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GLOBALIZATION IN A FALLEN WORLD: REDEEMING DUST

*Emily Albrink Hartigan**

ABSTRACT: If an abstract were possible or desirable, it might go like this: In a post-lapsarian world, what forces of redemption are available to give hope for an emergent legal consciousness that can affirm the sovereignty of the Spirit's redemptive presence-and-absence? This paper explores the spiritual aspects of the writing of Jacques Derrida, Ivone Gebara, Patrisia Gonzales, David Tracy, and William Stringfellow as they help to suggest the liniments of religion-beyond-religion active in the emergence of international legal norms, taps the feminist spirituality of law as a new font of imaginative creativity in the consciousness of the Earth, and plays with dusty old laws and stories, in a postmodern regulated love poem of the Just [God]-ever-elusive in Her world.

The primary paradigm used in academic globalization discussion is that of the discursive, "rational" discourse of the late twentieth century university and political-cultural commentary in the United States of America and Great Britain. I will begin in that voice, therefore.

My own approach to globalization would begin somewhat differently. I approach it as an Outsider, as someone whose most authentic manner of expression and process is not linear and purportedly syllogistic, but narrative and parabolic. Contrary to the dictates of late Enlightenment commentary, I would proceed in something closer to the stream-of-consciousness spiritual-poetic narrative characteristic of postmodern thought, and as I will discuss, I consider that several aspects of the human process of reflection that are not included in dialogic rationality are necessary to full human communication. My mode of discourse (and thus ground of hope for dialogic engagement) is not anti-rational, but it does not proceed in outline form, or by neat sections and numbered paragraphs—yet it does not evade the challenges and gifts of sophisticated, scholarly books like Martha Nussbaum's rich *Love's Knowledge*. My discourse does not purport to be merely deductive, or even inductive in the traditional manner. It relies instead, in addition to "reason," on a web of interconnections, thoughts, feelings, intuitions and unstated "channels" that are not easily mapped by the mindset that produced most of twentieth century academic thought. It is not unmindful of that thought, or disrespectful, but it is located in a resistant perspective, one primarily aware of the aporias and passions necessary to bring to voice and word experiential embodied truths, especially of those persons not privileged in the dominant discourse. My address resists the totalizing metaphors and models of "universal" discourse and the authorial third person, relying instead on its own incompleteness.

I understand that my view, and my presentation, are partial, unverifiable in the traditional sense, and inescapably subjective—but not merely or simply subjective, of course. I leave the wholeness that "objectivity" would require to what some call God, ceding the universal perspective to the Wholly Other and thus not to us, individually or, even in dialogue, collectively—at least not in any way we can ascertain. And, I still aspire to profit from the wisdom of plural perspectives and involve all other perspectives I encounter, with respect.

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I. THE PARADOX OF THE FALLEN GLOBE

I prefer the known and unknown limits of this earth rather than to fly off to a heaven proposed by theologians but one whose substance I do not know. I prefer to stay enmeshed in the dut of the earth rather than to mount to a sky white and perfect. I prefer, for my last sigh and my last repose, the arms of the earth—which, according to the book of Genesis, is the place where God walks.¹

The term “globalization” immediately evokes a paradox: a concrete image of a blue-green orb in a pervasively dark field cannot settle for the viewer whether the field or the ground is the more salient. The initial focus of attention is the beautiful sphere cradled in cloud webs swirling over the subtle surface, tracing a filmy pattern seemingly unanchored to the continents and oceans intermittently visible underneath. Yet, the vastness that contains this sphere is that much more spectacular when we realize that the viewer is literally situated “out there” beyond the globe, in the greater universe, in the undefined dark field. Thus when commentators begin by talking of universal values or the Universal Declaration of Human Rights, the paradox of a globe that risks confusing itself with the universe rattles with its own ironic incongruity against the dark, infinite field. For into what has the globe fallen, or been placed, or found itself? From where or Whom is it fallen? And from where, to Whom or what, would it rise? How could we possibly locate up and down, in the image we have been given by our photographs from “space”?²

It should not surprise us, then, that paradox is at the center of globalization. One key axis of that set of paradoxes is that between “good” globalization and “bad” globalization, another between the “is” and the “ought” of globalization. I was struck by several recent conversations on national media discussing the globalized economy of the past. For example, one commentator spoke of the time of the early common era, describing extensive trading patterns and cultural borrowing among civilizations well beyond the Mediterranean basin 2,000 years ago, including a trading route through India when the Silk Road was obstructed.³ There has been interconnectedness in human life for as long as history, and an accompanying incomplete awareness of what that interconnection meant, that is likely to end only with the eschaton. It will be important, then, to keep track of what is already emergent on a global scale,⁴ while we also look for the ludic in the pretension to “universality” among our attempts to see things as One and Many, as we may by focusing on the globe inadvertently exclude for any primary purpose probably one-shy-of-a-billion parts of a billion-measured “universe.” To put that globe in context is to turn another polar set of tensions spinning:

1. IVONE GEBARA, *OUT OF THE DEPTHS: WOMEN'S EXPERIENCE OF EVIL AND SALVATION* 131 (Ann Patrick Ware trans., 2002).

2. David L. Shapiro, *The Death of the Up-Down Distinction*, 36 *STAN. L. REV.* 465 (1984).

3. John Noble Wilford, *Under Centuries of Sand, a Trading Hub*, *NEW YORK TIMES*, July 9, 2002.

4. See Huie, *infra* note 47.

which is the particular, the one or the many? “Many” is a gathering category, sweeping up many particulars into one designation,—“the many”—in contrast to “the one” implying an almost self-reflexive singularity. Yet each of “the many” is radically singular while the “one” is always subject to the second look that David Tracy performs in *Plurality and Ambiguity*, a look that scatters the apparent “one” of the hierarchic, patriarchal Church both internally and among other “one” particulars.⁵ This minor wordplay is to suggest that the only “true” One, if there is such, would have to be transcendent and immanent at once, and of a nature so mysterious that the only adequate-and-inadequate word for it, if it is not solely the aporia of the *Deus absconditus*, might be “God.” This “God” would, however, be like the Jewish G-d or Meister Eckhart’s God-beyond-God; that is, it might be, like the Fool in the Trot deck in *The Greater Trumps*, moving so fast that it stands perfectly still yet invisible.⁶

