Guattari, 1983, p. 382). However, when anything “separates” desire “from its power of acting,” when anything separates desire from “the limit of what it can do” (Smith, 1998, p. 262-263), a schiz is opened. The potentiality of desire has been breached, gapped, schizzed. While, on the one hand, a breach of ethics can be seen as a negative thing, even in a Deleuzian sense—after all, desire has been gapped—on the other hand, a breach of immanent ethics also entails a schiz, which is the point of potential and a moment where the new may exist. The gap or schiz opened up provides a moment of possibility. It is important to point out that the capitalist axiomatic is never saturated, and capitalist axioms will attempt to re-territorialize these gaps, or stop-gaps. Yet, in that moment of the schiz, desire is released and a proliferation of the new is possible, a line of flight or escape (Deleuze & Guattari, 1983).

This is why capitalist systems attempt to control and command desire through a process of expanding axiomatics. According to Deleuze, capitalism naturally includes “relative breaks”—breaches or schizes within the socius as desire is separated from potentiality (Deleuze & Guattari, 1983, p. 246). However, capitalism deploys new axioms in a process of expanding axiomatic, i. e., new expressions, languages, modes of being, dictates, understandings, in order to fill or cover those breaches. As Deleuze says, “for capitalism it is a question of binding the schizophrenic charges and energies into a world axiomatic that always opposes the revolutionary potential” (p. 246). The axiomatic always attempts to cover the schiz or the breach and re-directs desire “in the service of the capitalist order” (Deleuze and Guattari, 1983, p. 246). In our analogy, this would be the constant, dynamic re-direction of the water away from a schiz/dam and into other ever-changing channels still determined by the system. Capitalist systems are in constant movement to deploy new axiomatics to control and harness explosions of desire so as to uphold dominant modes of being and defer the revolutionary potential of desire unleashed, or schizzed). Using our analogy, the system wants to avoid an eruption or explosion. So long as the new channels are created fast enough, an explosion is diverted. The water stays within the system. However, if the new channels and new diversions aren't created quickly enough, an explosion will occur. If the capitalist system is able to adapt, desire will be diverted away from the schiz; desire will be channeled, once again, along capitalist lines. If, however, the capitalist system of expanding axiomatics—creating new channels—doesn't happen successfully, desire will explode, erupt out of the system. Quite literally, a line of flight will be created.

So, to sum up, the schizophrenic process involves a cycle of de-territorializing codes and then repressing or re-territorializing those de-codes and desire in the service of the market. As desire, flowing through discourses in servitude, becomes gapped or breached, a schiz is opened. This schiz is a moment of potential. There is the potential that the schiz will be stop-gapped through an expanding process of axiomatics which reterritorializes discourse and remodulates desire. There is also the potential that the schiz results in a line of flight, a line of escape. For Deleuze, the line of escape is understood as a multiplication of desire, an explosion of desire. To use our analogy, think about the water exploding in all

different directions (Deleuze & Guattari, 1983, p. 348). The schizophrenic process is a story of desire: desire enslaved or desire becoming “functional multiplicities” (Deleuze & Guattari, 1983, p. 348). This process should become more clear as we explore it via a theorization of the profession of the teacher and the judge.

The Schizophrenic Process and the Profession of Teacher

Deleuze's concepts of deterritorialization, breach or schiz, and reterritorialization, and expanding axiomatics of reterritorialization are easy to observe in the life of a teacher. Let us first explore Deleuze's concept of deterritorialization.

Deterritorialization can be seen in the life of a teacher in the many ways that the identity of teacher is not tied to anything concrete, but is decoded to mean a multiplicity of things within the socius. After all, what really is a teacher? What does a teacher do? What does it mean to be *in education*? At times, teachers are deployed as the protector of human rights and the mentors of emancipation. Joel Spring (2000) links education, and by association, the teaching profession, with the protection of human rights. He states, “a universal right to an education is justified by being necessary for achieving other human rights” (p. 75). He very explicitly links education as being required “if human rights are to be protected” (p. 74). This kind of language is continued through out the works of many educational reformers, particularly those advocating a praxis for social justice. Ira Shor (1992) links education and the teaching profession to being fundamental for “active citizens” within a democracy (p. 11). Shor (1992) sees education as invested in modeling good democratic practice as teachers employ a “participatory” and “interactive pedagogy” (p.17). In fact, Shor (1999) links democracy and education by declaring that “the fate of democracy in school and society will be decided by the funding and curriculum wars now under way”(p.viii). Through out the education literature, these connections are made. Freire (1989) connects education to social justice and democracy by calling for “education as the practice of freedom” (p.69). David Bloome (1997) believes that students must be educated to live democracy: “[A]s teachers and educators, we are providing the resources and creating the conditions in which all students can live it” (p. 244).

