

PRAGMATISM MODIFIED AND THE FALSE CONSCIOUSNESS PROBLEM*

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I. INTRODUCTION

It was Herc who saw possibilities of mixing his own formulas through re-mixing pre-recorded sound.

—Houston A. Baker, Jr.¹

In calling this Comment *Pragmatism Modified*, I allude to Catharine MacKinnon's *Feminism Unmodified*—her refusal to move her feminism over to accommodate Marxism, liberalism, or any other pre-feminist theory.² If feminism is not moving, perhaps pragmatism can bend toward feminism and other liberation-ended newcomers to theoretical discourse, including critical race theory.³

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1. H. Baker, *Sounding Post-modernism: Hybridity, The Rap Race, and Pedagogy for the 1990's* 2 (1989) (unpublished manuscript). This line refers to Kool DJ Herc's use of turntables and hip-hop acoustics. Professor Baker's choice to take the text of urban rap seriously is an example of the expanded inquiry I advocate in this essay for pragmatists.

2. C. MACKINNON, *FEMINISM UNMODIFIED* (1987). See also C. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* (1989) (providing an analysis of politics, sexuality, and the law from the perspective of women).

3. "Critical race theory," as I use it, refers to the work of progressive legal scholars of color who are attempting to develop a jurisprudence that accounts for the role of racism in American law and that works toward the elimination of racism as part of a larger goal of eliminating all forms of oppression. Works I would include in this movement are, *inter alia*, Austin, *Sapphire Bound*, 1989 WIS. L. REV. 539; D. BELL, *AND WE ARE NOT SAVED* (1987); Calmore, *Exploring the Significance of Race and Class in Representing the Black Poor*, 61 OR. L. REV. 201 (1982); Crenshaw, *Race, Reform and Retrenchment: Transformation and Legitimation in Anti-Discrimination Law*, 101 HARV. L. REV. 1331 (1988); Dalton, *Aids in Blackface*, 1989 DAEDALUS 205; Delgado, *When a Story Is Just a Story: Does Voice Really Matter?*, 76 VA. L. REV. 95 (1989); Lawrence, *The Id, the Ego, and Equal Protection: Reckoning With Unconscious Racism*, 39 STAN. L. REV. 317 (1987); Lopez, *The Work We Know So Little About*, 42 STAN. L. REV. 1 (1989); Matsuda, *Public Response*

I would bend pragmatism toward liberation in three ways: First, I would weight the pragmatic method to identify and give special credence to the perspective of the subordinated; second, I would add a first principle of anti-subordination;⁴ and third, I would claim that the use of pragmatic method with a normative first principle is not inconsistent. This essay will address each of these modifications and respond to a range of false consciousness and essentialism critiques that are implicated by the concept of subordination.

II. THE PERSPECTIVE OF THE SUBORDINATED

As a method, pragmatism is attractive to subordinated people because it is often their indigenous method. Pragmatism recognizes multiple consciousness,⁵ experimentation, and flexibility as tools of inquiry. These are tools well known to poor women who live the refrain "and still I rise"⁶ as they adapt their strategies of daily living to meet the historical moment at which the wrong choice can mean going without the necessities of life. Professors Minow and Spelman in their exposition of the concept of context honor this rising.⁷

Arguing for attention to the perspective of poor women is more than arguing for one-woman-one-vote. Pragmatism becomes impoverished pluralism if its only message is, "Consider all points of view." Rectification of historical injustice, of historical devoicing, requires a weighted pragmatic method. Listening long and hard to less privileged voices is restitutive, reparative, rectifying, and reconstructive. It is the antidote to what Professor Radin calls bad coherence:⁸ the situated knowledge of the golden few.

If our goal as scholars and ethical beings is to know as much as we can about the human condition so as to improve the prospects of good

to *Racist Speech: Considering the Victim's Story*, 87 MICH. L. REV. 2320 (1989); Torres, *Local Knowledge, Local Color: Critical Legal Studies and the Law of Race Relations*, 25 SAN DIEGO L. REV. 1043 (1988); Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 HARV. C.R.-C.L. L. REV. 401 (1987); R. WILLIAMS, *THE AMERICAN INDIAN IN WESTERN LEGAL THOUGHT* (1990).

4. See Colker, *Anti-Subordination Above All: Sex, Race and Equal Protection*, 61 N.Y.U. L. REV. 1003 (1986) (one author's statement of the anti-subordination principle). See also West, *Progressive and Conservative Constitutionalism*, 88 MICH. L. REV. 641 (1990) (discussing anti-subordination politics and instrumental uses of law).

5. See Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 WOMEN'S RTS. L. REP. 7 (1989).

6. See M. ANGELOU, *AND STILL I RISE* (1978).

7. Minow & Spelman, *In Context*, 63 S. CAL. L. REV. 1597 (1990).

8. Radin, *The Pragmatist and the Feminist*, 63 S. CAL. L. REV. 1699, 1710 (1990).

lives for all of us, our task of retrieval is monumental and continual.⁹ Asking "Who is not in this room and why are they not here?" whenever we gather to form theory is part of this retrieval.¹⁰ We can ask this question literally and intellectually. We can question the physical absence, for example, of openly gay and lesbian scholars. We can question as well their intellectual absence. What would a critique of pragmatism that accounted for heterosexist assumptions look like, and how are we as theoreticians impoverished by the absence in the literature of such a critique?¹¹ These are the kinds of questions that initiate retrieval.

Here the exasperated challenge suggests itself: when will she be satisfied, when will all this talk about excluded voices end, and when will the excluded accept the fact that they are now members of the club, so that we can get on with the conversation that was interrupted when they knocked on the door?¹² The project of retrieval ends when the problem of bad coherence ends. It is hard to accept a task of rectification that promises no close reward. Bad coherence requires active and near-perpetual retrieval of subordinated perspectives because of the nature of power. Power at its peak is so quiet and obvious in its place of seized truth that it becomes, simply, truth rather than power.

