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SEEKING “. . . THE FACES OF OTHERNESS . . .”¹: A RESPONSE TO PROFESSORS SARAT, FELSTINER, AND CAHN

Lucie E. White†

This comment addresses Naomi Cahn’s *The Looseness of Legal Language: The Reasonable Woman Standard in Theory and in Practice*,² and William Felstiner and Austin Sarat’s *Enactments of Power: Negotiating Reality and Responsibility in Lawyer-Client Interactions*.³ I will begin with a recollection about my own education. I will then turn to “meta-theory,” or, more simply, the images we use to frame our thinking about the social world.⁴ I conclude with a brief story from my current work.

I

THE RECOLLECTION

When I went to college, our intellectual gurus—in addition to Timothy Leary and John Lennon—were people like Noam Chomsky and Claude Levi-Strauss. Their theories talked about boxes, bipolar oppositions, exchanges (usually of women, it seemed), and law-ruled transformations.⁵ Their intellectual maps were geometric and symmetrical, and covered the entire social world, as we then imagined it. Although there was a lot of movement within their paradigms, that movement resembled a military drill more than a

¹ See Jacques Derrida, *Force de Loi: Le “Fondement Mystique de l’Autorité”/Force of Law: The “Mystical Foundation of Authority,”* 11 CARDOZO L. REV. 919 (Mary Quaintance trans., 1990) [hereinafter Derrida, *Force of Law*].

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² See Naomi R. Cahn, *The Looseness of Legal Language: The Reasonable Woman Standard in Theory and in Practice*, 77 CORNELL L. REV. 1398 (1992).

³ See William L.F. Felstiner & Austin Sarat, *Enactments of Power: Negotiating Reality and Responsibility in Lawyer-Client Interactions*, 77 CORNELL L. REV. 1447 (1992).

⁴ It is difficult to discuss “meta-theory” without losing touch with solid ground. There is a parallel risk, however, in failing to interrogate the assumptions that frame our understandings of the world. See Cahn, *supra* note 2, at 1410 n.64 (citing Nancy Fraser and Linda Nicholson’s discussion of “quasi-metanarratives” in *Social Criticism without Philosophy: An Encounter between Feminism and Postmodernism*, 19, 27, in FEMINISM/POSTMODERNISM (Linda J. Nicholson ed., 1990)).

⁵ See, e.g., CLAUDE LEVI-STRAUSS, *THE SAVAGE MIND* (G. Weidenfeld & Nicholson Ltd. trans., 1966); CLAUDE LEVI-STRAUSS, *STRUCTURAL ANTHROPOLOGY* (Claire Jacobson & Brooke Grundfest Schoepf trans., 1963); NOAM CHOMSKY, *SYNTACTIC STRUCTURES* (1957); NOAM CHOMSKY, *TOPICS IN THE THEORY OF GENERATIVE GRAMMAR* (1966); NOAM CHOMSKY, *LANGUAGE AND MIND* (1968).

dance. Those days, the late 1960s, were the salad days of what we now disparagingly call "structuralism."

I remember reading during those years an essay by a young anthropologist named Clifford Geertz.⁶ This essay used the technocratic talk of the times, but its message was out of synch with the positivism that such talk often assumed. The essay made reference to a new "meta-concept" that Geertz called "terminal screens."⁷ This term is a wonderful reminder of how the words we use are inevitably colored by the historical moment in which we write. Clifford Geertz does not talk about "terminal screens" any more. Instead, he writes about "thick descriptions,"⁸ and works and lives.⁹

By "terminal screens," Geertz meant something similar to what one might describe, in the lingo of the 1990s, by reference to the array of designer "shades" that one can buy in places like Los Angeles, to color the world different tints for one's varying moods.¹⁰ Geertz used "terminal screens" to point out that one can view the same social "reality" through a range of different conceptual or theoretical screens or filters. Depending on the screen one looks through—the matrix of terms or concepts through which one filters what one sees—the same event can take on many different appearances.