This deployment of teacher as liberator is further imagined in media texts. Movies like *To Sir With Love* (1967), *Stand and Deliver* (1988), *Dead Poets Society* (1989), *Dangerous Minds* (1995), *School of Rock* (2003), *The History Boys* (2006), and many others position the teacher as an emancipator and difference-maker. These movies position teachers as able to help their students transcend their societies. The teacher is seen as a powerful force for change in the lives of these students. Interestingly, at least in some of the media/texts, this change often occurs *because* the teacher is willing to use an emancipatory pedagogy and a change-oriented curriculum. These types of pedagogy and curriculum are often positioned as against the oppressive, or dominant, norms of society and the school. This kind of media deployment organizes a desire within teachers to be the *good* kind of teachers—the kind that are involved in emancipatory projects.

Teachers and the identity of teacher are also deployed as the opposite of this narrative. In every story, movie, didactic text, there is also the foil: the teacher who is not invested in emancipation. This is the image of the teacher, often deployed by didactic texts, who is more invested in the canon and the *status quo* rather than emancipation. The foil to teacher as emancipator is often embodied by teacher as lazy, teacher as arrogant and unconcerned, teacher as oppressive, teacher as boring, and even teacher as abusive. These images are portrayed in movies like: *The Browning Version* (1951), *The Prime of Miss Jean Brodie* (1969), *Ferris Beuller's Day Off* (1986), *One Eight Seven* (1997), and of course *Blue Car* (2003). As long as the idea of a teacher cannot be concretely coded onto any one representation, or deterritorialization, the notion of teacher becomes free-floating—a competitive and conflative amalgamation of identity representations.

From here, it is important to note the ways that axiomatization and reterritorialization work within the profession of teaching. *Axiomatization* is the process whereby representations, and desire circulating in representation, are reterritorialized in the service of the market. This is illustrated by the ways that, while teacher identity is still not fully fixed, professional identity becomes linked into a meta-narrative whereby teaching and education become deployed as inservitude to the needs of the market. As Tyack and Cuban (1995) see it, “schools are a public institution oriented to equality in a society dominated by private institutions oriented to the market” (p.29). As the market has continued the process of reterritorialization, the field of education has been on a continual journey toward a “vision of scientific management” (Tyack & Cuban, 1995, p. 8). This has often translated into business-like or factory-like visions of schooling. Tyack and Cuban name multiple superintendents and government policy-makers throughout the past century who

spoke of schools as 'factories in which the raw materials (children) are to be shaped and fashioned into products to meet the various demands of life.' Aware of criticisms that schools wasted the public's taxes, city school chiefs avidly calculated the cost effectiveness of everything from a lesson in Latin to the purchase of school desks. They

detailed educational 'objectives' and blueprints for instruction. Like efficiency experts in industry . . . they thought it possible for managers to plan tasks while workers (teachers, students) did the work. (p. 114-115)

As reterritorialization of teacher identity and the idea of what counts as a good education has continued in attenuation to the market, "education has, in most instances, been reshaped to become the arm of national economic policy, defined both as the problem (in failing to provide a multi-skilled flexible workforce) and the solution (by upgrading skills and creating a source of national export earnings)" (Blackmore, 2000, 134).

Kliebard (2004) gives an example of reterritorialization of education in the service of the market by pointing to the ways that teacher certification and standardized tests have become part of the meta-narrative of efficiency and accountability in education as a way to serve the market. "The entry of the federal government" on "such a massive scale changed the dynamics" of how the role of education was seen *vis-a-vis* the larger society and the economy (Kliebard, 2004, p. 269). This change of dynamics—and re-channeling of desire—has resulted in increased teaching certification criteria and increased pressure on teachers to somehow force their students to do well on high-stakes tests.

The criteria for teacher certification have been re-worked multiple times throughout the past century. Edelfelt and Rafts (1998) issued a report published by the Association of Teacher Educators that reviewed all of the changes that have been implemented in teacher certification procedures over the past 130 years. They found that, while many of the problems and supposed solutions have remained the same throughout the time frame, this has resulted in significantly more tests, knowledge, and skills requirements for teachers in order to be certified. As government systems channel education into the service of the economy, more and greater accountability measures are put into place that support positioning teachers as cogs in an economic machine. More tests and examinations have been put into place to try and discover if teachers possess the skills and knowledge bases deemed necessary in order to produce more efficient workers for the economic system. Praxis I, Praxis II, and Praxis III, as well as increased portfolio requirements have made getting teacher certification a process of assessment after assessment.