My tentative location in a primacy of the many, the particular, the “here, now, this” instantiation of human reality is presaged by our limited epistemic grasp. What we know is always what *we* can know, not what can be known, much less what is. The “god’s eye view” postulated by contemporary philosophers like Hilary Putnam is the gaze of Plato’s *Form of the Good*, the wholly Other looking at us, an encompassing knowledge that by its divine and infinite epistemic position is forever unknown to us in this life.⁷ Even if we attend to “horizons” and communities of discourse (that is, to whole civilizations), we never exhaust the plurality of viewpoints. There is always an Other (internally as well as externally). We, as who we are given to be, must be content with what we hope to learn, the gift of revelation from time to time, the hope of ongoing dialogue and mystery. But in that hope to learn, reason is not enough of a motive force, as Socrates well knew. Although the human soul is profoundly, parabolically mysterious, I find myself continually tilting towards the greater epistemic inaccessibility of Universal truth or anything pretending in that direction on the so-called universal scale. Thus, I will be even more tentative about whatever a globe might be than about the mystery that is a human person. Although I believe that “decentering” is a spiritual movement and the decentered self a pilgrim stance, we still know first through our body knowledge; as P.F. Strawson said, “the concept of a person is prior to concepts such as mind or body that follow the very experience of being-a-person.”⁸ Before I began to know there was a globe, the psychologists tell me, I was as a child, a globe, a world, a universe.⁹ As I grew, I learned more and more that, like the text, there is nothing outside the world, the universe. And the human world is fallen.

The human world is also redeemed. The God-beyond-God is both unattainable and also present in the texture of the daily. It is *this* both/and, this paradox, that currently most concerns me. For what are we to make of a “world”-wide culture or economy or spirit or democracy or even Gaia sphere, that is inherently

5. DAVID TRACY, *PLURALITY AND AMBIGUITY* (1989).

6. CHARLES WILLIAMS, *THE GREATER TRUMPS* (1932).

7. See THOMAS NAGEL, *THE VIEW FROM NOWHERE* (1986).

8. P. F. STRAWSON, *INDIVIDUALS* (1960).

9. See D. W. WINICOTT, *MOTHER AND CHILD: A PRIMER OF FIRST RELATIONSHIPS* (1957).

fallen and plural and fragmented and decentered, even as we hope for an increasingly redemptive vision of it? One key must be to attend to the forces that would pull us back together, and the primary gathering force, manifested in revelation and procreation, is love.

Whatever are we to do with love in a “process thought” conversation on globalization and democracy? Perhaps one first step would be to look at the extant conditions of globalization. We find both beauty and ugliness. We do know that there is a global market with international corporations and conglomerates that in many cases have financial footprints larger than many of the world’s so-called nation states. Capitalism has already gone global. The world is already substantially commodified. The primary currency marking that one mode of valuation tends to be the U.S. dollar.¹⁰ And the lingua franca, along with accounting sheets, is the CNN version of English.

Yet the fracturing of that very materialist (I use that term in its fallen sense), unregulated grasp of commerce has begun in the center of the world empire, the United States. The flagship exemplar is Enron, and the very heads of state are implicated in the fracturing (Halliburton, Enron itself, the increasing public perception of Bush’s tunnel perspective on behalf of the corporate elite). Thus, the primary candidate to hold the iron grasp of a global cabal is already showing its fissures, even as the major and necessary piece in global reflective consciousness, the media, manifests radical ambivalence about reporting the “new world order” that is already producing ruins.¹¹

This movement of inevitable decay in any human “order” reminds the contrarian mind that there is a corresponding movement of resurrection, also. I would locate that movement at the “bottom,” the roots—to use the green metaphor, the grass roots. To do this, I will turn to my own location. That location itself is of course paradoxical; I teach at a “Hispanic-serving” institution in the Borderlands. St. Mary’s Law School in San Antonio is not fully in the United States. The city is about 30% Anglo, and its politics reflect the sine waves of the resistance to and recognition of that demographic. Currently, we have our second Latino mayor after Henry Cisneros, and a majority-minority city council, but the media “revelations” and exposés tend not to produce diagrams of the interconnections of the Anglo power elite and moneyed interests, but the relatively small-time questionable interconnections of the Latinos emerging barely into positions of public power. Diagrams of the sinister connections (such as campaign contributions of all of \$1,500, or alleged bribes of \$4,000) among Hispanics fill the paper¹² that remains substantially silent about the millions of dollars contributed to my university and other universities¹³ by major Anglo power-brokers (with significant institutional strings) or the web of cronies that produced a superfluous major sports arena and is in the process of circumventing

10. As this was written, the predictions and realization of the “global” consequences of George W. Bush’s bellicosity included the significant decline of the dollar. See, e.g., Laura d’Andrea Tyson, *Comment & Analysis: A War That Lacks a Financial Strategy*, FIN. TIMES OF LONDON, Feb. 25, 2003, at 17.

11. See TRACY, *infra* note 21.

12. See, e.g., SAN ANTONIO EXPRESS-NEWS, Aug. 18, 2002.

13. And other universities. See *Private Money Pads Packages of Public University Leaders*, NEW YORK TIMES, Aug. 23, 2002, available at <http://www.nytimes.com>.

a petition drive of historic proportions so we can build a PGA-level golf course for the poorest major city in the United States. We have a set of media-political relations reminiscent of the regimes that the United States has manipulated into being (and out of being) in Latin America; we have imported the second if not the third world, as is increasingly so in the inner cities of the entire country, but our region has no true border, so the “other” marginal aspect of a world nearly invisible in the mainstream media bleeds our conveniently externalized poverty and powerlessness north and south across the “border” with Mexico proper. Our economy is silently dependent upon the labor of those who are undocumented, invisible on official paper except for the body count of dehydrated unsuccessful job-seekers found in border ranchlands and the statistics of deportation prisons. One main version of fully outlaw culture of international impact in South Texas is the Mexican mafia, as it is called; another is the local version of Enron. We are already globalized, and it is not pretty.¹⁴

How, then do we search for beauty? Socrates told us long ago that we have God-lust, and that in the mysteries of attempting to touch the ultimate form of the Good, there are never sufficient words. At a moderately drunken dinner party, sanitized into the “Symposium,” he tells a story, a story about a woman with whom he is clearly in love, Diotema of Mantinea.¹⁵ She, as a priestess, has glimpsed the wisdom he seeks, and he can only seek it through encounter, meeting, with her. The *Phaedrus* tells us, and I believe, that the encounter is even deeper if it does not settle for a union that belongs only to the creation of family, but with its breath-taking tale of erotic attraction among those of intellect, Socrates’ story is hardly solely rational.