In the days when structuralism was still in vogue, this was a marginal, though by no means novel, idea. Since then, it has entered the intellectual mainstream. Many people now talk of the partiality—or inevitably interpretive nature—of all of the "discourses,"¹¹ "paradigms,"¹² or "lenses" through which we make sense of our human world, and in turn constitute ourselves. Many scholars now teach us how our understandings of the world both reflect and define the positions from which we view it.¹³

⁶ CLIFFORD GEERTZ, *Person, Time and Conduct in Bali* (Yale Southeast Asia Program, Cultural Report Series No. 14, 1966), in *THE INTERPRETATION OF CULTURES* 360 (1973). Professor James Boyd White points out that the concept of "terminological screens" was first introduced into the discourses of social criticism by Kenneth Burke.

⁷ See GEERTZ, *supra* note 6.

⁸ See CLIFFORD GEERTZ, *Thick Description: Toward an Interpretive Theory of Culture*, in *THE INTERPRETATION OF CULTURES*, *supra* note 6, at 3. Naomi Cahn reports that Geertz borrowed this term from Gilbert Ryle. See Cahn, *supra* note 2, at 1430 n.141.

⁹ See CLIFFORD GEERTZ, *WORKS AND LIVES: THE ANTHROPOLOGIST AS AUTHOR* (1988).

¹⁰ I have heard Professor Kimberlé Crenshaw, for example, use such an image in several informal presentations to Los Angeles audiences.

¹¹ See, e.g., Michel Foucault, *History of Systems of Thought*, in *LANGUAGE, COUNTER-MEMORY, PRACTICE: SELECTED ESSAYS AND INTERVIEWS* 199 (Donald F. Bouchard ed., & Sherry Simon trans., 1977).

¹² See THOMAS KUHN, *THE STRUCTURE OF SCIENTIFIC REVOLUTIONS* (1970).

¹³ For particularly compelling elaborations on this insight, see RENATO ROSALDO, *CULTURE AND TRUTH: THE REMAKING OF SOCIAL ANALYSIS* (1989); ELIZABETH U. SPELMAN,

II META-THEORY

At the same time that Clifford Geertz's star was rising in the world of social theory, Noam Chomsky's was falling: structuralism was overtaken by new "post-structuralist" ways of thinking. The intellectual leader of this movement was Michel Foucault. Foucault, with a little posthumous coaching from Nietzsche, was indisputably a genius, a paradigm smasher. He, more than any other single figure, moved us beyond the "conventional," structural understanding of power that Professors Sarat and Felstiner describe in their essay. In this conventional view, power is a thing that people have and wield over others, usually on the basis of their roles in stable institutional hierarchies. Foucault gave us a new meta-theory of power—one that was so intriguing, so fitting for the uncertain times of the 1970s, that many other theorists—sociologists, linguists, and historians—took up the joint project of filling in its details, and of using it, lens-like, to sharpen their view of social life.

According to this new meta-theory, power is not a tool. Rather, like an evanescent fluid, it takes unpredictable shapes as it flows into the most subtle spaces in our interpersonal world. In this picture, we no longer see distinct "persons" controlling power's flow. Indeed, we cannot really separate the agents of the movement from the movement itself. Sometimes we may think we see more or less familiar human actors, who seem to guide the fluid, like children might make giant soap bubbles in a park. Yet at other moments, these familiar "persons" disappear, and we see only the patterns that linger as the bubbles dance.