Richard Arends (2006) also gives some excellent examples in the movement and changes in teacher certification practices. He makes an example of two women, one getting her certification in 2005, the other in 1960:

Even a cursory view of these two scenarios illustrates that, although some things remained the same over the 45-year period between 1960 and 2005, some rather dramatic changes had occurred in the design and execution of teacher education and in the performance assessment of teacher candidates. . . [There was an] evolution toward more accountability and the use of performance assessments to ensure accountability and professionalism. (p. 4).

The yen for increased efficiency and accountability to ensure efficiency now, more than ever before, also gets incorporated into the lives and identity constructions of teachers after they've become certified and enter the classroom. The increased focus on high-stakes testing for students has become a method for weeding out the bad, or lessefficient teachers in order to preserve the good or more efficient teachers. This is where the process and symbolic ordering of the "examination" has been fully colonized by Capitalism and has actually come to define what it means to be a teacher:

The myth of standardized testing is that it raises the quality of education to its highest levels and does so in ways that are measurable and generalizable. Within this view, the failure of schools is a failure of management due to an inability of their "lowest level" employees (i.e., the teachers) to induce achievement in their students. The remedy derived from this view of schooling is to create a management system that will change behavior through more accountability. (McNeil and Valenzuela, 2000, p. 3)

This myth is supported by the production of numbers, the statistics that are generated from the high-stakes tests. As Dorn (1998) has noted, "statistical accountability systems are important because numbers have visible power in public debate. . . A number connotes objectivity or, at the very least, legitimacy" (p. 1). As numbers are published showing declining test scores, it becomes easy to position the school as a failing enterprise and the teachers of the school as failed employees. Thus, teachers become subject to ideologies and policies that require the job stability of teachers to be linked with the performance of their students on standardized tests. This creates a situation where teachers, in order to be seen as good and efficient employees, are made accountable for their students' scores.

Teachers are produced and recognized *as teachers* insofar as they labor in accordance with the policies and cultural imaginary aligned with the market. The examination takes center stage. Public policy and the media operate as arms of the market to draw focus to the examination as the very public symbol of teacher worth. Schooling has come to be in service of the market: Students should do well in school so they can find jobs and we can support American capitalism in a global world. The examination has become the public marker of how well teachers are socializing students to fit within that goal.

As such, the very ways, manners, possibilities, and options of laboring as teachers come to be molded and shaped by the market drive. How teachers teach, and whether they are recognized as teachers at all, good or bad, depends upon how closely they are aligned with the ideologies produced in service to the market

Reterritorialization deploys a meta-narrative of teaching and education whereby the free-floating forms of teacher as liberator or teacher as foil-to-the-liberator are then brought together as a cautionary tale. If you support the market, then your students will be emancipated and you can see yourself as the liberator. If, however, the market finds you to be inefficient, then you, as a teacher, become the foil.

This move is illustrated in language used throughout the *No Child Left Behind* (NCLB, 2005) legislation. The language at the beginning of the bill acknowledges deep rifts in class and socio-economic status. The bill acknowledges that it is not socially just to perpetuate inequality. As one reads NCLB and information put out by the government about NCLB, one finds a whole section dedicated to selling the bill to some minorities. There are sections called “How No Child Left Behind Benefits African Americans, and “How No Child Left Behind Benefits Hispanics,” among others. In the section introducing the bill to African Americans, we read, “because of *No Child Left Behind*, **closing the achievement gap** is now a national priority. Schools are now held **specifically accountable** for the annual progress of African American students. Schools must have high expectations for every child -- the soft bigotry of low expectations is no longer tolerated” (emphasis in the original; NCLB, 2005). So, the representation of education and teaching as emancipation gets deployed as part of a bill that will only encourage the training of the students into “subjectivized variable capital” (Deleuze and Guattari, 1983, p. 70). (For more on the ways that NCLB funnels human capital into the market, see Street, 2005; Eferakorho, 2006; Giroux & Schmidt, 2004; and Pepper, 2007, to name just a few.)

This move from deterritorialization to reterritorialization in the service of the market happens over and over unless there is an apparent breach in the trajectory of desire. As noted before, this breach opens when desire is interrupted and not allowed to proceed toward fulfillment. This happens when the desire invested in the deterritorialized codes is seen to be disrupted by the narratives of reterritorialization. For teachers, this can happen when the desire associated with the idea of teacher as liberator is seen to be disrupted, rather than re-modulated, through reterritorialization. For example, Margot Pepper (2006), an educator and writer, illustrates this moment of disjuncture very well in her piece *No Corporation Left Behind: How a Century of Illegitimate Testing Has Been Used to Justify Internal Colonialism*.