How can we engage in such full, lusty dialogue? Again, I suggest that it starts from the ground up. Feminist theorists emphasize embodied knowledge, a genesis in the local, the Other of the dominant discourse, the marginalized. Brazilian theologian Ivone Gebara writes in *Sacred Universe, Sacred Passion* that with “a method much appreciated by ecofeminists, especially in third world countries, we need to be concerned about the universal and the Universe, but we need to make the journey from our own cultures, our own countries, from our own environments.”¹⁶ She is advocating that the most marginalized—third world women of color—go to their own religious traditions, with an understanding of the colonial overlay, to tap the sacred fire necessary for them to claim their own value. Until the Other knows herself as loved by someone other than the patronizing first world speakers, she is not able to speak as she should for herself as only she can. One way Gebara taps this is to get women who find in Genesis 3 a story that blames evil on women to act the passage out. Then she asks them who is the most interesting character, and the next most interesting? The list starts with the snake, then goes to the woman, the man, and God last of all.¹⁷

14. Benjamin M. Friedman, *Globalization: Stiglitz's Case*, NEW YORK REVIEW OF BOOKS, Aug. 15, 2002 (reviewing JOSEPH E. STIGLITZ, *GLOBALIZATION AND ITS DISCONTENTS* (2002)).

15. See Louis Ruprecht, Jr., *A Funny Thing Happens on the Way to Mantinea: Diotima and Martha Nussbaum on Love's Knowledge*, 75.1 SOUNDINGS 97 (Spring 1992).

16. IVONE GEBARA, *SACRED UNIVERSE, SACRED PASSION* 8 (2001).

17. *Id.* at 10.

What do we find most interesting in the global conversation? I suggest that it is the confluence of the Unknown God and the creation centered sensibility of the indigenous, the Others, those who have stayed in place. For those of us who have moved, the sense of the world as alive and radically imminent is available, but only after a journey back, perhaps something like theologian John Dunne's "passing over and return."¹⁸ That is, we have left home, and to know where we are truly situated is a complex, paradoxical voyage that hopes to result in what Paul Ricoeur calls the second naiveté. Those who stayed may have a non-Enlightenment sense of connection with the created world that is not as accessible to us more peripatetic folk.

II. FALLING HOME TO EARTH

Tlatelolco is a sacred site—the people have made it so—and it called me inside of its stone to live the mystical of the place, to understand the "mind" of the land, the living, the breathing spirit of the Life. . . . The mind of the universe, of life, of animals, minerals, matitas. We become piedras. This land calls forth its own "sacred geography[]" The land is made sacred by its stories.¹⁹

In 1996, I traveled with a human rights tour led by faculty at my university through Guatemala. At one point in our meandering through the highlands, we stopped at a contemplative community of Maryknoll nuns. These women, part of a primarily activist religious community, had chosen to return to the sites of violence, and took residence in a former rectory that had been the site of torture and killing during the 1980's. In this place in need of plenary redemption, they lived a cloistered life. Steeped in the high-intellectual texts of postmodern and mystical theology and years of quest for the contemplative life, I asked them what the local indigenous population made of their life style. Could they understand why the sisters lived in silence and prayer, I asked. They laughed. "These people are natural contemplatives," they replied. The wisdom sought so avidly by the seekers of my imperial culture, they had never relinquished. Seeing our ignorance, they maintained their sense that the world was alive, in all particulars, in all creatures. There was no disconnection. Yet after the unspeakable violence they had endured, no one could call them simply naïve. They had lived a hell that we can only empathize with; the stories from even our indigenous guide were beyond full hearing in their agony and betrayal.

Thus in this globe there are those who know, as victims of heedless, unconscious "global" power, and still rejoice in the beauty of this globe. They have a rich cosmology that does not fail to acknowledge the complexity and temporal flexibility of "reality" even as they live in resistance to the fungible, cybertech

18. This theme recurs in the works of theologian John S. Dunne, particularly *The Way of All the Earth* (1978); he gives "A Note on Method" concerning this movement in the life of spirit at the end of *The Reasons of the Heart* (1978) on pages 148-52.

19. PATRISIA GONZALES, *THE MUD PEOPLE: CHRONICLES, TESTIMONIOS & REMEMBRANCES* 60 (2003).

world we offer. They have not given up breathing with the planet. They must not be romanticized; when I was in Guatemala, there were several incidents of indigenous justice that sounded in that most fallible community face, small-town scapegoating. A stronger tie to the earth is no guarantee of virtue.²⁰

In postmodernism, there is a possibility of meeting these natural contemplatives, these people who know who they are in relation even to a changing sphere in a black void. Thus in a volume on globalization, after a discussion of the rational horizons of Habermas's philosophy of "empirical verification" (of all things), University of Chicago theologian David Tracy turns to an unannounced, seemingly incongruous part of the story.

Tracy has first explored the work of German philosopher Jurgen Habermas, finding Habermas's ideas of communicative action persuasive, including the need to link philosophical theory to "a reconstructive, empirical, testable sociological hypotheses" of the institutionalization of the rationalization processes of our societies.²¹ As the basis for this venture, the four criteria from Habermas that Tracy accepts for "communicative rationality" are comprehensibility, truth, rightness, and sincerity.²² In the margin of this text, I had written "discernment and revelation" and would add "knowledge through love" as the overarching category. This category includes the "rationality" that Tracy adopts, but it expands it to what Bernard of Clairveau knew was the only avenue of access to the relational knowledge of God: love. It is not that love is anti-rational, but that it encompasses the rational and much more.

Without giving an overt theoretical prelude, Tracy abruptly moves into the realm of the "more" by discussing postmodernism. Note that there is no rhetorical marker, no abstract attempt to bridge his mainstream academic discourse with what comes next. Without transition, Tracy locates postmodernism in difference, the Other—and the radical love mystics.²³ He goes so far as to suggest that postmodernism supplies a "new participatory sensibility."²⁴ He stops short of calling it a participatory sensuality. He takes religious manifestation as one (timeless and postmodern) emanation of God's radical immanence.²⁵ Further, he identifies the unique role of indigenous religious traditions that have not lost the sense of radical participation in the cosmos. Turning to Francis of Assisi, he finds the most radical religious figure in the west—and I ask: is the Virgen de Guadalupe not of the west? She has been in our culture, even mainstream U.S. culture, for centuries. How much more directly indigenous a figure could a United States scholar find? (Perhaps Saint Juan Diego?) Thus the "felt synthesis" that Tracy taps²⁶ is at first deflected to Europe, but not conclusively.

