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**ANTI-SUBORDINATION AND THE LEGAL STRUGGLE OVER CONTROL OF THE "MEANS OF COMMUNICATION": The Imaginary of English Only**

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**SUMMARY:** ... In the second half of the paper where we defend the heuristic device or aesthetic idea of the imaginary domain to justify Spanish language rights, we approach value and the point of view of the person as modeled in Kantian moral philosophy, once it has been given a constructivist twist. ... Hence, as beings who take our selves as our own ends, as the source of value we give to our lives, we all have equal dignity. ... The identification, LatCrit, is an ethical and political identification and as such it is clearly open to whites to identify as a LatCrit, but how I, as a white woman, take up that identification is part of the ethical and moral challenge it presents to me. ... As a newly declared LatCrit, who understands this identification to challenge the legally imposed exclusion of Spanish language and Latin heritage and culture in the identification "American," the answer has to involve a challenge to the legal justifiability of these kinds of statutes. ... The imaginary domain extends to each person a right to self-representation and self-evaluation of her basic identifications. ... But to once again focus on the white Anglo perspective - as if speaking Spanish were a form of identity politics and speaking English were not (Audience laughs) - is to reinforce the legitimacy of that perspective as the perspective on others. ...

[\*977]

I'm honored to be here and I want to thank Lisa and Frank for inviting me. In the section of the paper summarized by Bill, we approached value and the point of view of the person as modeled in economic theory. In the second half of the paper where we defend the heuristic device or aesthetic idea of the imaginary domain to justify Spanish language rights, we approach value and the point of view of the person as modeled in Kantian moral philosophy, once it has been given a constructivist twist. We need both viewpoints and accounts of value. Without a reasonable moral, political, or legal ideal of the person, and with it some interpretation of freedom and equality, the fact that the legal suppression of Spanish is a functional equivalent of Jim Crowism is just a fact. What makes it wrong is that the legal imposition of linguistic peonage controverts the equal dignity of the person imposing a form of moral servitude on Latinos and Latinas.

Kantian moral theory understood with a constructivist twist, which is just to say with an ethical or political twist, argues that each one of us, thrown as we are into a finite human existence with all its historical and relational complexity - what I shortly will call basic identifications - cannot but address the question, what should I do? Should I, for example, identify with or as a LatCrit? What does it mean for me to identify with or as a LatCrit if I also feel called to identify as a white Anglo woman, to attempt by so doing to make visible the privileging of Whiteness and of English. Once LatCrits have carved out symbolic space and formed the identification so that it must be addressed in a legal academy, and in law more generally - the "establishment" of LatCrit as an identification in law in such a short time is an extraordinary ethical and political achievement - how each of us is to identify or not is an ethical and political question we must confront. Shut your ears and the question remains. That the question remains, that we must address the question of what we should do and give it an answer, even the answer that we do not know or, more

strongly, cannot theoretically know whether it is right for a white Anglo woman to identify as a LatCrit, is to take up the stance of what Kant called practical reason. From this standpoint, I cannot be your object since I, like you, am existentially positioned to ask and answer that question only for myself. This is the basis of Kant's famous moral postulate that each of us is an end in herself, because we are beings who cannot avoid making evaluations of our own lives and of the [\*978] world around us. Kant's basic premise was that because each of us holds her own ends to be good, each of us also regards her own humanity as a source of value. The Kantian ideal of the free person with equal dignity who should be treated legally by the state as such, insists on our equal worthiness to do just that, make our own evaluations.

The capacity to value our ends and to develop life plans to achieve them is what John Rawls has called our rationality. Because of our rationality, we take ourselves to be the source of value we give to our own lives. We have a further capacity, which Rawls names reasonableness, to recognize, consistent with our own rationality, the rationality of other human beings. We must attribute the same kind of value to our humanity as to the humanity of others. Hence, as beings who take our selves as our own ends, as the source of value we give to our lives, we all have equal dignity. A fair social order must be premised on our equal dignity.

Our moral freedom turns on the postulation of ourselves as the source of our own values and the ends we choose. This is a postulate of practical reason, not a given truth of reality. Some of us value certain ends, for example, a college education, because it has been hammered into our heads that that is what we should value. None of us can clearly know the entire complex trajectory through which we have actually come to value such ends. The ultimate question for us then is whether or not it is ethically necessary for us to affirm this basic postulate of practical reason. We think it is, precisely because it is what allows us to "see" what is wrong in the moral servitude imposed by linguistic peonage.