Pepper is both a writer invested in the representation of emancipatory education, *and* a second-grade teacher required to give her students the tests associated with NCLB. Pepper (2006) believes that testing and other accountability measures run directly contrary to desire invested in projects of social justice. Pepper (2006) states,

Little known by the taxpayers footing the bill is the fact that for over a century, such norm-referenced test results have been misinterpreted in the United States to support a myriad of immoral campaigns from slavery to the abolition of Head Start. Some scholars have identified this historic pattern as a product of internal colonialism to amass capital at the expense of an expendable minority. Like the inappropriate use of the Intelligence Quotient or IQ tests, NCLB standardized tests are being used to lend legitimacy to policies which lead to cheap labor and large profits in the private sector. (p. 1).

Pepper has come to a point where she recognizes the desire circulating in representations of the teacher and education as emancipators, are being breached or schizzed. The attempt to re-modulate the desire invested in the emancipatory mythos into alignment with the mythos of efficiency and free-market policy, has cut across and opened a schiz in the desire circulating through this discourse/representation. A breach of ethics, a breach in the circulation of desire along this particular trajectory, has occurred. This kind of experience is mirrored by many other educators across this country. Many theorists are drawing attention to the ways that discourses of emancipation are interrupted by discourses of marketization. Appadurai (1996) frames education as transformation, and education in service of the market, as being antithetical. He says, “[w]hat is required is a sustained effort to create a climate that is actually hospitable to . . . the new or the transformation of what already exists by the new” (Appadurai, 1996, p. 26). Appadurai, thus, uses language meant to draw attention to or prolong the schiz. More and more, educators are coming to see the rift between the desiring discourse that positions them as educators for emancipation and the desiring discourse that positions them as educators in the service of the market. Still, for the profession of teacher, this schiz has thus far always resulted in further axiomatization.

The axiomatizing cycle always opposes revolutionary potential, or escape (Deleuze & Guattari, 1983, p. 246). While the schiz naturally occurs as part of capitalist structure, these schizzes can either result in a line of flight *or* a re-modulation, an axiomatization, by the market. The difference depends “on whether the decodings are caught up in the axiomatic or not; . . . on whether controlling reterritorializations are added to the process of deterritorialization” (Deleuze & Guattari, 1983, p.

247). Thus far, in the teaching profession, the breaches of desire circulating in representations of teacher as emancipator have resulted in further control devices of testing and surveillance which have been deployed as part of a larger narrative supporting these strictures in support of the market, the expanding axiomatics. As the market and government combine to deploy more control over what can be taught and over who can teach, the schiz is stop-gapped so as to re-orient the focus onto education in service of the market. As testing becomes more public, the project of schooling gets told as a story of education in order to have economic stability or dominance. Figure One shows an illustration of this process. In this figure, desire gets modulated toward axiomatization on behalf of the market rather than as a potential escape. By contrast, the schizophrenic process has resulted in an appreciable line of escape and multiplicity of desire and meaning for the profession of judges. The profession of judging has been able to take advantage of the schiz and develop a line of flight into multiplicity: a multiplicity of what it means to labor as a judge.

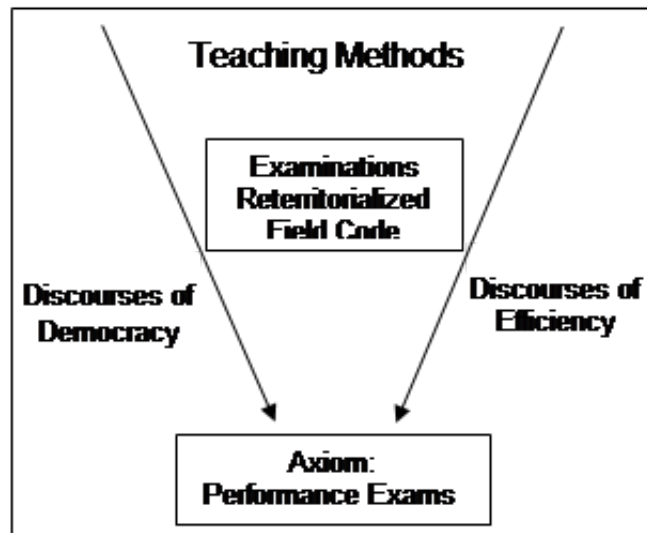


Figure 1

The Schizophrenic Process and the Profession of Judge

The profession of judge has a long history. It is a profession that has often been the site of revolution and counterrevolution, of encoding and decoding, of territorialization and reterritorialization. The profession has recently experienced a schiz that has developed into a line of flight, into a proliferation of desire and representations of judging as such. This proliferation of desire is itself revolutionary; although it remains to be seen when/whether the capitalist axiomatic will be able to cauterize and unitize the schiz or not (Deleuze & Guattari, 1983,). What is certain, however, is that *at this moment*, the profession of judging has been carried away by a proliferation of judges, of modes of judging, and the development of new relationships to law. This is a development that should be encouraged for its own sake, for the possibilities, despite the dangers, of the *new*. To see how it came to this, let us examine the schizophrenic process within the profession of judging.