20. Thanks to Professor Mark C. Modak-Truran for this notation, as it is included after his insightful comments at the "Democracy, Globalization and Law" symposium in October 2002, sponsored by The Center for Process Thought of Claremont Graduate School and Hamline Law School.

21. David Tracy, *Public Theology and the Mass Media: Can the Muses Still Inspire*, in *RELIGION AND THE POWERS OF THE COMMON LIFE* 235 (Max L. Stackhouse and Peter J. Paris eds., 2000).

22. *Id.* at 239.

23. *Id.* at 240-41.

24. *Id.*

25. *Id.* at 244.

26. *Id.* at 245.

Francis, wonderful as he is, is no hegemonic figure for those outside Western Christendom. Tracy continues to regress from his core insight of the participatory sensibility/sensuality, towards what he calls “nonreductive saturated phenomena”²⁷ and “truly saturated auratic, sacred elements-become-images.”²⁸ I ask *la Guadalupana* if she is auratic and saturated, and she laughs.

III. BLASTED FRAGMENTS OF BEAUTY

The spirits have come to the kitchen table. A long, yellow wooden table. They all gather at the table, ancestors from North and South. They have come here, to the house of earth. They come again, as in a procession, to my book. Another obsidian moon. They walk to the mud place. They know which mud to use for healing.²⁹

The irruption of laughter is the threat of what David Tracy next names in his article that is after “9/11” tied to a potentially violent set of metaphors. Taking from Walter Benjamin the “theological theory of the modernist image” that becomes after the modern, “a fragment,”³⁰ Tracy follows these image fragments to the privilege that those from the margin and historical suffering should enjoy, echoing the preferential option for the poor of liberation theology, and countering the seductive image of the celebrity. He calls for a “radically eschatological, indeed apocalyptic and messianic” understanding that focuses on the “explosive, marginal” “fragments” to “blast alive” the past with memories of suffering and hope.³¹ The explosive fragmentary images he advocates include the postmodern Muses such as atonal music, rap, pop art—and, no, I am not going to break into rap, but that is a statement of my degree of socialization to the academy. Still, rap is a notoriously violent medium, rife with sadistic misogyny and heedless gangsterism. Is Tracy advocating landmines, hand grenades, suicide bombs, other incendiary devices that throw off explosive fragments that blast alive the suppressed memories? Why would he invoke street images of force and blood? Several fragments present themselves to me here for this text. The first is one that Professor Cheryl Preston presented at the AALS panel where some of the papers in this symposium were given.³² The one that struck me hardest was an advertisement from *Vogue*. It featured a woman’s pelvic area open, one knee higher than the other, at the crotch clothed in black panties. The location was sufficiently jarring, but the positioning of her six- or seven-inch high, one-inch thick high heel so that the phallic parallel was unavoidable, was truly explosive. What made it so was the aesthetic-intellectual frame given by Professor Preston.

27. *Id.* at 251.

28. *Id.* at 252.

29. GONZALES, *supra* note 19, at 228.

30. TRACY, *supra* note 21, at 252.

31. *Id.* at 253.

32. Cheryl B. Preston, *Women in Traditional Religions: Refusing to Let Patriarchy (or Feminism) Separate Us from the Source of Our Liberation*, 22 MISS. C. L. REV. 185 (2003).

She carried us to the unmentioned heart of today's major commercial media, who calculatedly composed from seemingly simple lines the ultimate commodification of the female sex, of women. The explosiveness is of women's consciousness when they see what American commerce sees as valuable for traffic in money and women's privacy.

There are other explosive artistic fragments close to the street that are much more redemptive. One is the image on the wall of my colleague at St. Mary's, Reynaldo Anaya Valencia.

In my office at the St. Mary's University School of Law in San Antonio, Texas, I have a reprint of an original work by Morales which depicts a beaten and battered young, Latino male wearing a white tank top and sporting several tattoos, open wounds and scars. His hair is disheveled and his eyes look very tired. Emblazoned and superimposed on his chest and his white tank top is the image of the Virgen de Guadalupe, the patron saint of Mexico. Across the bottom of her image are the following words: "*Perdoname Virgencita*" ["Forgive me, Virgin"]. I bought the poster and had it framed and mounted for my office because of the powerful symbolism which the work's images have for me. Here is a down and out young *cholo/pachuco* who probably never or rarely attends church, but has nevertheless had notions of Catholicism so ingrained in him that he still seeks forgiveness from the Virgen de Guadalupe. When people enter my office and view the framed print, they often ask whether I personally know the individual depicted. My response is somewhat loaded. I typically respond yes, I know the individual, because he is every Chicano that I grew up with.³³

By presenting this image in his work, Valencia is performing what Tracy calls for, but of course, being at the University of Chicago, is less likely to perform: "Free the Muses to capture both needed images of participation in our religion-as-manifestation traditions and the explosive fragmentary images of the apocalyptic and the prophetic proclamation traditions."³⁴

I am coming to this "symposium," this gathering with papers that grew with table fellowship, hoping for free Muses appearing among us. For the supposed foundational texts of our corner of the globe, the Greek playwrights, philosophers, and poets, were Muse-inspired. Plato, the notorious "father of philosophy" included in his portrait of Socrates—that elusive non-writer—myth, poetry, history and play, all within a dialogic structure that was inherently narrative. Socrates's motive force was Eros, the animating energy of the search for the Good. The playful, almost ephemeral syllogisms and conjectured dualisms, were embedded in the tale of conversations among persons who evoked the

33. Reynaldo Anaya Valencia, *On Being an "Out" Catholic: Contextualizing the Role of Religion at LatCrit II*, 19 CHICANO-LATINO L. REV. 449 (1998).

34. See TRACY, *supra* note 21, at 254.

Muses and performed their callings. Philosophy used to be, well, perhaps we might say more saturated and auratic than it is now.

The Plato that has been obscured is revealed by true deconstruction. Jacques Derrida writes with increasing directness about the work of deconstruction, a work premised on the Unknown located in parabolic fidelity to “classic” texts.