Catharine MacKinnon said, "[T]he worse and more systematic one's mistreatment is, the more it seems justified. Liberalism has a regard for power that never *sees* it, yet sees *only* it. It never sees power as power, yet can see as significant only that which power does."¹³ While Radin suggests the possibility of bad coherence, MacKinnon suggests its inevitability. Whether located in a structure (like patriarchy) or in an

9. Our task is monumental because of a cultural and political legacy that has denied the capacity for thought and the right of public voice to subordinated groups. See White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFFALO L. REV. 1 (1990) (discussing the denial of legal capacity, including competency to testify, to white women as well as men and women of color). Our task is continual because we will not achieve a world free from all forms of domination until lifetimes of struggle have passed.

10. The evidence mounts that we also need to ask, "Of those here, who is not speaking and why?" See *id.*, at 20-21 (discussing evidence that "women and other subordinated groups do not in fact participate in legal proceedings as frequently or as fluently as socially dominant groups"); see also D. TANNEN, *YOU JUST DON'T UNDERSTAND: WOMEN AND MEN IN CONVERSATION* (1990) (discussing gender barriers to communication).

11. For the emerging analysis of heterosexism in law, see, e.g., Gomez, *The Public Expression of Lesbian-Gay Personhood as Protected Speech*, 1983 Law & Inequality 121; Halley, *The Politics of the Closet: Towards Equal Protection for Gay, Lesbian, and Bisexual Identity*, 36 UCLA L. REV. 915 (1989).

12. This query is implicit in the parade of academic bestsellers that lament the passing of the old canon.

13. C. MACKINNON, *FEMINISM UNMODIFIED*, *supra* note 2, at 221 (emphasis in original).

individual (like the radical lawyer attempting to use a conservative system of law),¹⁴ the push toward coherence, toward reproduction of certain beliefs and truths, is strong. If pragmatists wish to take seriously the possible truth offered by marginalized people, a weak neutrality in listening is not enough. The centrifugal force of dominant culture is not resisted by standing still.

In my work I strive to learn from those who have access to a world I do not know, a world I cannot hope to imagine in full and telling detail.¹⁵ A reading of theorists like MacKinnon is valuable because it reveals sexual hierarchy and suggests theoretical structure. It cannot, and does not, pretend to suggest the lived detail of every person touched by that structure, the thousandfold moments of adaptation, resistance, agony, and agency that breathe life into theory and declare it true or false. Reading the theory of patriarchy cannot tell me of Darlene Leach, the Appalachian woman who recounts:

I hauled coal when I was pregnant, and my sister and I have loaded and unloaded coal with a shovel with a six-month-old baby lying asleep between us. I have cut paper wood to buy the baby the medicine she needed and sold berries to buy clothes for an unborn baby.¹⁶

As this woman tells of her life, she tells of her strategies of survival and of her dream of dignity. She describes getting married at fifteen to escape poverty; she tells of her husband's alcoholism and violence. In the midst of physical abuse, she says, "I got to where I felt like I was absolutely nothing. I didn't want to face people or talk with them because I was so ashamed . . . I didn't think I had any brains at all. I was completely alone in the world."¹⁷

Eventually, Ms. Leach sought help from a women's collective, and she divorced her husband. He begged her to come back, and eventually he quit drinking. She explains:

[M]y religion said I should take him back. Plus we were desperate for money, and he was working, so, finally, I said I would take him back

14. For a personal recounting of this danger, see Freeman, *Racism, Rights and the Quest for Equality of Opportunity: A Critical Legal Essay*, 23 HARV. C.R.-C.L. L. REV. 295 (1988).

15. See Matsuda, *Affirmative Action and Legal Knowledge: Planting Seeds in Plowed-up Ground*, 11 HARV. WOMEN'S L.J. 1 (1988) (discussing specific methods for retrieving absent perspectives in legal scholarship).

16. F. BUSS, DIGNITY 130 (1985).

17. *Id.* at 137.

and we remarried . . . Virgil has not drank or hurt me or the children physically since I remarried him, but he has hurt us emotionally.¹⁸

Ms. Leach says her confidence has grown through her association with the women's collective. The purpose of the Mountain Women's exchange, she says, is "to help women to not be pushed back into the corner like some kind of animal that's afraid to move or a little mouse that is afraid to stick its head out from under."¹⁹

This story is a complex one of a woman surviving poverty and patriarchy, sometimes resisting, sometimes acquiescing, sometimes knowing, sometimes deceiving herself. This woman teaches about change in structures of domination: it was her credible threat to leave her batterer that ended his physical abuse. Positive change in oppressive relationships is almost always initiated by the victim. But there is danger in initiating change. Women are sometimes killed when they attempt to leave their batterers.²⁰ Change is risk. I have so much to learn from women like Darlene Leach, women unschooled in the academic sense and well schooled in the living sense. Yet nearly everything in my own academic schooling has told me that her voice is not theory and that I have nothing to learn from her.²¹

18. *Id.* at 141.

19. *Id.* at 144.

20. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 43 STAN. L. REV. (1991) (forthcoming).

21. Adrienne Rich wrote of this lie in her essay *Notes Toward a Politics of Location*:

In my white North American world they have tried to tell me that this woman—politicized by intersecting forces—doesn't think and reflect on her life. That her ideas are not real ideas like those of Karl Marx and Simone de Beauvoir. That her calculations, her spiritual philosophy, her gifts for law and ethics, her daily emergency political decisions are merely instinctual or conditioned reactions. That only certain kinds of people can make theory; that the educated mind is capable of formulating everything; that white middle-class feminism can know for "all women"; that only when a white mind formulates is the formulation to be taken seriously.

A. RICH, BLOOD, BREAD, AND POETRY 230 nn.1, 17a (1986). Barbara Christian offered a related observation:

[P]eople of color have always theorized . . . often in narrative forms, in the stories we create, in riddles and proverbs, in the play of language, because dynamic rather than fixated ideas seem more to our liking. How else have we managed to survive with such spiritedness the assault on our bodies, social institutions, countries, our very humanity?

Christian, *The Race for Theory*, 14 FEMINIST STUD. 67, 68 (1988). Christian's celebration of organic theory contrasts with Rorty's suggestion that the language of victims is obsolete and difficult to replace. R. RORTY, CONTINGENCY, IRONY, AND SOLIDARITY (1989). Allan Hutchinson suggests the colonial nature of this observation in his review of Rorty's work. See Hutchinson, *The Three 'Rs': Reading, Rorty, Radically*, 103 HARV. L. REV. 555 (1989).