Prior to the nineteenth century, concepts of judging developed through an accepted understanding of a *common-law* system. Common law judging was deeply invested in a sense of *natural law* common to all men which predated, and in fact superseded, the sovereignty of the aristocracy claimed through the Norman Conquest (Foucault, 1997, p. 106). This appeal to the concept of the law as natural and common created an ideology of the law and judging as anti-hierarchical and impartial (Abraham, 1998, pp. 1-2). In fact, the rituals of the courtroom go a long way to maintaining the ideology of the judge as the impartial giver of the natural law. In trial--the point of examination--the courtroom maintains strict differentiation among jurors, lawyers, and the public. The judge is singularly separated and elevated; the special relationship is intended to create the impression of "supremacy, impartiality, and abstraction" (Almog, 2006 p. 204-05). In literature and film, with the notable exception of William Gaddis's novel, *A Frolic of His Own* (1994), the judge is less a character than a caricature: justice personified. The judge is merely a passive part of the legal setting (Posner, 1998). In this discourse, the judge is an even-handed, depersonalized law-giver. And the judge gives the law by making a formal, judicial examination at trial (Garner, 2004).

These codes of impartiality and the service to a pre-existing natural law also, in time, developed not only highly ritualized

symbols of judicial impartiality, but also highly ritualized courtroom and trial procedures. To enforce common-law rights, a litigant had to plead with the judge for the court's decision. Far from being a descriptive verb, pleadings were ritual statements which had to be completed correctly for a litigant to prevail at trial. Over time, the formal nature of pleadings multiplied into numerous, but highly stylized, rigid, and time-consuming rituals, rituals that not only informed but also often directed, limited, or governed results at trial, the site of examination. Each type of case (e.g., trespass, breach of contract, theft) had a special type of ritualized pleading that was unique to it. Judges and lawyers followed complex and detailed pleading rules which were many and varied. Instead of a single type of trial, there were many types of trials, depending on the required form of pleading. As the influential William Blackstone (1768) wrote in his *Commentaries on the Laws of England*, which were extensively used and incorporated in early American law: "Trial then is the examination of the matter of fact in issue; of which there are many different species, according to the difference of the subject, or thing to be tried." (p. 330). In this regime, common law judges operated within the strictures of this formality which were, like *Jarndyce v. Jarndyce* of Dickens' *Bleak House* (1853), incomprehensible to those without legal training. Under this discourse, the concept of a *good* judge was defined as one who was good at discharging the law in all of its ritualized process, with emphasis on identifying the proper type of pleading, and thus, supervising the proper type of examination/trial. Thus, the judge was the embodiment of the natural, but above all, impartial rituals of the law.

In the nineteenth century, things changed. Capitalist discourses dismantled and deterritorialized the codes of common law pleading in order to recreate judges and processes of judging which were better able to serve the developing industrial markets. Legal historian Lawrence Friedman describes the process of increased pressures, caseloads, and economic responsibilities brought to bear on judges and courts beginning in the nineteenth century: "The American legal system faced demands from industry and commerce and from an enormous middle class of consumers of law" (Friedman, 1985, p. 388). In the face of ballooning court dockets, some judges applied "radical routinization" and "assembly-line justice" (p. 390). This assembly-line concept was more broadly applied in 1848 when New York State passed the highly influential Field Code. (Friedman, 1985, p. 391). The Field Code was highly simplified, unstylized, and "was meant to destroy the [ritualized] paraphernalia" of common law pleading and deploy a single type of pleading and a single type of trial under universally applicable standards (Friedman, 1985, p. 392). Friedman explains the change in terms of economics: "Just as a mass market led to mass production of commodities, so a mass market led to a mass production of law" (p. 398). The capitalist system de-coupled the coding of judges as the embodiment of justice, and, through a process of reterritorialization, judges and the judicial process began to be represented by a drive toward efficiency and attenuation to the market. Thus, policy shifted so that the profession was remodulated toward the marketplace.

The judicial process became reterritorialized in the economics of pleading. By the turn of the century, the numerous, ritualized common law forms of action were replaced by "*one* form of pleading" that was not technical at all, but required only "a short and plain statement" (Federal Rules of Civil Procedure, Rules 2, 8, 2008; emphasis added). Although this is technically not the Field Code, for ease of reference, we will use *Field Code* to refer to all modern pleading practices owing their existence to this first codification. In this pleading regime, as demonstrated by the first rule of Civil Procedure, good judges were policed into an efficiency-first stance as they were required to discharge the law in order "to secure the just, speedy, and *inexpensive* determination of every action and proceeding" (Federal Rule of Civil Procedure, Rule 1; emphasis added).