When I hear the call to “explosive fragments of the apocalyptic and prophetic proclamations,” I think of William Stringfellow. From the margins, knowing that life is shot through with the powers and principalities that Stackhouse notes, Stringfellow wrote with a spare and piercing prophetic voice that almost eluded his assurances that his was a voice of hope—but hope only in the face of the full visage of death, for that is what we must confront on the way to New Life. If we hope for some vestige of a new world order, what has preceded it and how we have known ourselves must perish.

Death and life are intimately interrelated, as are the fallen and redeemed aspects of the world, and the death-bound face of the globe is already before us. I do not see that we have much choice in the face of the aggressive Social and Economic Darwinism already rampant in the world economy. Asking that we reverse globalization seems strangely anachronistic unless such a turn is accompanied by an accommodation of the forces of human nature, those “darker angels” (with the irony of the patriarchal racial overtones of the phrase) that led to the already powerful tentacles of global capital and profit-taking. Yet in one sense to try to concoct theories about globalization is itself a doomed enterprise. As Mark Wallace chronicles, the best of Derrida’s deconstructive thought is revealing itself as religious-beyond-religion, and as hopeful for justice and democracy—yet still resistant to theory. Wallace finds in Derrida a hope, a “‘messianism without religion’ that is ‘irreducible to any deconstruction.’ This hope operates in the register of a radically indeterminate and ungrounded expectation of the coming of a just order; [it] is neither religious in the conventional sense of the term nor a candidate for deconstructive reductionism.”³⁵

How are we to move into such a radically indeterminate “vision,” and may it be called a vision at all? One thread in Derrida’s thought that is increasingly insistent in critical legal thought is a newly conceived post-Marxist concern for the material, both in its positive guise (matter, mater, Mother Earth) long suppressed, and in its seemingly sinister aspect, the global capitalism we already face. We must track clearly the story of the material distribution and dynamics of money and power, and their effects on consciousness. The emphasis on the media is one crucial turn in the truth-telling, for as many have noted and Foucault made pungently visible, even in the academy, knowledge is constructed in major part by forces other than the pursuit of truth, by power, privilege, and possessions. Surely, in the face of Mammon, both Spirit and the truth about Mammon are needed. The truth about Mammon involves naming the powers and principalities, giving the facts of the matter as best we can—down to earth, material facts. The number of children who starve, in which countries, of which

35. Mark I. Wallace, *God Beyond God: Derrida's Theological Self-Portraiture*, in *THE UNKNOWN, REMEMBERED GATE: RELIGIOUS EXPERIENCE AND HERMENEUTICAL REFLECTION IN THE STUDY OF RELIGION* (Elliot R. Wolfson & Jeffrey J. Kripal eds., forthcoming).

race, under what structures of domination—those facts.³⁶ Also persistently “factual” is the way of doing business that produces Enrons over and over as the passage in the next paragraph from William Stringfellow’s *Instead of Death*, written over forty years ago, reminds us.³⁷

The radical indeterminacy for which Derrida holds out, the resistance to new icons and a persistent iconoclasm should be familiar. This is the prophetic tradition. Stringfellow is nothing short of outrageous, as were Jesus and Akiba and Mohammed and Buddha—and we should be also. In the outrageous tradition of U. S. prophetic voices, Stringfellow has some rather striking things to say about our shared world and the dominations and powers and principalities. It is not merely the starving children who are the victims of a commodified world, he reminds us. “Does anyone seriously suppose that the high-ranking executives involved in the price-fixing scandals in some of the great corporations in this country are anything but prisoners, no more truly free than serfs, confined and conformed to the interests of the principalities they serve?”³⁸ The pervasive commerce of power and money, the domination of both persons and the human within each of us by the fear-driven survival-through-possession dynamic of the early twenty-first century is the face of the fallen human state, and thus a face we should know. It is the false face of death unaccompanied by resurrection.

I am not against something that could be called globalization, but I am for the decentralization, the de-centering of that phenomenon, the balancing of the globe on a known paradox that will never let it rest.³⁹ For the insomnia that Immanuel Levinas portrays is the state of the morally alive person and the morally alive community and the morally alive world. Levinas reminds us that we cannot rest, cannot sleep, in the face of the Other⁴⁰—an Other that in this world will always be in need. Thus Derrida reflects on Matthew’s Gospel in *The Gift of Death*⁴¹ in order to call us who consider ourselves Christians to believe what our Good News tells us: it is in serving those without food or clothing or shelter or freedom from the constraints and prisons of social constructions, that we serve Jesus-in-us. In one way, global soup kitchens are a tragic image, but in another, they are the symbol of our coming to a global consciousness of our integral interdependence. Fritz Eichenberg’s Christ of the Breadlines, movingly described by Howard Lesnick, is emblematic of where we find the unexpected Christ. The image of Christ on Lesnick’s wall is itself “out of place” as his description explains why he has, on his office wall, this:

a copy of a 1953 woodcut by Fritz Eichenberg, *Christ of the Breadlines*. It shows a file of ragged men and women, shabbily dressed and worn down by poverty and despair, patiently stand-

36. Douglass Sturm in *Solidarity and Suffering: Toward a Politics of Relationality* (1998) performs this.

37. See STRINGFELLOW, *infra* note 38.

38. WILLIAM STRINGFELLOW, *INSTEAD OF DEATH* 41 (1963).

39. For a mixture of the indigenous perspective in the face of a patriarchal religion and a restless paradoxical text on the role of religion in the lives of Latinas, see *Laura M. Padilla, Latinas and Religion: Subordination or State of Grace*, 33 U.C. DAVIS L. REV. 973 (2000).

40. IMMANUEL LEVINAS, *ETHICS AND INFINITY* (1985).

41. JACQUES DERRIDA, *THE GIFT OF DEATH* (1996).

ing in a line that extends in both directions off the picture. In the center, waiting in line with the rest, is Jesus. The “holding” of that picture would take more than a sentence or two of political philosophy to express, and would hardly be improved by that clarification. But what is it doing on my wall? I am not a Christian, nor even (I continue to insist) a believer, as that term is usually used. To be “coherent,” would it be more appropriate for me to replace it with the book jacket of *A Theory of Justice* or *The Grapes of Wrath*, or perhaps with the *French Declaration of the Rights of Man*? The loss in any such change would not merely be in effectiveness, in rhetorical or literary power. The woodcut says more fully and plainly what I want to say, and it says it in a way that I feel comes more from the core of me.⁴²

Today, to find the confluence of the core of such a Quaker Jew with Buddhist and Catholic sensibilities as Lesnick might be described, we might look to the children of Iraq, whom we have bombed and starved in order to attack our former ally, Saddam Hussein, or to the widows and children of the Taliban soldiers our allies sealed in airtight cargo containers, suffocating them into a future when we would consign them to the necessity of media oblivion to protect “peace and stability.” War crimes are, the United States heedlessly assumes, where we point and say they are, we at the “center” of the de-centered global empire. The myopia of the center creates a false global discourse, as the counterpunctual protests increase in volume.