Power is lyrically described in Professors Felstiner and Sarat's essay. It is "mobile and volatile, and it circulates . . . it is a complicated resource that is constructed and reconstructed so that its possession is neither necessarily obvious nor rigidly determined."¹⁴ It is "continually enacted and re-enacted, constituted and re-constituted . . . shaped and reshaped . . . taken and lost . . . present and

INESSENTIAL WOMAN: PROBLEMS OF EXCLUSION IN FEMINIST THOUGHT (1988). If there is currently a serious debate about this notion, it is not about whether each of us sees the world from behind a particular, contingent "terminal screen." Rather, the debate is about whether we have any power to shape the screens through which we see, or to shift between them—either by authoring our own moral, political, or intellectual identities, or by expanding the language that we use—or whether our perspectives on the world are dictated by matters of fate, be they our genes, our life fortunes, the circuits wired into our brains, or the categories inscribed into our native tongues. For a short but elegant exploration of some of these themes, see Maria Lugones, *Playfulness, World-Travelling and Loving Perception*, 2 HYPATIA 3 (1987).

¹⁴ Felstiner & Sarat, *supra* note 3, *passim* (quotes are in an original draft, on file with author).

absent . . . shifting, deeply embedded in complex processes of contestation and negotiation."¹⁵

This theory of power offers a very interesting lens through which to view social interactions, including interactions between lawyers and their clients. Professors Felstiner and Sarat demonstrate this. Their picture of power works like one of those infrared periscopes that military tank crews might use to render a desert landscape visible in the dark. Through their lens, Professors Felstiner and Sarat are able to see and study, in astonishing topographical detail, the interactions of Wendy, a well-meaning but probably lazy divorce lawyer, and Kitty, or rather Kathy, her excessively well-mannered client. Their lens enables Felstiner and Sarat to see in the interactions of these two women subtle enactments of power that other spectators, using a more conventional structural lens, for instance, would miss.

Felstiner and Sarat's work is part of a larger collective project undertaken by several legal scholars. Sally Merry, for instance, has recently used Foucault's lens to produce a detailed account of how working class people interact with the courts.¹⁶ Regina Austin has applied the lens to the workplace.¹⁷ Others are producing similar work.¹⁸ Of this new work, Gerald López's writings stand out. He uses the new conception of power to make visible complex interactions between groups of poor people and the professionals who try to help them.¹⁹ In this work, he shows how power is indeed very fluid, even across the formidable barriers of race and class identity.

This new meta-theory of power is especially important to progressive law teachers, scholars, and advocates for at least two reasons. First, this lens is bringing forth a new body of situated micro-descriptions of lawyering practice. For the first time, these descriptions give us a substantial base of data that we may use to reflect on our work. This new data enables us to see exactly how and when we deploy power within the routines of our own lawyering. With this new insight into *what* we do, we can begin to ask *why* we do it and *how* we might change. We can begin to envision different habits—

¹⁵ *Id.*, *passim* (quotes are in an original draft, on file with author).

¹⁶ SALLY E. MERRY, *GETTING JUSTICE AND GETTING EVEN: LEGAL CONSCIOUSNESS AMONG WORKING-CLASS AMERICANS* (1990).

¹⁷ See Regina Austin, *Employer Abuse, Worker Resistance, and the Tort of Intentional Infliction of Emotional Distress*, 41 STAN. L. REV. 1 (1988).

¹⁸ See, e.g., Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L.J. 2105 (1991).

¹⁹ See GERALD P. LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992); Gerald P. López, *Reconceiving Civil Rights Practice: Seven Weeks in the Life of a Rebellious Collaboration*, 77 GEO. L.J. 1603 (1989); Gerald P. López, *Training Future Lawyers to Work with the Politically and Socially Subordinated: Anti-Generic Legal Education*, 91 W. VA. L. REV. 305 (1989) [hereinafter López, *Training Future Lawyers*].

different ways of talking and paying attention—that may make our deployments of power less disruptive of our clients' efforts to empower themselves. This kind of reflective reconstruction of our day-to-day lawyering routines can make our practice, as progressive lawyers, more consistent with our aspirations of greater social justice.²⁰ Thus, the descriptive project undertaken by Felstiner and Sarat makes possible a new field of critical reflection on advocacy and pedagogy²¹—a “theoretics” of practice—the potential of which we are just beginning to explore.