These changes markedly affected the profession of judging. Contemporary descriptions of judging and contemporary judicial ideology are far from the mystical, common-law law giver. Judging, as a profession, was reterritorialized into an economics of labor (Rubenstein, 2006). Judge Richard Posner, sitting on the United States Court of Appeals for the Seventh Circuit, describes judges this way:

My analysis and the studies on which it builds find that judges are not moral or intellectual giants (alas), prophets, oracles, mouthpieces, or calculating machines. They are all-too-human workers, responding as other workers do to the conditions of the labor market in which they work. (Posner, 1998, p. 7)

As participants in a labor market, separating good judges from bad judges has become a capitalist process of separating good workers from bad workers.

While adoption of the Field Code may have served the capitalist needs of a nineteenth century and early twentieth century industrial capitalism, the desire circulating within discourses of judging as justice and judgment personified, and even judging as an enterprise of efficiency, has come to be seen as schizzed within the profession. The use of the Field Code, which at one time acted as a reterritorialization in alignment with the market, has come to be seen as an impediment to justice and efficiency—a breach of ethics, an interruption of desire. Such dissatisfaction has erupted into numerous ways of judging that are incompatible with Field Code Justice, and ways of judging which displace the trial—the examination—as

the primary site of judging. Within the profession, judges have been able to focus the act of laboring away from market drives and instead, focus the act of labor in alignment with the narration of judging *as* justice. This has resulted in an explosion of possibilities for the actual labor done by a judge.

This explosion is illustrated in a number of ways, two of which are sufficient for the purposes of this paper. First, is the *vanishing trial*. Second, is the proliferation and development of specialized Courts where judges play new roles incompatible with traditional judicial ethics, and incompatible with the traditional trial.

The vanishing trial is a phenomenon whereby the judging goes on outside of the courtroom as well as apart from and prior to the point of examination. About five years ago, Marc Gallanter highlighted this phenomenon occurring in Federal litigation: Judges were working on more cases than ever but there were fewer and fewer cases brought to trial (Gallanter, 2004). Since then, the topic has garnered an enormous amount of attention in the legal field, produced a fast growing body of literature, and was even the subject of a special conference by the American Bar Association. Even critics who deny the validity and efficacy of the vanishing trial phenomenon agree that judges are more active in traditionally non-judicial activities—activities which may go against codified judicial practices—by taking on the role of case managers. Furthermore, non-trial activities like “alternative dispute resolution” (commonly referred to as ADR), has been gaining increasing prominence for both litigants and judges (Lande, 2004, p. 202). In fact, most studies estimate that, depending on the jurisdiction, only one half of one percent to ten percent of cases are resolved by trial (Shestowsky & Brett, 2008, p. 98). Accordingly, a multiplicity of judging has been reintroduced, but unlike the multiplicity at common law, it occurs *prior to* the point of examination, and indeed, the purpose of the multiplicity is to avoid the trial/examination all together.

Second, there has also been a proliferation of therapeutic courts since the 1990s. (Bozza, 2008 p. 113). These are specialized courts which deal generally with criminal behavior in a collaborative, as opposed to adversarial, manner. Because the model of adjudication is completely different, the role of the judge is completely different, and judges serving therapeutic courts follow different rules: In fact, they are expressly exempt from the most recently promulgated code of judicial ethics. (Harrison, 2007, p. 264). In one sense, the creation of therapeutic courts reintroduces multiplicities of the type of trial; however, unlike the multiplicity of common law trials based on rituals to examine the evidence, the purpose of therapeutic courts is *explicitly* to help mold the litigant and *not* to mark him or her through a traditional examination at trial. Accordingly, the therapeutic judge is not an impartial objective law giver, but a helping participant. Adoption of therapeutic judging is only possible once the common-law judge has been demystified, and the judge a laborer or worker, sees an escape from the capitalist confines of traditional judging. The justification for these courts is heavily embedded in the discourse of justice, which discloses a breach of justice by using the “assembly-line approach” that is the Field Code. (Bozza, 2007, p. 101). The therapeutic courts movement is not without its critics, like Bozza, but it appears that increasingly greater numbers of these Courts have strong support in federal legislation (Bozza, 2007). Policy has shifted again, this time being modulated toward discourses of justice over market economy.