Views like Christian's, on the other hand, are sometimes called "anti-intellectual" or "balkanizing." I hope to do the work of theory in a way that is neither anti-intellectual nor exclusionary.

It is a lie that there is no knowledge, no theory, no eloquence among the poor. Scholars like Fran Buss, who recorded the story of Darlene Leach, along with the stories of other low-income women, have called out that lie. Pragmatic method is enriched, I believe, by weighting it to retrieve subordinated voices in order to attain a truer account of social reality and human possibilities.

III. JUSTICE AS AN END

In a world of radical inequality, relativist resignation reinforces the status quo.

—Mary Hawkesworth²²

In addition to suggesting weighted pragmatism as method, I suggest rectification of past injustice and elimination of all present forms of subordination as first principles. Pragmatic method suggests plural, provisional, and emergent truths. It is skeptical of universalized experience and absolute description.

There is a difference, however, between cultural relativism and ethical relativism.²³ This relates to Professor Putnam's reading of Dewey.²⁴ "Anything is possible" is not the same as "anything goes." The emphasis on context and provisional truth does not remove the obligation to divide right from wrong and to retain justice as the goal of theory.

It is aesthetically and instrumentally ineffective to talk of homelessness as maybe, possibly, or probably unjust. The loss to me is more than tactical. It is above all a loss of the soul. To call justice claims "possibly true" does disservice to our deepest longings and degrades the courage of human beings who risk all for a vision of justice. In this, I side with Professor Coruel West's quest for a prophetic pragmatism,²⁵ one that hears the human plea for decent lives.

22. Hawkesworth, *Knowers, Knowing, Known: Feminist Theory and Claims of Truth*, in M. MALSON, J. O'BARR, S. WESTPHAL-WIHL & M. WYER, *FEMINIST THEORY IN PRACTICE & PROCESS* 351 (1989).

23. I thank Professor Renato Rosaldo for suggesting this distinction. Another writer who has struggled with this distinction is Robin West, who suggests that both relativism and objectivity are, at the extreme, useless to lawyers concerned with justice. She concludes, "At a minimum, the judge (or lawyer) who performs well—who is responsive to both the authoritarian danger of objectivist thought and the quietist danger of relativism—has a heightened sensitivity to the plight of others—particularly the silenced, the outsider, and the subordinate." West, *Relativism, Objectivity, and Law*, 99 *YALE L.J.* 1473, 1502 (1990).

24. Putnam, *A Reconsideration of Deweyan Democracy*, 63 *S. CAL. L. REV.* 1671 (1990).

25. C. WEST, *PROPHETIC PRAGMATISM* (1988).

The seeming contradiction between the critique of objectivity and the critique of present injustice is well known to feminists and critical race theorists.²⁶ Various "social construction" theories and the unmasking of "white male subjectivity" form an emerging theme in the academy.²⁷ Critiques suggesting the contingency of knowledge and the way in which dominant conceptions of knowledge support existing inequalities of power resonate for people who identify with the powerless.

The powerless, however, have always relied on claims of objective truth and on the use of existing structures of knowledge to critique dominant society on its own terms.²⁸ Can one deconstruct law and use law at the same time? Critical race scholars have suggested this is possible.²⁹

Pragmatists are plagued by an analogous dilemma. The common caricature of pragmatism as the religion of the perpetually skeptical and the morality of the avowedly amoral reflects this. Where is the line at which "all truths are provisional" leaves humility and enters cynicism?

I believe it is here: pragmatism as a method is valuable as a method to an end, and the end of all human striving is justice. To have a goal as ambitious and grand as justice counsels equally ambitious humility, lest

26. For a sampling of the rich feminist literature on this subject, see, e.g., S. HARDING, *THE SCIENCE QUESTION IN FEMINISM* (1986); Haraway, *Situated Knowledges: The Science Question in Feminism and the Privilege of Partial Perspective*, 14 *FEMINIST STUD.* 575 (1988); Hawkesworth, *supra* note 22. For one author's perspective on objectivist legal claims and racial subordination, see Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 *HARV. C.R.-C.L. L. REV.* 323 (1987).

27. See Crenshaw, *Toward a Race Conscious Pedagogy in Legal Education*, 11 *NAT'L BLACK L.J.* 1, 3 (1989) ("[L]aw school discourse proceeds with the expectation that students will learn to perform the standard mode of legal reasoning and embrace its presumption of perspectivelessness. . . . [W]hat is understood as objective or neutral is often the embodiment of a white middle-class world view."); Rosaldo, *Others of Invention, Ethnicity and Its Discontents*, 82 *VOICE LITERARY SUPPLEMENT* 27 (1990) (offering a complexified analysis of "invention of" and social construction theories). Leslie Wahl Rabine writes of the need for feminists to remain both post-structuralists in theory and situated critics in political practice:

If the metaphysical oppositions and the imposing of a single phallogocentric truth can be oppressive . . . bottomless deconstructive strategies can in certain situations be equally so. The deconstruction of metaphysical oppositions always takes place in a context of social hierarchy Whether this play is progressive depends on who does it to whom, what is its historic or institutional context, and who makes the rules.

Rabine, *A Feminist Politics of Non-Identity*, 14 *FEMINIST STUD.* 11, 28 (1988).

28. See Rosaldo, *supra* note 27.

29. See, e.g., *Minority Critiques of the Critical Legal Studies Movement*, 22 *HARV. C.R.-C.L. L. REV.* 1 (1987). Feminists also struggle with this dilemma. See, e.g., Fmley, *Breaking Women's Silence in Law: The Dilemma of the Gendered Nature of Legal Reasoning*, 64 *NOTRE DAME L. REV.* 886 (1989) (discussing the difficulty of using male-centered legal language to attain feminist ends).

grand goals become the excuse for ignorance and inhumanity. Pragmatism is ambitious in its humility, a humility born of the chilling history of mistakes made in the name of Truth.