The second reason that Foucault's picture of power is so important to progressive advocates is that it has opened up new possibilities in the political practice of relatively disempowered groups. The conventional theory of power reveals a dichotomized world of domination and subordination; through such a lens, the hegemony of the dominant class is virtually absolute. Not only does that class confine the actions of the subordinated, but it also dictates their language, preferences, thoughts, dreams, and indeed most deeply held moral and political intuitions. In American legal scholarship, Catharine MacKinnon has used this dichotomized picture of power with great skill to challenge claims that women can experience authentic subjectivity in contemporary society.²²

MacKinnon posed this challenge in an encounter with Carol Gilligan at Buffalo Law School in 1984.²³ In that exchange, MacKinnon argued that values of “caring” and “connection” that Gilligan and other feminists sought to reclaim and celebrate are symptoms of women's subordinate position in a closed system of power.²⁴ According to MacKinnon, even women's feelings of sexual pleasure are suspect; these feelings, like every other feature of Woman, de-

²⁰ I use “we” because many legal scholars have expressed similar aspirations in their writing and practice. A recent symposium issue of the *Hastings Law Journal* on the Theoretics of Practice collects some of the most recent works to which I refer. See Symposium, *Theoretics of Practice: The Integration of Progressive Thought and Action*, 43 HASTINGS L.J. 717 (1992).

²¹ See Gerald P. López, *The Work We Know So Little About*, 42 STAN. L. REV. 1 (1989); López, *Training Future Lawyers*, *supra* note 19; Howard Lesnick, *Being a Teacher, of Lawyers: Discerning the Theory of My Practice*, 43 HASTING L.J. 1095; Schon, *Bridges to Where: What Are Our Objectives*, Keynote Address at Association of American Law Schools 1992 Annual Conference, Mini-Workshop on Theory and Practice: Finding Bridges for the Classroom (Jan. 4, 1992) (available on audio cassette from the AALS, 1201 Conn. Ave., N.W., Washington, D.C.).

²² See, e.g., CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* (1987) [hereinafter MACKINNON, *FEMINISM UNMODIFIED*]; CATHARINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* (1989).

²³ See Ellen C. DuBois et al., *Feminist Discourse, Moral Values, and the Law—a Conversation*, 34 BUFF. L. REV. 11 (1985) (transcript of a discussion held on October 19, 1984 at the law school of the State University of New York at Buffalo as part of the James McCormick Mitchell Lecture Series).

²⁴ *Id.* at 73-76.

fine a colonized subject, a being whose essence has been shaped by and for men.²⁵

Thus, as Angela Harris has demonstrated in her critique of Catharine MacKinnon's work,²⁶ a conventional understanding of power locks women, and indeed every subordinated group, in a discursive "prison-house"²⁷ from which there is no escape. Just as the dominators can do nothing except wield their power, the subordinated can speak nothing except their masters' will. No change is possible in this universe; indeed, even the most creative tactics of resistance or gestures of solidarity reinforce the bonds of domination. This understanding of domination, designed to reveal injustice, leads to two perverse results. First, it excuses those in the dominant class from attempting to reflect on or change their own conduct, or to ally themselves with subordinate groups. Second, it reinforces in relatively disempowered groups the very doubts about their feelings, capacities, and indeed human worth that subordination itself engenders.

Foucault's picture of power disrupts this closed circle of domination. By showing that the dominators do not "possess" power, his picture makes possible a politics of resistance. It opens up space for a self-directed, democratic politics among subordinated groups, a politics that is neither vanguard-driven nor co-opted, as the politics of the colonized subject inevitably is. At the same time, and of more immediate relevance to lawyers, this new picture of power makes possible a self-reflective politics of alliance and collaboration between professionals and subordinated groups. Given the new theaters of political action that Foucault's theory of power has opened up, it is not surprising that it has stolen the stage in historical, cultural, and finally legal studies from those who speak of power in more conventional terms. The Foucaultian picture of power makes insurgent politics interesting again; it brings possibility back into focus, even in apparently quiescent times when resistance is visible only in the microdynamics of everyday life.