There is an existential dimension to the understanding of our freedom that was not addressed by Kant, but was taken up by later philosophical queries to him. Moral freedom can be viewed as moral responsibility. If no one else but me is to be recognized as the source of my judgments and evaluations - no matter what their actual source is - then I am responsible for those evaluations and judgments. I can't worm out of my responsibility. As finite beings we are bombarded by ethical dilemmas to which we must respond. One of the ways in which ethical dilemmas present themselves is in the form of demands for identification or dis-identification. Note that I am using the word identification, not identity, and that I have described LatCrit as an identification, a recently formed one at that, and one that is constantly being reshaped in these conferences. Some of the most crucial ethical and political issues of our time have been obscured by the either/or rhetoric of identity politics. The identification, LatCrit, is an ethical and political identification and as such it is clearly open to whites to identify as a LatCrit, but how [\*979] I, as a white woman, take up that identification is part of the ethical and moral challenge it presents to me. The existential dimension of our responsibility, if we value our freedom as a postulate of practical reason, is intimately connected with the question of identification. Who I am is a moral, ethical, and practical question, which takes us into the most profound entanglements of our lives with others.

As a white Anglo, do I identify - and yes, given the privilege that has come with that identification of me in the eyes of others, I see the need to identify myself as such - with the attempt of some white Anglos to impose English only in the name of an identification "American" that we supposedly share? Does this identification demand the legal suppression of Spanish as the advocates of English only seem to suggest? Our answer in this paper is "no." Indeed, the implied political position we take is the opposite; the identification "American" demands that it be reconceptualized if it is to be maintained at all to recognize the centrality of the Spanish language and Latin culture more generally to it. Our identifications may be given to us, they certainly are defined by others, and that meaning is passed on to us as part of what it means to be who we are and how we are identified "by others." But that doesn't get us off the hook. We are still responsible if we take our freedom, in the Kantian sense I earlier described, seriously. We wrote this paper in order to take up that responsibility - more deeply felt, no doubt, because discrimination is not experienced as outside our family but within it - to challenge the meaning of the identification "American"

as necessarily involving the suppression of Spanish as what is entailed in the establishment of English as the "American" language.

As a newly declared LatCrit, who understands this identification to challenge the legally imposed exclusion of Spanish language and Latin heritage and culture in the identification "American," the answer has to involve a challenge to the legal justifiability of these kinds of statutes. I could just say that is the reasonable conclusion for any citizen to reach, relying on Rawls's sense of the word reasonable. And I believe it is. But the ethics of identification are inseparable from how as a white Anglo I came to feel called upon to write this paper in the first place.

An explicit enforcement of the norm of assimilation as the basis of citizenship through English only statutes treats Latinas and Latinos as less than free and equal persons, equally worthy and capable of evaluating their own basic identifications, including their language. That's our bottom line.

So far, I have been using the word identification to point out the moral and political inevitability of having to identify or disidentify or rethink my identifications whenever I try to answer the question, "What [\*980] should I do?" - particularly when I also have to answer the question, "What should I do in the struggle for justice?" This is another question inevitably posed to each of us, since none of us, as Marx pointed out to us so long ago, can live without appropriating a share of society's goods and resources.

But we also mean basic identifications in the sense that all of us in our hybrid identities are constituted by the sedimented meanings we inherit in relationships we did not choose. Language, ethnicity, national origin, sexual and gender orientation are all basic identifications. We form ourselves from out of the symbolic material we are given, which also shapes us. The ideal of the imaginary domain recognizes the fragility of our freedom, precisely because we can never be truly autonomous. Instead we are envisioned as inseparable from the cultural personas in which we are all engaged in order to represent and claim ourselves. On this understanding, the person of practical reason remains inseparable from the project and potential through which we will ethically and morally form a self. We cannot escape working through personas because we are embodied creatures who appear to others as formed in a particular way, shaped for example as a woman, who then inherits a set of norms and prohibitions which are supposed to be essential to her being. Our freedom, therefore, also must be given body, consistent with a materially and culturally embedded subject.