The pragmatist says, "Listen hard. Consider all possibilities. In meeting other cultures and world views, try to know them and to enter them before judging them." The anthropologist Renato Rosaldo tells us of his fieldwork with the Ilongot headhunters.³⁰ At first he could not understand their explanation for the practice of headhunting. It was, they said, what they needed to expunge raging grief at the loss of a loved one. The headhunters were equally perplexed by the American anthropologist's draft notice. "How can one man order another man into battle?" they asked.³¹ This was completely foreign to the Ilongot sense of the humanly possible.

In telling this story, Rosaldo attempts to demonstrate cultural specificity and the separate truths of separate groups. We can never purport to know another culture fully, he says, or to set aside fully our own assumptions in order to study another's. The anthropologist's humility suggests cultural relativism: there is more than one way to organize life and politics, and we should not judge before we understand.

It has been my privilege to teach with Professor Rosaldo, and I know from both his teaching and his lived practice that he is not an ethical relativist. He is a person who will make great sacrifices for the moral positions to which he is committed. Somewhere in the process of approaching other cultures and possible truths with great humility, he has found the moral truth he lives by and the moral courage to act.

The anthropologist's humility toward culture and the pragmatist's humility toward theory need not exist in a moral vacuum. Individually and collectively, we face unavoidable choices that implicate our survival. The method of holding truth provisional can encourage knowing more and thinking harder so that when we make the difficult choices, we are at our best. The method of holding truth provisional does not, for me, mean there is no truth, no justice.

We can live better lives than we live now. Certainly the growing numbers of impoverished children can live better lives than they live now. This is imperative. At the end of our theoretical struggle is someone's life.

30. R. ROSALDO, *CULTURE AND TRUTH* (1989).

31. *Id.*

Real people and their needs create the outside normative position from which I measure the legal strategies derived from pragmatic method: Does the strategy help dismantle structures of subordination? Does it feed the children and keep the bombs from falling? Does it heed the jagged edges of human pain, the soaring places of human desire? If it does not, I cannot risk its use.

IV. NORMATIVE PRAGMATISM AND CONTRADICTION

Relieving anxiety is not the object of academic work.

—Gayatri Spivak³²

Third, and last, I suggest the plausibility of a normative notion of pragmatism. The perceived dichotomy between pragmatic method and normative absolutes is the place where I live and do my legal work and from which I take my strength. This is not a paralyzing contradiction to me. I will put forward the anti-subordination principle as a likely candidate for transcendental status and sign on to the pragmatism that is an urgent search for humane political practices. This is how I work, and it feels real and noncontradictory.

The binary, either-or thinking that favors arithmetic exactitude challenges us to choose sides. “Is law and liberation an oxymoron?” a group of law students asked recently. A range of legal thinkers answered, in a variety of styles, “not necessarily,” resisting the push always to choose when faced with a contradiction.³³

In advocating legal restrictions of racist speech, I had the familiar feeling of trying to walk, not crawl, on a narrow ridge between two chasms.³⁴ “Choose an anti-racist or a free speech agenda,” was the challenge I heard, and I tried to respond, “I will not choose to abandon one of two principles when both are necessary for my survival.”

Neither will I choose between commitment to an anti-subordination morality and commitment to the truth-seeking method of pragmatism. At some point the path along the ridgeway may narrow, and I may have to choose. But I am not there yet, so I hope to stay in the pragmatist's

32. Quoted in Barringer, *The Mainstreaming of Marxism in U.S. Colleges*, N.Y. Times, Oct. 25, 1989, at B7.

33. *Is Law & Liberation an Oxymoron?*, 1 YALE J. L. & LIBERATION 1 (1989).

34. See Matsuda, *supra* note 3. For similar efforts, see Lawrence, *If He Hollers Let Him Go*, 1990 DUKE L.J. — (forthcoming); Delgado, *Words That Wound*, 17 HARV. C.R.-C.L. L. REV. 133 (1982).

conversation, drawing strength from the whirlwind place we call contradiction.³⁵

V. CRITIQUE OF PRAGMATISM MODIFIED

A. ANTI-ESSENTIALISM

How *does* one affirm that the world is made, not given, and still recognize the weight and force with which socially constructed factors impinge on human lives?

—Renato Resaldo³⁶

The version of pragmatism suggested here invites critique. First, as Judge Posner has suggested, the oppressed/oppressor dichotomy creates problems of identification.³⁷ Subordination is a dynamic, not a static, relationship.³⁸ Structures of domination overlap and merge. The parties in a given dyad of domination can change places, depending on context. Oppression itself is interactive, as Hegel knew.³⁹ In response to this complexified and processual understanding of subordination, we have two choices: We can throw up our hands and say, "Everyone's oppressed. How can we know who to listen to if the charge is to listen to the oppressed?" Or we can say, as I do, that we live in a material, knowable world and that, while oppression is a complex notion, we can walk through the streets of our cities and bear witness to its existence. We can walk as anthropologists amid our own culture, attempting to describe the full complexity of its structures of subordination.

35. For Alice Walker on contradiction, see A. WALKER, *REVOLUTIONARY PETUNIAS AND OTHER POEMS* 31 (1971). ("Be nobody's darling;/Be an outcast/Take the contradictions/Of your life/And wrap around/You like a shawl,/To parry stones/To keep you warm."); for Gwendolyn Brooks on whirlwind, see G. BROOKS, *The Second Sermon on the Warpland*, in *BLACKS* 456 (1989) ("It is lonesome, yes. For we are the last of the loud. Nevertheless, live. Conduct your blooming in the noise and whip of the whirlwind."). I read these poets' embrace of whirlwind and contradiction as a womanist echo of the refined statement of Wallace Stevens's metaphor described in Professor Grey's analysis. See Grey, *Hear the Other Side: Wallace Stevens and Pragmatist Legal Theory*, 63 S. CAL. L. REV. 1569 (1990) (discussing the paradox of perspectivism and quoting Stevens's choice of "the whole,/The Complicate, the amassing harmony"). See also D. Trubek, *Back to the Future: The Short, Happy Life of the Law and Society Movement 77-78* (April 1990) (Institute for Legal Studies, Working Papers Series No. 4) (on "[l]iving in the contradiction . . ." of legal indeterminacy and the need for normative argument).