The globe is fallen; the globe is redeemed. The reality of it is multiple and material and paradoxical. We are called to be rational and loving, prophetic and compassionate, imaginative and practical about that globe. I will offer next a moderately practical sense of what law may do in the continuing process of human globalization, and my sense of how we can hope to contribute to that process from the distance of intellectuals at academic conferences in the contemporary United States. For my “practical-legal” template, I suggest that even though Euro-centric, the past development of “merchant law” and the intimations of “new merchant law” present a strand of historical insight for today’s globe.

IV. THE COURTS OF DUSTY FEET

During the period when there were no strong nation-states, European traders developed a set of customs and finally even courts to settle commercial disputes across geographic boundaries. With the colorful name of “pie powder” courts (from the French *pied poudre*, or dusty foot, indicating the itinerant seller of goods), these “international” tribunals came to codify the emergent case-by-case cultural norms that had to evolve in a situation of trading among members of plural cultures. There was no theory, and I see no indication of great thinkers or

42. Howard Lesnick, *Religious Particularism, Religious Metaphor, and Religious Truth: Listening to Tom Shaffer*, 10 J.L. & RELIGION. 317, 329 (1993/4).

theologians directing the development of the dusty feet of peddlers trekking through landscape that would later coalesce into identifiable borders. Rather, the “permeable boundaries” of a somewhat chaotic European terrain were traversed by those making a living at taking goods from one place to another where their value would be greater. Today, huge streams of commerce overshadow individual hawkers of goods, but there are also individual consumers and interesting paths among them, one of which is a new thing under the sun, the Internet.

The old terrain described in accounts of the rise of the law merchant (*lex mercatoria*) consisted of unpaved roads in Europe and England across which itinerant salespeople visited fairs, traversing the territory marked not by national boundaries but by a mapping of population clusters and feudal fiefdoms. As they went, the merchants’ boots gathered the dust of the roads, and in Norman France the expression “dusty feet” was used to gather the customs under which these merchants traded and sold goods. In French, it was “pieds poudres” shortened to “pied poudre” and then Anglicized across the channel to “pie powder.” This system of mercantile law flourished in the medieval period, and consisted of courts in which merchants served as judges of commercial disputes, and the somewhat “free-floating” law was purportedly uniform. Its jurisdiction was confined to the disputes arising at the particular fair, and the court itself was set up as part of the royal franchise to a lord or borough holding the fair.⁴³ In the seventeenth century, Lord Coke moved most of the jurisdiction of both equity courts and pie powder courts into the common law courts.⁴⁴

The current equivalent of a “new law merchant” is reflected in UNIDROIT, an acronym for the International Institute for the Unification of Private Law.⁴⁵ UNIDROIT published a paperback volume of the Principles of International Commercial Contracts in 1994 containing principles of international commerce that are slowly making themselves known and effective among international users of contract law. Recently, scholars comment that certain rules of law have taken on an international cast, as arbitrators use them when resolving transnational disputes. Some of the principles upon which international arbitrators have begun to rely are the duties to bargain in good faith, to renegotiate contracts, and to mitigate damages. Thus observers see an increasing body of international precedents, similar to traditional common law jurisprudence, emerging from a pattern of arbitration decisions rather than from the command of a sovereign.⁴⁶

Sometimes, the force of commerce directly contravenes the law and the Constitution of a state. Professor Marsha Huie, *et al.* chronicle the case of Nazi memorabilia for sale on the Internet, and the fate of United States merchants’

43. Charles A. Bane, *From Holt and Mansfield to Story to Llewellyn and Metschikoff: The Progressive Development of Commercial Law*, 37 U. MIAMI L. REV. 351, 353 (1983).

44. Allan Farnsworth, *General Principles of International Commercial Law*, 7 WORLD ARB. & MEDIATION REPORT 113, 115 (1996).

45. Friedrich K. Juenger, *American Conflicts Scholarship and the New Law Merchant*, 28 VAND. J. TRANSNAT’L L. 487, 494 (1995). See also Harold J. Berman & Felix J. Dasser, *The “New” Law Merchant and the “Old”*: Sources, Content and Legitimacy, in LEX MERCATORIA AND ARBITRATION—A DISCUSSION OF THE NEW LAW MERCHANT 21 (Thomas E. Carbonneau ed., 1990).

46. See Mark Garavaglia, *In Search of the Proper Law in Transnational Commercial Disputes*, 12 N.Y.L. SCH. J. INT’L. & COMP. L. 29 (1991).

First Amendment rights to hawk nearly any wares. Because Internet sales of such forbidden merchandise were to be blocked in France, under French law against Nazi memorabilia, the sovereigns began to negotiate. The U.S. claimed the right for its businesses to commerce freely irrespective of the speech content of the merchandise. The U.S. businesses, if they wanted to have access to French markets, would have to forego their alleged rights. In a similar, connected vein, prospective European buyers of such contraband, should they manage to learn about the wares through other means, would not want their names made public or available to the authorities. Again, they would meet U.S. law, which allows personal data from computers and Internet users to be obtained and proliferated even without the users' knowledge much less consent. In contrast, the EU prohibited such data gathering or transmission. European citizens could not communicate with U.S. dealers via the Internet because the EU required the safeguarding of personal data transmitted outside the EU through their Data Privacy Directive, effective 1998, and as it stood the free-wheeling US law could not guarantee that privacy.

[T]he EU and the U.S., after extensive high-level government negotiations, hammered out a compromise labeled the Safe Harbor Agreement on July 21, 2000, which allows onward transfer of EU data to U.S. companies complying with Safe Harbor requirements. U.S. business has decried the possible lack of jurisdiction in the U.S. FTC over Safe Harbor matters . . . and the effectively extraterritorial impertinence of the EU Data Privacy Directive itself.