Yet with the power of this new lens comes a risk. With such an instrument in our hands, it is easy to forget the lesson that Professor Geertz taught. Any "terminal screen" gives us only a partial view of the world: it enhances some features of reality—probably those that

²⁵ These themes are developed throughout MacKinnon's writings. For one clear early statement of the link between male domination and even "normal," ostensibly noncoercive heterosexuality, see MACKINNON, *FEMINISM UNMODIFIED*, *supra* note 22, at 46.

²⁶ Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 *STAN. L. REV.* 581, 590-601 (1989).

²⁷ The allusion is to FREDRICK JAMESON, *THE PRISON-HOUSE OF LANGUAGE: A CRITICAL ACCOUNT OF STRUCTURALISM AND RUSSIAN FORMALISM* (1972).

its inventors most wanted to see—while erasing or obscuring others. The risk for those who use Foucault's lens is that they will forget this lesson, and begin to think of their own meta-theory as the last word on how power "really" works—the *terminal* screen. Foucault's lens reveals such a longed-for landscape of possibility that it has begun to entrap our imagination, deluding us into thinking that with this lens we have finally seized the power to comprehend the world.

One consequence inevitably follows when we forget that our latest theories are not absolute. This is the risk that, in our own certainty, we will lose patience with those who do not share our faith. As Professor Delgado points out, such intolerance often reveals itself only after time renders our certainties obsolete, and thereby ridiculous.²⁸ At least two further risks are specific to Foucault's lens.

The first risk has been identified by feminist scholars such as Nancy Fraser and Robin West.²⁹ While the Foucaultian lens reveals the fluidity of power, it does not show how power can become congealed in social institutions in ways that sustain domination. It may be true that everyday interactions create and maintain social institutions, but this insight does not enable us to map those interactions against the institutional matrices they create. Nor does this insight show us how institutions constrain the circulation of power, channeling it to flow toward some social groups and away from others. In short, the Foucaultian lens does not move us toward a theoretic and a reconstructive politics of *institutional* designu.

Without richer meta-theories—stronger lenses—that focus on institutional as well as interpersonal realities, we will remain bewildered by exactly how our actions reiterate what has been called "structural" or "institutional" subordination.³⁰ We will remain unable to critique and repattern our actions, so that we enact more democratic institutions as we seek to live more ethical lives. These other lenses need not replace Foucault's; rather, they can provide a second filter on the same landscape, enabling us to study the geol-

²⁸ Richard Delgado & Jean Stefancic, *Images of the Outsider in American Law and Culture: Can Free Expression Remedy Systemic Social Ills?*, 77 CORNELL L. REV. 1258 (1992).

²⁹ See NANCY FRASER, UNRULY PRACTICES: POWER, DISCOURSE, AND GENDER IN CONTEMPORARY SOCIAL THEORY 17-34 (1989) [hereinafter FRASER, UNRULY PRACTICES]; Robin West, *Feminism, Critical Social Theory and Law*, 1989 U. CHI. LEGAL F. 59; Nancy Fraser, *The Uses and Abuses of French Discourse Theories for Feminist Politics* (1989) (unpublished manuscript, on file with the author); see also BRYAN D. PALMER, DESCENT INTO DISCOURSE: THE REIFICATION OF LANGUAGE AND THE WRITING OF SOCIAL HISTORY (1990).

³⁰ See, e.g., Kimberlé W. Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988); Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987).

ogy of the ocean floor as well as the action of the waves. Without these other lenses, the dynamics of systemic injustice—dynamics that stunt the life-chances of some social groups with more than random frequency—will remain invisible and therefore go unchallenged.