36. Rosaldo, *supra* note 27, at 27.

37. Posner, *What Has Pragmatism To Offer Law?*, 63 S. CAL. L. REV. 1653, 1659 (1990).

38. I've learned this from the students who have been brave enough to tell me when they feel subordinated in my classes. My thanks to them for their teaching.

39. See G. HEGEL, *PHENOMENOLOGY OF SPIRIT* (1807), discussed in Thomas, *A House Divided Against Itself: A Comment on "Mastery, Slavery, and Emancipation,"* 10 CARDOZO L. REV. 1481 (1989).

Both within and without subordinated communities the group identity question is a significant one. Rather than gloss over the problem, we should ask for more critical thought about its subparts, including (1) the problem of dynamic relations within and among groups, (2) the problem of multiple identity or what Kimberle Crenshaw terms intersectionality, (3) the various anti-essentialism critiques,⁴⁰ and (4) the question of self-determination or who decides when a group is a group.⁴¹

A magician makes a rabbit disappear with deft hands and sympathetic lighting. An intellectual makes the category "rabbit" disappear by selective inspection of its constituent parts. There are, obviously, other small furry animals that are not rabbits. There are pop cultural icons like Bugs Bunny; there are jackrabbits racing planes down rural California runways, and there are rabbit legs in stews in Parisian restaurants. There is the rabbit associated with fertility in European culture and the rabbit who lives on the moon in Asian culture. What, then, is the rabbit?

The other side to this kind of playful deconstruction is the recognition that categories count. They count in naming the structure of "racism" or "patriarchy" and suggesting a category, "women of color," impacted by both. Categories count in calling attention to social facts, in organizing for social change. They count tragically, in determining who gets shot in the back while running from the police in the night in Louisville, Kentucky.⁴²

Categorization is not antithetical to recognizing movement either within a structure or within a category.⁴³ That is, in creating the category "women of color," we can recognize changes and interactions within the category. Some women of color are strongly identified with the category, and others have not given it a thought. Some have given it thought and have chosen to reject the category. Some reject the name, and others reject the status and "pass" as white women. Class status, for some women of color, may determine the course of their lives more surely than does either race or gender.

40. By "anti-essentialism" I mean the critique that challenges the notion that there is a distillable essence that characterizes a particular subset of human beings, such as women. *See, e.g., Harris, Race and Essentialism in Feminist Legal Theory*, 42 *STAN. L. REV.* 581 (1990).

41. *See infra* note 51.

42. Youth of Newburg, a group of African-American teenagers from Louisville, Kentucky, reported to the 10th National Convention of the National Alliance Against Racist and Political Repression that their friend Jay Lewis was shot in the back while running from the police. Jay Lewis's crime, the Youth of Newburg concluded, their voices loud in the cadences of rap, was "being black," and I believe them.

43. For a discussion of this theme, see R.M. UNGER, *POLITICS: A WORK IN CONSTRUCTIVE SOCIAL THEORY* (1987). Unger would neither deny structure, nor deny its elasticity.

Movement within the category is joined by movement without. Men of color, white men, and white women are in varying relations to the category "women of color," relations that will change over time and that will manifest themselves in a range of outcomes in individual cases. Some white women will have close peer relationships with women of color. Others will not.

This dynamic quality of intragroup and intergroup relations does not necessarily destroy the intellectual power of group categorization. In fact, it can reinforce it. A category of analysis becomes useful when, understood in its full complexity and revealed in its exceptions and counterexamples, it helps us to know more than we would have known otherwise.

To clarify: a category like "women of color" is useful if thinking about that category tells us more about the workings of racism and patriarchy than we would know if we did all of our thinking without that category. A pragmatic approach to the problem of group identity might be to say that, even if we do not know how useful a group analysis will be, we can consider the classification provisionally, asking what it adds to our thinking. Considering the category "women of color," we might ask, as Professor Crenshaw has, whether the analysis of the point at which racism and patriarchy intersect is an analysis that can help us know and dismantle those structures of domination.⁴⁴

In analyzing intersectionality, Professor Crenshaw shows that one person can have multiple group identities. Rather than using this to end the conversation about group status, she uses it as a beginning. Neither an anti-racist nor an anti-patriarchal critique of law is completely satisfying to her.⁴⁵ The partial critique becomes a fuller critique by standing at the intersection and from there embarking on the lawyer's task of analyzing Supreme Court decisions.

Professor Crenshaw avoids the simplistic anti-essentialism that deconstructs subordinated group identity until subordination no longer seems to exist. There is a certain sophisticated attraction to the critique

44. Professor Crenshaw says, "Placing those who currently are marginalized in the center is the most effective way to resist efforts to compartmentalize experience and undermine potential collective action." Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL FORUM 139, 167. See also A. DAVIS, *WOMEN, CULTURE & POLITICS* (1989) (discussing an interconnected understanding of all forms of oppression).

45. She discusses criticism of Title VII doctrine, rape, separate sphere ideology, and cultural explanations of black poverty as inadequate without an intersectional analysis. Crenshaw, *supra* note 44, at 146-50, 157-59, 164-65.

that says something like, "All women could not possibly share the same experience of subordination; therefore, gender-based cultural claims are vulgar and diversionary." A similar critique of race as a category of analysis is also in vogue.⁴⁶

Anti-essentialism critiques have multiple geneses. First is the strong liberal tradition of formal equality under which the best defense against subordination is to argue that "all people are the same." Categorizing—for instance, calling attention to Japanese-American cultural identity—is threatening when assimilation and equal citizenship claims are survival tools for the categorized community.

Second is the simple truth of the critique. *Of course* no two people within a category will share the same experience, and no structure will consistently and directly produce a predictable outcome. Life is too wondrously complex for that.