*Nevertheless, U.S. businesses have ostensibly begun to comply, motivated presumably by their wish to maintain favorable commercial relations with the huge European market, now the world's largest trading bloc.*⁴⁷

Thus although the U.S. Constitution and sovereign law reign supreme in theory, in practice the private merchants are complying with the restrictions of European policy in order to maintain the free flow of money.

This imbroglio of European Holocaust contrition, United States businesses' asserted right of free speech, talking money and constitutional inconsistency is perhaps an apt exemplar of our current dilemma. In an attempt to set limits, the EU will not condone the commodification not only of what is most precious (including personal data), but also of what is most odious. The United States, in contrast, has decided that money is speech in the *Buckley v. Valeo*⁴⁸ campaign finance case, and that one cannot restrict the access to purchasing non-sexually obscene materials. Using money to buy (rather than speak about or hear about) Nazi items or to finance politicians is sacrosanct in the United States—unless trumped by its commercial interests running in another, larger stream, the international Internet auction business. Thus we find that trading partners such as

47. Marsha Cope Huie et al, *The Right to Privacy in Personal Data: The EU Prods the U.S. and Controversy Continues*, 9 TULSA J. COMP. & INT'L. L. 391, 397-98 (2002) (emphasis added).

48. *Buckley v. Valeo*, 425 U.S. 946 (1976).

France who have values with substantive content can in effect change our Constitution. One form of globalization-regulation, then, may be the conscientious actions of other nation-states.

V. BORDER DUST

[T]he divinities of the earth, as if what we can touch, smell, and breathe becomes the most concrete divine reality. This is something like a primitive experience, more fundamental than any description of it, the experience of being of the earth and of returning to the earth. The earth appears as our familiar, something we know, our own substance, mother, or primary source, capable of giving us peace and helping us to consent to the mystery of life.⁴⁹

There are implacable earth forces other than mere commerce on the internet, however, that create a dusty trail of law. Feet covered with dust travel every day and night across the Borderlands of Texas, Arizona, California. Mouths parched with dust risk death by dehydration as migrants without documents choose the more remote ranch lands to try to evade *la Migra* as they forge north to earn money for their families. Bodies covered in little or no dust sprinkle the banks of the *Rio Bravo*, as *coyotes* take the money of those wishing to traverse the river yet betray their “clients” to the elements.⁵⁰ The character of the southern Borderlands of the United States is not ruled by law. It holds an unstaunched flow of humanity moving with the economic forces that herd the jobless into arroyos and overcrowded detention centers, only to return again and again. The very national boundary is not as it is drawn on the maps—rather, it is a wide swath of brown people with papers and promises of papers and shadows and dreams of papers, surging around checkpoints (with parcels of fine white dust sprinkled among the human commerce) with arid dust covering everyone passing by the diminishing ribbon of Rio Grande water that barely makes it to the Gulf. The legally crisp line of the border is smudged by feet, spread well into Texas and then funneling in channels up to Wisconsin, Indiana, Michigan.

Whether on the feet of the fifteenth century fair merchant or the twenty-first century *camposina*, the dust of the individual trying to support a family or make a life, draws on the globe new patterns. Sometimes the pattern is etched by telephone lines carrying small-time ebay buyers, and other times it arises from widget-makers in Tennessee trying to sell to someone in Honduras. On one hand there are the octopus patterns of the huge transnationals choking nation-states whose GNP is a tenth of their CEO’s, on the other there are the coyote trails that Mexican *trabajadores* wend once a year, returning home for Christmas or *la semana santa*, and then back. These more humble “organization charts” traced in dust are the hope of the globe. They remind me of Stephen Mitchell’s retrans-

49. GEBARA, *supra* note 1, at 156.

50. Herman Rosenberg, *Border Becoming a Tomb of the Unknowns*, SAN ANTONIO EXPRESS-NEWS, July 28, 2003.

lation of the final passage in Job. Rather than being humiliated and silenced by the force of God's grandeur, Mitchell's Job is overwhelmed by the beauty of the world, and is "comforted to be dust."⁵¹ The elemental dust from which we came and to which we return has promise, as it always has, of new forms of human interaction that enrich just a tad more than they make us suffer. Virgilio Elizondo reminds us that the migrants who risk the dust of the deserts are the ones who give us hope, those of us sitting in our bourgeois locations, writing and reading scholarly papers on the globe. What he calls "the gift of their presence"⁵² among us is one of spirit and also potentially of law. But we must attend to this level of commerce, rather than being either mesmerized or discouraged by the titans of multi-national corporations.

VI. DUST AND TRUST

The recent notorious implosion of this century's robber barons may foster another historical cycle of critical reflection on the social necessity of trust and trustworthiness, and a dampening of the lottery mentality concerning one's eventual worldly fate. Perhaps the ludic nature of the Horatio Alger myth will finally break into the consciousness of this nation of immigrants who think they have left their parents in the dust, and we will see in the mirror that we have become our aristocratic European parents, while they have ironically matured since we left with our Declaration of Independence. We can learn to contribute to and help to sustain a true democratic sense of community. We might give gift subscriptions to decent newspapers and journals, pursue genuine social and political critique in our teaching, switch our retirement funds to social choice investments, and go to the local bar association lunches and make loving trouble. We might practice restorative justice (a movement embraced in Minnesota that arose not from "rational" theory but the practices of indigenous peoples).⁵³ We might read Martha Nussbaum for ways that philosophy is meant to be about action and contemplation and love, or advocate Richard Rohr's prophetic, disturbing action/contemplation nexus.⁵⁴

What we cannot do is settle for the high academic. Much as I love to read Derrida, and will continue to do so, the increasing complexity he spins so beautifully is only of value when it does what I grant him that it often does: disturbs people terribly. What makes him truly disturbing, I believe, is not identifiable by theory or intellect alone. It is something that Mark Wallace reveals that Derrida is admitting, and what Bill Stringfellow calls us to do: it is to proclaim, to manifest, a faithful and worshipping heart. Stringfellow is merciless in his radical demand and gift:

Work represents the broken relationship between [us] and the rest of creation. [We], literally, work to death. . . . In work [we] lose [our] dominion over the principalities and are in bondage to