The legal profession has seen a proliferation in non-traditional adjudication. ADR itself is heavily invested in an out-of-court, or non-Field-Code resolution, to legal disputes. In fact, in this discourse, the perceived impartial unity of the Field Code itself has come under question. There is a growing body of literature questioning whether *all* trials should be conducted under the same universally applicable standards (Hannon, 2008, p. 834), *i.e.* the profession no longer perceives that there is a single set of examination questions to satisfy all issues as envisioned by the Field Code. Instead of repressing and remodulating desire into a unity for the market, the recent explosion of modes of adjudication represents an explosion of desire and the traversing of a line of escape from market-modulated regimes of judging. Figure Two illustrates this point. At one point, desire was modulated toward axiomatization by the market. However, current policies allow for a proliferation and explosion of desire realized in variable codings of the judge.

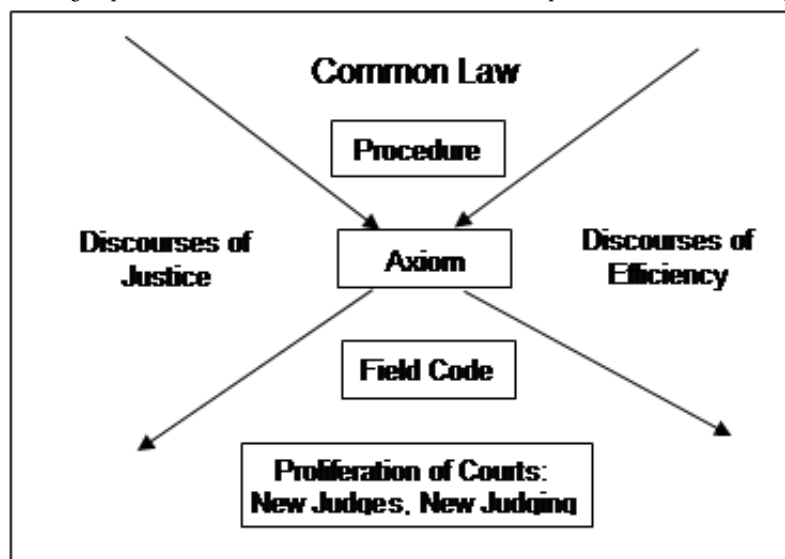


Figure 2

This movement, this explosion of adjudicatory modes, is not without its critics. There are critics which attempt to stop the proliferation of courts with an axiom that links the impartiality of the judge and the discourses of justice and efficiency with adjudication in a unified and more thoroughly pointed system of adjudication focused on the trial as the point of examination, like the Field Code. This criticism is an attempt to reinstate the territorialization that led to the adoption of the Field Code. However, despite their critics, it appears that these courts, and the ADR techniques forming the explanatory basis of the vanishing-trial phenomenon are here to stay.

On its face, these changes may appear modest, but to a lawyer or judge, they are fundamental, indeed revolutionary. They represent multiple avenues/lines of escape from the axioms of legal practice which are incompatible with the process previously learned. Though we have been unable to locate any systematic studies, it is interesting to note that the most recent multiplicity of judging, should have an effect on the conditions of labor for a judge. Both for the vanishing trial and for therapeutic courts, less and less time is spent by the judge at trial—the most public point of examination. Accordingly, a judge's relationship and visibility to the public have changed, and the conditions of labor may likewise change. For a legal practitioner, the fundamental nature of this explosion and multiplicity is at once frightening and exciting. The very existence of these lines of escape hold the promise, perhaps, of something better.

Multiplicity as Revolution and Opportunity

It may not at first seem that revolutionary: a multiplication in the ways that judges are judges—an explosion in the way that judging is performed. However, this explosion of desire into a “multiplication of concurrent orders” of newness counts as a chink in the armor of the market—of capitalism (Doel, 1993, p. 181). After all, Deleuze's project is Marx-like, thought not necessarily Marxist. It is the repetition of multiplication, the infinite explosion of desire that will finally bring down capitalist oppression of representation. As Deleuze suggests, and here he refers to desire unrepressed by capitalist axiom, “despite what some revolutionaries think about this, desire is revolutionary in its essence—desire, not left-wing holidays!—and no society can tolerate a position of real desire without its structures of exploitation, servitude, and hierarchy being compromised” (Deleuze & Guattari, 1983, p. 116). This is because, as Doel points out, difference in multiplicity “deconstructs representation” (p. 179). It is representation, which “speaks only in the language of signs imposed on it by merchant capital or the axiomatic of the market,” and is created from the residuum of codes deterritorialized by capitalism (Deleuze & Guattari, 1983, p. 241). According to Deleuze, as representations are deconstructed and multiplied, desire—the desiring-machine—is exploded from its repression (Deleuze & Guattari, 1983, 376). This is not to say that one causes the other; rather, they happen at the same time. As the schiz releases desire, traversing a line of flight, multiplicities of desire trajectories are released. This multiplicity of desire, desire flowing in new and different trajectories through thought and meaning, “overthrows the established order” (Deleuze & Guattari, 1983, p. 376). Thus, while a new multiplicity of judging options may seem small, it is a meaningful explosion of desire. It is through numerous and repetitive explosions, explosion through the axiomatic into the outside, which will bring an end to the repression of desire and the particular subjugation of capitalism (Kaufman, 1998).