Third is a faith in human agency and a pragmatic distrust of finality in categorization. If woman is defined as victim, how will she be anything but that?⁴⁷ If African-Americans call attention to their distinctive culture, how can they resist blame-the-culture explanations of African-American economic disadvantage?⁴⁸ The courageous ascendance up and out of subordinated status that some individuals attain is celebrated and taken as further evidence of the falsity of the classification.⁴⁹

46. See Kennedy, *Racial Critiques of Legal Academia*, 102 HARV. L. REV. 1745 (1989). In my work I have attempted to identify a critical theory of law that derives from the experience of people of color. In doing this, I have carefully noted that not all people of color have the same experience, either within a specific group or as between groups. I have also avoided claiming that only people of color can attain critical consciousness of race, claiming, in fact, quite the opposite. See Matsuda, *supra* note 5. In spite of this qualification, certain readers have insisted on misstating my thesis as "reading out from chromosomes and physiognomy." DiLeornado & Reed, Letter to the Editor, *Nation*, Oct. 23, 1989, at 442. Writers like Professor Kennedy have insisted on restating my work as essentialist, even after the qualifying statements were called to his attention. See, e.g., M. Matsuda, Remarks at Law Profs Fight the Power, Stanford Law School Panel Discussion (Nov. 17, 1989) (unpublished). This insistence indicates a psychological need for the essentialist bugaboo: why have the critics created an essentialist voice where there is none? Mere clarity of thought does not require the frantic retreat that seems to accompany any suggestion that, at this historical juncture, racial status tends to generate certain generally discernible experiences. For another example of the need to create and then trash essentialist arguments, see Will, *Academic Set-Asides*, *Washington Post*, May 17, 1990, at A27. Will attacks a theory that "all black scholars have had 'experiences' that give them unique 'perspectives' that whites are not qualified to question." *Id.* I am not aware of anyone who has made the argument that Will attacks.

47. See Littleton, *Women's Experience and the Problem of Transition: Perspectives on Male Battering of Women*, 1989 U. CHI. LEGAL FORUM 23.

48. For a discussion and critique of cultural inferiority claims, see Lawrence, *supra* note 34.

49. In this sense, one of the earliest and most poignant American anti-essentialist tracts was Booker T. Washington's *Up From Slavery*, which extols self-reliance and hard work as the key to proving blacks are as good as whites. B.T. WASHINGTON, *UP FROM SLAVERY* (1901).

Finally, the categories threaten people because positioning people in structures of subordination implicates all of us. It denies random and individual explanations of who we are and what our responsibilities are to others. If there is patriarchy, and if that is the reason men earn a dollar to women's sixty-five cents, what does that mean about a man's claim that he earned his paycheck?⁵⁰ If there is homophobia that coerces people into heterosexual relationships, what does that mean about the last time she, a straight woman, "fell in love"? If there is a category called Native Americans with valid unredressed claims to treaty violations, how can we say that ours is a nation of laws?⁵¹ If we pick apart the categories we need not answer these questions.

Decategorizing is more than an intellectual game. It has a politics and a set of consequences: When the Mashpee Tribe raised land claims, the legal issue of treaty rights was never reached because the court decided the Mashpee were no longer Indians.⁵² Should we create and retain categories that explore relationships of privilege and subordination, and if so, whose claims to categorization deserve primacy? The concept of self-determination encompasses the human right to define the self. My choice in looking at a group of which I am not a member is to grant particular weight to that group's internal process for identifying group membership.⁵³ That is my starting point. Beyond that, I turn again to pragmatism and the anti-subordination goal. I do not know how we can end subordination without talking about it, studying it, and naming it in all its forms. We must conceptualize, albeit with provisional humility, the structures of subordination.

As we do this, we can remember that no two people experience the world exactly alike and that this asymmetry multiplies geometrically when we generalize to the level of groups. Complexity is not the same as chaos. No two snowflakes are alike, but when it is snowing, it is cold outside. There are parallels and intersections in the maze of complex

50. See Blau, *Trends in Earning of Women and Minorities*, 41 *INDUS. & LAB. REL. REV.* 547 (1988); Carlson & Swartz, *The Earnings of Women and Ethnic Minorities, 1959-1979*, 41 *IND. & LAB. REL. REV.* 530 (1988); Shack-Marquez, *Earnings Differences Between Men and Women: An Introductory Note*, *MONTHLY LAB. REV.*, June 1984, at 15.

51. See R. WILLIAMS, *supra* note 3.

52. See J. CLIFFORD, *THE PREDICAMENT OF CULTURE: TWENTIETH-CENTURY ETHNOGRAPHY, LITERATURE & ART* 277 (1988).

53. See, e.g., Matsuda, *supra* note 26, at 387 (discussing the right of native Hawaiians to determine who is Hawaiian for purposes of obtaining reparations for the illegal overthrow of the Hawaiian monarchy). See also Resnik, *Dependent Sovereigns: Indian Tribes, States, and the Federal Courts*, 56 *U. CHI. L. REV.* 671 (1989) (exploring complexities of tribal membership); Trask, *Politics in the Pacific Islands: Imperialism and Native Self-Determination* (1989) (unpublished manuscript).

structures that are the human condition. Knowing one structure of subordination makes it easier to know another. We are not the same. But we are not so different that we are bereft of the chance of knowing anything at all about one another and thereby about ourselves.

B. FALSE CONSCIOUSNESS

The next, related objection to a discourse of the subordinated is, as Professor Brewer suggested, that even if we identify subordinated groups there is no guarantee that they have anything valuable to say about subordination.⁵⁴ This is the "false consciousness" problem. Various phenomena, such as working-class authoritarianism, Asian-American homophobia, and women's interualization of patriarchal body images, show how subordination can obscure as well as illuminate self-knowledge.⁵⁵ The long, cold history of subordinated status generating subordinating impulses is well known to both scholars and targets of recycled hate.⁵⁶

The subordinated are not always the source of wisdom the Seven Samurai seek when they ride into the village to save the starving peasants. What the Seven Samurai found were people ugly, hungry, tired, and, above all, untrustworthy.⁵⁷ The filmmaker, I would add, was more a samurai than a peasant.⁵⁸ Did *he* find what he was looking for?

Even if the poor are noble and wise, it is suggested, they may be inarticulate and incapable of sharing what they know.⁵⁹ Their knowledge may not exist in any container they can pass to us. Instead of being known to them as knowledge, it may simply be "the way things are." When I have argued in the past that legal theorists should seek out subordinated voices, I have heard in response a regiment of reasons why

54. Here I acknowledge Professor Brewer's clarification in the comment period. See *Afterword*, 63 S. CAL. L. REV. 1911, 1911 (1990). I thank him for the engaged and non-elitist tone of his critique.