51. STEPHEN A. MITCHELL, *THE BOOK OF JOB* (1992).

52. VIRGILIO ELIZONDO, *A GOD OF INCREDIBLE SURPRISES: JESUS OF NAZARETH* (2003), 53.

53. See HOWARD ZEHR, *THE LITTLE BOOK OF RESTORATIVE JUSTICE* (2002).

54. Richard Rohr is director of the Center for Contemplation and Action in New Mexico and author of numerous books including *Everything Belongs* (2000).

the principalities. Instead of [our] ruling the great institutions—corporations, unions and so on—we are ruled by the great institutions. And the claim over a [person's] life that all principalities make is idolatrous⁵⁵

Because the world is broken, we are condemned to death in work, and the only way to redeem that reality is to know that our work is not ethical but confessional, Stringfellow proclaims. “Work as witness is specifically the confession in and through ordinary daily work of the Lordship of Christ, that is that the whole of creation, despite its fallenness, belongs to God.”⁵⁶ The dominion in the world that we were given and lost is restored when “we become members of the body of Christ in the World.”⁵⁷ Christ restores our life and reconciles us to creation and all others. For such a person “daily work, and non-work, become virtually indistinguishable from worship.”⁵⁸ Worship is not cultic activity but the “integration of the whole of Christian life into history.”⁵⁹ Stringfellow calls us to enact “the gathered sacramental life of the Church” in all that we do.⁶⁰

This seems impossibly at odds with writing for a law review.

I recall two things. First was a Hamline law student who was a former nun telling me that she would never in her wildest dreams have imagined advocating what I did in my first article in the *Journal of Law & Religion*: that the best form of hermeneutic was Heschel's *kavannah*, inwardness, that is, intense prayer.⁶¹ I look back and think I was a bit mad. But then I consider the second image that came: just last semester, at the very end of my professional responsibility class, the final of three student presentations began with only seven or eight minutes left in the semester. The student had to rush, and so he read his handout, but he really read it—perhaps even with *kavannah*. He went through Catholic doctrine on peace and sacrament, and then at the end, he told the class that they were each and all sacrament. I could not have imagined it in my wildest dreams. I think he was a bit mad. I still almost cry with gratitude when I think of it.

Let me be confessional: I am not capable of the kind of intentionality, *kavannah*, sacramental presence, gratitude that Stringfellow describes, for very much of the time. But when I am, for that total of seventeen or maybe by now nineteen minutes a day, willing to accept God's grace and love, I am confident that visions like Mark Wallace's “postmodern green pneumatology”⁶² will contribute to the vision/s we need so that the people will not perish as the world grows more consciously interconnected. But I hope that the men (using that term as a social construct) who have tenure will begin to acknowledge that postmodern green pneumatology is fancy-masculine-talk for Gaia, for the Earth that

55. STRINGFELLOW, *supra* note 38, at 42.

56. *Id.* at 43.

57. *Id.*

58. *Id.* at 12.

59. *Id.* at 44.

60. *Id.* at 10.

61. Emily Fowler Hartigan, *Law and Mystery: Calling the Letter to Life Through the Spirit of the Law of State Constitutions*, 6 J.L. & RELIGION 225 (1988).

62. Mark Wallace, *God Is Underfoot: Pneumatology After Derrida*, in THE RELIGIOUS 197, 198 (John D. Caputo ed., 2002).

women have been proclaiming for decades (and millennia), and that feminine visions are only now escaping into masculine words, and begin to name and acknowledge the maternal genesis of that imagery.⁶³ If you need a male role model for that, revisit Doug Sturm's works.⁶⁴ That is one of the first practical steps that the masculine in all of us can make to continue the task of *tikkun olam*, mending the world. We can say aloud and in our texts more of our mother's names, in gratitude. I want to begin that with Susan Brooke Snyder, late professor of English at Swarthmore College. She was unable to teach during many of her final years because of crushing depression, but when she taught me freshman English and Renaissance Poetry and the Great Chain of Being, I found entirely credible the legend that she had written the most brilliant thesis on Edmund Spenser that Columbia University had ever seen. The passion and joy she took in the *Fairie Queene* was luminous. Sadly, ironically, I believe that if she had been a man, you would have heard of her before this.

I also want to celebrate a conversation that embodied the acknowledgment of the non-analytic, the power of the feminine and the valor of mothering.⁶⁵ Some years back, I read one of the most subversive articles I can recall, one that revealed what is best secreted in a relatively high-falutin' journal: that Dr. Seuss was a feminist commie.⁶⁶ Someone whose children's stories have a near-universal appeal and are among the best-sellers of all time, was unmasked as privileging motherhood, affirming communitarian values, and undermining materialism. Perhaps there are esoteric truths that should not be revealed too publicly . . . but thank you, Betty Mensch, for sharing the "truth" of Seuss, and Alan, with us. This inversion of the patriarchy not into subjection by the mother but by finally claiming the right to nurture for all (including for grey-haired, wired, funny Jewish Alan), is a promise of opening up an aspect of the earth—earth-mothering from all, a global ethics of care, a grounded sense of emergent international law.

I have deliberately ended with the personal. Mark Wallace characterizes Derrida's work as "theology as autobiography"⁶⁷ and in the end that is all that we can do: write autobiography, and read one another's stories. Mine attempts to venture into the realms of what once was called universal reason, against the assured failure of such a venture, and to redeem the failure by the risk of the genre about which I warned you at the outset. Thus I resist the temptation to try to go back and put this in further quasi-outline form, to shape it up into sections, to decorate it with Roman sub-numerals, to make it more "respectable." I persist in my hope that from the strongest particularity we can muster, weaving in and out of the texts we share and adding threads of new and strange texts and stories, we will end up with something unexpected, unthematic, and beautiful.

63. See SHARON THERESE ZAYAC, O.P., EARTH SPIRITUALITY: IN THE CATHOLIC AND DOMINICAN TRADITIONS (Dominican Women on Earth, No. 1, 2003).

64. See, e.g., STURM, *supra* note 36.

65. At the Globalization, Law and Democracy conference in October of 2002 where the first version of this was read, David Held of the London School of Economics took intriguing issue with the use of motherhood, although as here I used two men to exemplify motherhood. Thus I acknowledge that "parenthood" might be used . . . though the impact of men crossing the traditional gender divide seems worth the alleged risk of "essentialism"—though all terms of language take that risk.

66. Elizabeth Mensch & Alan Freeman, *Getting to Solla Selew*, TIKKUN Mar./Apr. 1987.

67. Wallace, *supra* note 62, at 198.