While it is important to point out that, for Deleuzian theory, the explosion and multiplication of desire is in and of itself revolutionary (Deleuze & Guattari, 1983), we, as authors, are left to consider what that multiplication, may bring. Is it possible that a multiplication of desire along new trajectories brings with it modes of being that are even more oppressive to the socius? According to Deleuze, the answer is yes. “Schizoanalysis as such does not raise the problem of the nature of the socius to come *out* of the revolution” (Deleuze & Guattari, 1983, p. 380). This is because desire only *aims for* desire itself. Desire cares only for “what generative role desire enjoys therein [in the new regime or socius]” (Deleuze & Guattari, 1983, p. 380). So, there is risk in multiplication and the new. It is possible that, while the new ways of judging allow for the “being multiple,” and offer “lines of variation, which do not even have constant coordinates,” that these new ways also offer their own different kinds of oppression (Doel, 1993, p. 183). In the *new*, “anything could happen to anyone because nothing yet has and no one is there. . . Nothing yet has taken place but the place” (Holland, 1991, p. 61). This is why Doel points out that, just because there is difference and multiplicity and explosion of the new, it does not mean that there is “no danger of confusion, ambiguity, impropriety or contamination” (p. 178). Still, we want to submit that this risk is worth it, both because multiplicity can bring an end to the repressed desire inherent in the capitalist machine, and also because the idea of a new place and a multiplication of possible trajectories fills us with excitement.

This excitement is true of an expansion, a multiplicity, even on a small scale. We admit that a multiplicity in judging has not brought down the capitalist order. However, not only is it a chink in the armor of capitalism, but it has resulted in an appreciable change in the ways that judges labor. Judges now have more options and more ways of *being* a judge. The examination process, the trial, has been re-worked to provide judges with more options, more lines of flight. Now, if the examination process for teachers, and what it means to labor and be a teacher, could also be expanded and multiplied--decoded and exploded away from hinging on whatever the market wants—then teachers might also enjoy a greater multiplicity. There is a potential for *the new*.

We, as authors, also want to question why it is that the schiz has been exploited within the profession of judging but not within the profession of teaching. Does the profession of judging interpolate the socius and the idea of the public square in such a way that the explosion of desire is easier, less subjected to axiomatization, than in the teaching profession? After all, while teachers and judges are both government employees, and both subject to the market in their own ways, is there a mysticism that surrounds the coupling of judge and justice within the very institution of the public that allows for a dodge of axiomatizing discourses? Will further deterritorializations of teacher representations have to occur before the schiz can be exploited (and desire exploded) by the teaching profession? These are important questions, and perhaps writing further about teaching and desire can open avenues of thought where these questions are more fully explored and desire is multiplied. And this is where we conclude our paper; hanging our hopes on the revolutionary possibility of writing--the possibility that writing may prolong and explode the schiz.

Elizabeth St. Pierre compares *writing*, the process and act of writing, to the Deleuzian idea of deterritorializing thought and inquiry--“nomadic inquiry” (St. Pierre, 1999, p. 258). For her, escaping the axiomatics of the marketized social order--ordering of thought, ordering of connection-- is done by seeking a line of flight to the “aside” or “outside” through the act of writing (St. Pierre, 1999, p. 278). She sees the aside as a pleasurable, although risky, place of doing and experimenting (St. Pierre, 1999). She uses writing as a form of nomadic inquiry. It is writing, and seeking the outside within our writing that allows us to participate in a nomadic journey—an inquiry into territories of the new. We want to echo this idea.

We want to echo De Certeau (1984) when he suggests that, the aside—the outside--is a space “to be other and to move toward the other” (p. 110). We believe there is a pleasure in alterity and a subversiveness and release in multiplicity. While we, as authors, believe that the new comes with risk, we also believe that this new and multiple space/place offers a chance to experiment with different modes of being and dehiscent fields of inquiry. We believe that writing, for change and for difference, is part of this risky journey of possibility. Writing allows for the possibility for exploiting the schiz and delving into the new and multiple. We see this text as a brief attempt at writing the schiz, at pointing to the possibility of a new space. And writing, of itself, is a space. “It is an affirmative, joyous space, perhaps the most thrilling of all the fields in which we work” (St. Pierre, 1999, p. 266).

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