55. Feminists attempt to deal with internalized oppression through the method of consciousness-raising. See, e.g., E. BALKIN, M. PRATT & B. SMITH, *YOURS IN STRUGGLE* (1984).

56. See, e.g., H. SHAPIRO, *WHITE VIOLENCE AND BLACK RESPONSE: FROM RECONSTRUCTION TO MONTGOMERY* (1988).

57. A. KUROSAWA, *SHICHININ NO SAMURAI (THE SEVEN SAMURAI)* (1954). See D. DESSER, *THE SAMURAI FILMS OF AKIRA KUROSAWA* 78 (1983) (discussing the relationship between the farmers and the samurai in *The Seven Samurai*).

58. See D. DESSER, *supra* note 57.

59. The Native American poet Paula Gunn Allen wrote the following: "No easy inatter—to simply write what happens now, or then. It is beyond me on ordinary days to acknowledge what I know and what I see. I was carefully constructed to forget what is before my eyes." P. ALLEN, *WYRDS* 51 (1987).

this search would prove pointless, ranging from "We already know what they have to say," to "It does them disservice to romanticize their position," to "Their immersion in their own subordination taints their analysis."

My personal and unscientific suspicion is that there can be false consciousness about false consciousness.⁶⁰ There is a strong incentive for academics to believe that poor and working people have little of value to say about law, social life, or politics. How could we justify gathering at meetings like the Symposium on the Renaissance of Pragmatism in American Legal Thought so graciously sponsored by the University of Southern California, if indeed it is true that important information, theory, and imagination are possessed by people whom we never invite to our conferences?

In addition to this possible bias, we must also consider the record that reveals that subordinated people do make history, particularly when their political practice gives them a consciousness of their position. Workers claimed the eight-hour day; women claimed suffrage; African-Americans claimed access to public accommodations. In the academy, similar claiming has changed the institutions of knowledge production. There were white women, people of color, and women of color at the USC Symposium on neopragmatism. This happened not by chance, but by a consciousness of exclusion and demands for inclusion that originated outside the academy.

False consciousness is a real phenomenon that we must understand and for which we must account. It exists in tandem with critical consciousness, with the power of the subordinated to understand subordination and to derive means of liberation from it.

Thus, if we are to weight pragmatism so that it attends to the perspective of the subordinated, the challenge is to identify the particular voice refined by consciousness-raising.⁶¹ By "consciousness-raising," I

60. A writer criticizing a positivist social scientist's survey research on Korean-American entrepreneurs argues against empiricism and for analysis of "the social world from a critical perspective . . . eugag[ing] with people in helping them to see how hegemonic ideologies dominate their understanding of their own experience." Bonacich, *The Role of the Petite Bourgeoisie Within Capitalism: A Response to Pyong Gap Min*, 15 AMERASIA 195, 200 (1989). She opens her critique, however, by admitting that the empiricist—a Korean-American—"obviously has a far more intimate knowledge of the Korean community than I." *Id.* at 195. It troubled me to read in her critique an assumption of false consciousness coupled with an admission that the Korean-American researcher "has a kind of hands on knowledge that I lack." *Id.* at 199.

61. Korstad & Lichtenstein, *Opportunities Found and Lost: Labor, Radicals, and the Early Civil Rights Movement*, 75 J. OF AMER. HIST. 786 (discussing the 1940's civil rights movement, which organized in coalition with the labor movement).

mean a collective practice of searching for self-knowledge through close examination of our own circumstances, in conjunction with organized movements to end existing conditions of domination.

Human beings engaged in this kind of work have overcome self-hate and limited beliefs about life's possibilities. They have learned to listen to others and to confront their own role in maintaining subordination. Through this process women have learned to leave batterers, and batterers have learned why they are so angry. African-Americans have learned they could demand voting rights, and Japanese-Americans have learned they were not crazy to demand an apology for the wrong of World War II internment.⁶² Students have learned they can link oppressions and fight racism, sexism, homophobia, militarism, class oppression, environmental degradation, and all forms of subordination in the unprecedented coalition that will be known to history as the great student movement of the 1990s. Workers have learned that racism and sexism are the first clubs to hit the shop when a union drive begins; they have learned—in those progressive moments in labor history when unity defeated race and sex privilege—that all benefit from the elimination of all forms of oppression.⁶³

My search is for these moments of knowing. While I want to listen to all economically disadvantaged people, I want to listen with special care to the miners at the Pittston coalfields who are organizing in a way that gives them knowledge about their class position.⁶⁴ While I want to listen to all women, I want to listen especially well to women who work

62. For discussions of coming to critical consciousness in the African-American civil rights movements, see S. CLARK, *READY FROM WITHIN: SEPTIMA CLARK AND THE CIVIL RIGHTS MOVEMENT* (1986). In this work, veteran activist Septima Clark describes her failed efforts to get African-American school teachers to support her when she was fired from her South Carolina teaching position because of membership in the NAACP:

I don't know why I felt that the black teachers would stand up for their rights. But they wouldn't. Most of them were afraid and became hostile. . . .

I considered that one of the failures of my life because I think that I tried to push them into something that they weren't ready for. From that day on I say, "I'm going to have to get the people trained. We're going to have to show them the dangers or the pitfalls that they are in, before they will accept." And it took many years.

Id. at 37-38. Testimony and oral history of Japanese-Americans played a critical role in the redress movement. Cf. J. TATEISHI, *AND JUSTICE FOR ALL: AN ORAL HISTORY OF THE JAPANESE AMERICAN DETENTION CAMPS* (1984).

63. Cf. M. CONWAY, *RISE GONNA RISE: A PORTRAIT OF SOUTHERN TEXTILE WORKERS* 119 (1979) (discussing racism as a union-busting tactic). For discussion of successful anti-racist, multi-racial organizing strategies, see, e.g., E. BEECHERT, *WORKING IN HAWAII: A LABOR HISTORY* (1985) (discussing unity tactics of the International Longshoreman and Warehouseman's Union).