In divorce lawyering, Professors Felstiner and Sarat have studied an area in which systemic patterns of race and class privilege do not always figure in obvious ways. Therefore, in that setting it may be, as they suggest, that their theoretical framework does pick up much of what is interesting to see. However, we cannot tell what different lenses might show us until we try them out. The work of Martha Fineman,³¹ for instance, suggests that theories about gender and motherhood, as well as a Foucaultian theory of power, might help us make sense of Felstiner and Sarat's story of the unsupported wife.³² And in areas of legal practice where hierarchies of race and class routinely figure, such as criminal law or social welfare law, the risk that a Foucaultian lens will unduly limit our vision is great. In those domains of practice, recurring patterns of domination will go uncharted unless lawyer-client interactions are studied through a lens that explicitly theorizes race and class.³³

Getting stuck inside the Foucaultian worldview carries a second risk as well. In addition to stunting our ability to rethink institutions in emancipatory ways, this lens obscures our human capacity—or, more accurately, our longing—to realize ourselves in the world by feeling with other people, as well as by winning against them. Foucault's lens defines and thereby reveals human interactions as strategic contests. Our personhood takes form in those moments when the contest shifts power our way. This lens does not pick up those moments when we feel the force of another's emotions or the resolve behind her commitments. If such moments appear at all, they look like surges of the other's power rather than images of the other's face.

We must not discount the risks imposed by theories that make human connection seem too easy to attain. As Professor Cahn points out, such theories are very dangerous in our not-yet-post-colonial world.³⁴ Such theories have typically sanctioned domina-

³¹ See, e.g., MARTHA FINEMAN, *THE ILLUSION OF EQUALITY: THE RHETORIC AND REALITY OF DIVORCE REFORM* (1991).

³² Felstiner & Sarat, *supra* note 3, at 1471.

³³ See, e.g., Peggy C. Davis, *Law as Microaggression*, 1989 *YALE L.J.* 1559; Isabelle Gunning, Teaching Methods to Discuss Racial Stereotyping and Discrimination, Address at Association of American Law Schools Workshop on Clinical Legal Education (May 3, 1991) (audiotape available from AALS).

³⁴ See Cahn, *supra* note 2, at 1429 n.139; 1445 n.217; see also GAYATRI SPIVAK, *THE POST-COLONIAL CRITIC: INTERVIEWS, STRATEGIES, DIALOGUES* (1990) [hereinafter SPIVAK,

tion of the most insidious kind, by encouraging the privileged to name the feelings of less powerful others, without cautioning that to name another's feelings is also to silence her voice.³⁵ We cannot give up Foucault's contest-focused theory to return to a simplistic, imperialist version of humanism. At the same time, however, we must recognize that Foucault's theory is ultimately—and indeed, inevitably—incomplete.³⁶ For although Foucaultian power is always in motion, it hovers outside of the other, circling in what is ultimately a closed field. Foucault's theory does not make sense of our yearning for, or our occasional movement toward, a more fully and freely interconnected human world.

What if we seek to map the elusive moments of human connection as well as the endless currents of contest? What if we seek to transform our practice and the institutions that practice enacts, not merely so we will be more adept at manipulating power, but also more present when others call our names? If we want to reflect on our longing for connection as well as our zeal for contest, what theoretical lenses might we use?

There is no easy answer to this question. Nonetheless, Renato Rosaldo, in an arresting essay in his recent book *Culture and Truth*,³⁷ offers some promising thoughts. He describes his effort to comprehend, in order to "translate," the ritual of headhunting among the Ilongot group in the Philippines. He studied the practice exhaustively, using the best methods academic ethnography had to offer. After extensive conversation with local informants, he carefully mapped out all of the features of the ritual. He then attempted to interpret the practice—to translate its underlying cultural logic in terms that would make sense to his own people. His informants had explained that the ritual was their way of enacting the grief they felt for loved ones who had died prematurely. Yet even with the benefit of this explanation, Rosaldo could not fathom how the grotesque act of beheading a member of a neighboring group and then eating his flesh could be endorsed by any human beings as a sensible, let alone

THE POST-COLONIAL CRITIC]; GAYATRI C. SPIVAK, IN *OTHER WORLDS: ESSAYS IN CULTURAL POLITICS* (1987); *ANTHROPOLOGY AND THE COLONIAL ENCOUNTER* (T. Asad ed., 1973).