The imaginary domain extends to each person a right to self-representation and self-evaluation of her basic identifications. This is a right to establish herself as her own representative as between herself and the state. To be included in the moral community of persons established by any system of rights in a modern legal system is to be recognized as someone who can shape and reshape her basic identifications out of the available symbolic material in accordance with her changing evaluations. Such recognition takes us beyond any legally imposed hierarchical definitions of the self based on caste, class, race, gender, national origin, or linguistic descent, which continue to be used to banish some of us to the realm of the phenomenal, determined supposedly by our so-called nature. To be banished to the realm of the phenomenal is, in Franz Fanon's words, to be denied existence as a legitimate point of view, including the point of view implicit in the evaluation of one's mother tongue. The intertwining of self and language as a basic identification is eloquently stated by Gloria Anzaldúa, "So if you really want to hurt me talk badly about my language. Ethnic identity is twin to linguistic identity. I am my language. When I cannot take pride in my language, I cannot take pride in myself."

Race critical theory has taught us that given our embodied freedom [\*981] we cannot escape identifications, in both senses in which I've used the word, nor from the perspectives attached to them. Franz Fanon tells us that there are at least three perspectives from which we judge our world. The perspective of the standpoint in the world, the perspective seen from other standpoints in the world, and the person's perceptive awareness of itself being seen from other standpoints. To reject the perspective of the other as a perspective from which we are constituted is a form of denial we see all too often these days in

attacks on identity politics. Those others are making us see white, Anglo privilege and this may cause us great discomfort. That privilege can easily be reinforced if we reform our discrimination law to distance ourselves from "victim talk" to tackle instead the white perspective in which people of color are negated as the sources of a legitimate perspective. But to once again focus on the white Anglo perspective - as if speaking Spanish were a form of identity politics and speaking English were not (Audience laughs) - is to reinforce the legitimacy of that perspective as the perspective on others. Thus, we strongly disagree with Martha Minow's recent suggestion that we should refashion our discrimination law so as to concentrate on white "bad" attitudes about people of color rather than the proclaimed identities of those discriminated against. Alternatively, we would legally enshrine freedom and the equality which comes with it and leave us all with a political responsibility from which we cannot escape. Thank you. (Audience claps)...

I would like to add one point because this is another part of our paper which really goes to both the excellent comment you made and Sharon Hom's presentation, which is that we fully recognize the need to keep the role of law very small. And within law, the discourse of rights should also remain in its proper place. Hopefully, in a world in which we enshrined freedom, as we put it, and recognized just how central language is to communication with others, the cost of multi-lingualism would be very different because people would speak many different languages. That the Anglo majority has been able to legislate its language to the point where the costs you speak of are real to them (although I need to stress that we think there's certainly a huge fantasy dimension to how the cost is perceived) has undermined the kind of rich multi-cultural world that is part of our dream. We are arguing that in a world in which there is truly respect for the reality that there's always an other of the Other, more of us would seek to get in to the worlds of Others by trying to learn these different languages. And of course, this access to a multicultural world based on mutual respect is cut off from us by this so-called common cultural movement...

First of all we address not only English-only in government but [\*982] also English-only in the workplace. But I want to say something about the moral theory we present in our paper which advocates that government should speak and allow itself to speak to others in their language. So for instance, if you're in New York City, and you only speak Spanish, and you need to get your Medicare benefits, you should expect to find someone who will speak to you in your language. That's how seriously we take this idea of self-representation. The fact is that Spanish language, as we define it in one of our footnotes, is part of "American" culture and it's about time that we recognize that- not just because we robbed a good part of Mexico in one of our many brutal and unjust wars, but because of the significant size of the populations in states like California and in my city, New York City. I want a person to be able to go into an office, perhaps they speak perfect English but they're not in the mood to speak it, and say in Spanish, give me my Medicare benefits and give them to me now. (Audience laughs). This is an affirmative duty which goes beyond the usual conception of right as correlated only with negative right. Some rights entail affirmative duties. Bill may be a little more conservative in how far he would go in the imposition of affirmative duties. How this affirmative duty to respect the language of the Other is defined would effect how we think about bi-lingual education. These days bi-lingual education is only seen as remedial as opposed to a celebration of Spanish language. We used to have schools in New York City where people wanted their children to continue in their Spanish, solely for the purpose of celebrating Latin culture. There are only a handful left. I think this is a travesty.