64. See Mills, *Solidarity in Virginia*, *DISSENT*, Spring 1990, at 237.

in battered women's shelters, who have knowledge about the dynamics of patriarchy.⁶⁵ While I want to listen to all African-Americans, I want to listen with keen attention to those who are developing an African-American interpretation of the civil rights movement and who are studying neglected primary sources in their own communities.⁶⁶

Subordinated status plus critical consciousness-raising is the condition that produces the knowledge I seek. It is a knowledge that was largely unavailable to past generations of pragmatists. It is a knowledge that is increasingly available to us as we enter the age of the post-colonial university.⁶⁷

VI. CONCLUSION: PRAGMATISM, ESSENTIALISM, AND LIBERATION

[W]e are not one or ten or ten thousand things. Not one poem.
We could count ourselves forever and never agree on the number.

—Elizabeth Alexander⁶⁸

During the time of the Harlem renaissance, the industry of criticism flourished on the back of the industry of literature. Critics decried the racialism and embarrassment of the fascination with Black dialect, rural folklore, and Afro-Cuban rhythm. Of the poet Langston Hughes, they asked, "Why not exalt our professoriat over our proletariat? Why use the vernacular when so many question our ability to use the language of the elite?"⁶⁹ Race writing emphasizes Blackness in a way that conflicts with the broader goals of truth seeking and peaceful coexistence.

The critics' voices are largely lost to the archives. They deserve study both for their substantive challenge and for our understanding of the context in which they arose. It is no accident, however, that the

65. See Mahoney, *supra* note 20.

66. See, e.g., A. MORRIS, *THE ORIGINS OF THE CIVIL RIGHTS MOVEMENT: BLACK COMMUNITIES ORGANIZING FOR CHANGE* (1984); Bryan, *Her-Story Unsilenced: Black Female Activists in the Civil Rights Movement*, SAGE, Fall 1988, at 60; Crawford, *Grassroots Activists in the Mississippi Civil Rights Movement*, SAGE, Fall 1988, at 24 (studying "the countless, nameless Black women who were the backbone of the civil rights struggle in local communities").

67. See Rosaldo, Lawrence & Matsuda, *Toward a Post-Colonial University: Curriculum, Scholarship, Pedagogy and Change* (1990) (unpublished manuscript).

68. E. ALEXANDER, *Today's News*, in *THE VENUS HOTTENTOT* 51 (1990).

69. For discussion of the debate between Langston Hughes, W.E.B. DuBois, and others over the obligation of the artist to portray African-Americans positively, given their historical devaluing in American culture, see Gates, *The Black Person in Art: How Should S/he Be Portrayed?*, 21 *BLACK AMER. LIT. FORUM* 3 (1987). For an excellent essay recovering female participation in the Harlem renaissance, see G. HULL, *COLOR, SEX, AND POETRY: THREE WOMEN WRITERS OF THE HARLEM RENAISSANCE* 1 (1987).

critics are lost to the archives and that what we retain from our present vantage is the voice of the poet who wrote, "I, too, sing America."⁷⁰

Writers who sing with their native voices and claim for themselves a vision born of the structures of power in our society are subject to facile critique. Maxine Hong-Kingston is attacked by certain Chinese-American critics, who charge that her particularity does not speak for them.⁷¹ Alice Walker is scorned by certain African-American critics who charge that she maligns Black men.⁷² Catharine MacKinnon is denounced for an alleged single focus on sex as a location of power. These women, like ages of women before them, stand falsely accused.

The easy critique of women warrior writers says that they distort, generalize, singularize, and polemicize, just as the easy critique of the anti-subordination pragmatist is that subordination is a moving target. The hard critique, the engaged critique, rises to the challenge of recognizing structures of subordination and accounting for those structures in both strong and weak manifestations, in contradiction, and in exception. This is the promising work that feminists, critical legal scholars, and critical race theorists are bringing to jurisprudence.

To approach truth without exalting too soon a claim to it and to seek justice without forgetting the fallibility of justice-seekers is my quest. Pragmatism, posed as it is on the cusp of the modern and postmodern worlds, provides a legacy rich with contradiction and promise for those who judge theory according to its potential for empowering the least powerful among us. The imperative of ending all forms of subordination and the attempt to define and attain critical consciousness are tasks-in-progress. Like the pragmatists of Dewey's time, the liberation

70. This line is from a famous Langston Hughes poem, "I, Too, Sing America," echoing Walt Whitman. It is also the subtitle of volume 1 of a significant two-volume biography of Hughes by Arnold Rampersand. 1 A. RAMPERSAND, *THE LIFE OF LANGSTON HUGHES: I, TOO, SING AMERICA 1902-1941* (1986).

71. M. HONG-KINGSTON, *THE WOMAN WARRIOR: MEMOIRS OF A GIRLHOOD AMONG GHOSTS* (1982). Criticism of Hong-Kingston is discussed in Wong, *Necessity and Extravagance in Maxine Hong-Kingston's The Woman Warrior: Art and the Ethnic Experience*, 15 MELUS 3 (1988), and in Cheung, "Don't Tell": *Imposed Silences in The Color Purple and The Woman Warrior*, 103 PUB. OF THE MODERN LANGUAGE ASSOC. 162 (1988).

72. The criticism of the film version of *The Color Purple* is discussed in Crenshaw, *supra* note 44, at 163. As Professor Crenshaw notes, "[M]ost critics overlooked the positive transformation of the primary male character in *The Color Purple*." *Id.* at 163 n.63. For a defense of Walker and a critic's response, see Barbara Smith and Ismael Reed in Gates, *supra* note 69. For Ms. Walker's own spirited and spiritual defense, see A. WALKER, *Coming in From the Cold: Welcoming the Old, Funny-Talking Ancient Ones into the Warm Room of Present Consciousness, or, Natty Dread Rides Again!* and *In the Closet of the Soul*, in *LIVING BY THE WORD* 54, 78 (1988).

theorists of today know that the road is long, the way uncertain, and the choice to retreat not ours.

All is not well; there is pain at so many levels of our lives—personal and political, individual and collective. We can save ourselves and each other by listening to the pain and to the dream of human dignity we have sustained alongside it. Cornel West calls this prophetic pragmatism, and others in our history have called it, simply, freedom.