³⁵ This is the underlying paradox of "advocacy" for a less powerful other. See Lucie E. White, *Goldberg v. Kelly on the Paradox of Lawyering for the Poor*, 56 BROOK. L. REV. 861 (1990). Advocacy is inescapably—etymologically—a practice of translation, of carrying the voice of the other into a new domain. *Id.* at 861 n.3. Yet translation is also a replacement of the other's voice. Thus, Professor White appropriately raises the theme of "tragedy" in his comment on Professor Cunningham's article. James B. White, *Translation as a Mode of Thought*, 77 CORNELL L. REV. 1388 (1992).

³⁶ See FRASER, *UNRULY PRACTICES*, *supra* note 29.

³⁷ See ROSALDO, *supra* note 13.

sacred, act. For all of Rosaldo's anticolonial commitment, he felt that this practice came from a radically Other world.³⁸

It was only when Rosaldo witnessed his wife plunge down a gorge to her death that he finally felt for himself the rage that follows the loss of a loved one before her time. It was the force of this feeling that enabled him, for the first time, to imagine why the Ilongot might have acted out their own grief in the way that they did. When he recalled his informant's explanation in the context of his own experience, he finally began to comprehend the ritual's human sense.

Rosaldo does not fully elaborate a theory of empathy in his essay. Rather, he offers this story to suggest some themes on which such a theory might draw. He suggests that the force of one's own emotions may cast a moment's light on others' lives, revealing both irreducible difference and, paradoxically, common ground. Contrary to Professor Cahn's suggestion in her essay,³⁹ Rosaldo suggests that we need not know all of the "facts" about the other in order for these moments to occur. Nor need we share all the features of the other's "identity," categorically defined. Indeed, as *pre-requisites* for empathy, both of these conditions are impossible to meet.

But there is also a deeper problem with the two conditions for empathy that Professor Cahn's essay identifies. This deeper problem is that these two paths toward empathy are also practices of domination. The advice that we must find out the "facts" of the other to feel empathy toward her counsels us to objectify that person, to confine her subjectivity in categories that we construct. And the idea that to feel empathy with the other person we must identify with her, along such dimensions as race, parental status, and class, dashes all hope of empathy in many settings. In those few circumstances where empathy remains possible, this view condones practices of perception and definition that "essentialize" the other, naming her as more "like" us than she may wish to be. These practices of collecting facts about the other or cataloguing similarities with her may indeed enable us to feel closer to the other person. At the same time, however, such practices effect interpersonal domination. Perhaps we *must* take such steps, if we seek to understand the other. But we must also *renounce* these practices, or at least our confidence that they can work, if we are to recognize the other as a fellow—unique—human being.

³⁸ Cf. SPIVAK, *THE POST-COLONIAL CRITIC*, *supra* note 34.

³⁹ See Cahn, *supra* note 2, at 1429.

Thus, the practice of empathy is a paradox. It takes place beyond the fields of interpersonal contestation, beyond our obsession to know exactly who we are and our maneuvers to name the other. The practice of empathy takes place beyond our certainty that, in listening to a battered woman who has fought back, that we, unlike her, "could never stab anyone."⁴⁰

III A STORY

My present research involves the role of parents in two local Head Start programs.⁴¹ In doing this work, I have become acutely aware of our need for multiple theoretical lenses, lenses that focus on institutions, on moments of recognition, as well as on the ebbs and flows of interpersonal power. I felt this need with a particular urgency after conducting an interview with a seventy-two year old former sharecropper in rural North Carolina. This woman was the great-grandmother and legal guardian of a Head Start child. In the interview, she gave me a brief account of the highlights of her life. She told me of her father's defiance in sending his daughter to school when the white plantation bosses expected her to be working in the fields. She told of receiving a scholarship to an elite women's college, but turning it down because she could not afford a bus ticket to get there. She told of graduating from an African-American teacher's college and of teaching for fifty years in the public schools. She told me what it was like to teach before the schools were integrated, when her students were given text-books handed down from whites. She also told me what it was like to teach after integration, when white children asked, and were allowed, to transfer out of her class. She referred only in passing to the civil rights movement. I learned from others that she had been one of the movement's many local leaders in the rural counties of the south.

As I contemplated this story, comparing it to what others had told me about the record of racial violence in the county and the courage this woman had shown in combating it, two features stood out. First, throughout the story, she expressed inexhaustible patience, and indeed love, for the white people she had dealt with over the years. Second, although she recounted many injustices, her narrative carefully excluded the details of the violence she had en-

⁴⁰ *Id.*

⁴¹ Head Start is a federally funded social program providing pre-school and other services to poor families. See Head Start Act, 42 U.S.C. §§ 9831-9858 (1991).

dured. I had noted similar themes in interviews with other African-American Head Start parents.⁴²

After the formal interview was completed and the tape recorder turned off, I casually inquired about the woman's older great-grandchild, who, like my own daughter, had recently started kindergarten. When I asked this question, my informant became visibly sad. She told me that when she had dropped this child off at school earlier that morning, a young white child had run up to take her hand. Just as her great-granddaughter reached back, however, a second white child came up to the first and yanked her hand away, explaining that white girls should not touch people who were black.

Then the woman looked hard at me, and said, "The white people will go to any lengths to keep us down, even if it means keeping themselves down as well. They're making Frankensteins of us all."

This encounter could be examined through a Foucaultian lens. Such an examination would reveal an important reality. It would reveal this woman's skillful maneuvers, designed to ensure that our mutual reality was negotiated on her terms. This lens would show a woman who was artful in controlling the pace and extent of her revelations, and in determining how the injuries she had suffered would be named. This lens would reveal a woman negotiating the power between us to shape an account that she wanted me to hear.

Yet this lens reveals only a partial reality. For when this woman told me of her child's morning at school, she was not merely controlling how that event would be interpreted, and thereby trumping my own power to do the same. She was also speaking to me as another person. Through her brief story, I "felt," for a moment, something of the impossible sadness that eluded our language game. At the same time, I picked up her astute reminder that as one of those whites, I dare not claim to have "felt" her pain.⁴³

The risk of domination is inextricable from every humanist practice. Yet we must still seek to listen when others speak to us,

⁴² See JUDITH ROLLINS, *BETWEEN WOMEN: DOMESTICS AND THEIR EMPLOYERS* (1985) (documenting interactions between African-American maids and their white employers); JAMES SCOTT, *DOMINATION AND THE ARTS OF RESISTANCE: HIDDEN TRANSCRIPTS* (1990) (describing ways in which systematically dominated groups conceal feelings and experiences in interactions with members of dominating groups).

⁴³ In thinking about the (im)possibility and practice of empathy, I am guided by Jacques Derrida's reading of Emmanuel Levinas. See, e.g., JACQUES DERRIDA, *Violence and Metaphysics: An Essay on the Thought of Emmanuel Levinas*, in *WRITING AND DIFFERENCE* (Alan Bass trans., 1978); Derrida, *Force of Law*, *supra* note 1. In writing about justice, as distinguished from rule or law, Derrida seeks guidance from Levinas's "difficult" conception, which is centered in the paradox of empathy. According to Derrida, Levinas imagined justice as the "equitable honoring of faces . . . the heteronomic relation to others, to the faces of otherness that govern me, whose infinity I cannot thematize and whose hostage I remain." *Id.* at 959.

and to be moved. We must still seek to hear in the words of others not just negotiations of power, but appeals to our most difficult memories and deepest emotions. We must seek, in our encounters with others, not just to map the power or read the text, but also to recognize, in all its alterity, the other's face.