

Masks and Resistance

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For stigmatized groups, such as persons of color, the poor, women, gays, and lesbians, assuming a mask is comparable to being "on stage"—the experience of being acutely aware of one's words, affect, tone of voice, movements, and gestures because they seem out of sync with what one is feeling and thinking. At unexpected moments, we fear that we will be discovered to be someone or something other than who or what we pretend to be. Lurking just behind our carefully constructed disguises and lodged within us is the child whom no one would have mistaken for being anything other than what she was. Her masking was yet imperfect, still in rehearsal, and at times unnecessary.

For Outsiders, being masked in the legal profession has psychological as well as ideological consequences. Not only do we perceive ourselves as being "on stage," but the experience of class-jumping—being born poor but later living on the privileged side of the economic divide as an adult—can also induce schizoid feelings. As first-year law students don their three-piece suits, they make manifest the class ascendancy implicit in legal education. Most Latinas/os in the legal profession now occupy an economic niche considerably higher than that of our parents, our relatives, and frequently our students. Our speech, clothes, cars, homes, and lifestyle emphasize this difference.

The masks we choose can impede our legal representation and advocacy by driving a wedge between self, *familia*, and community. As our economic security increases, we escape the choicelessness and lack of control over vital decisions that oppress communities of color. To remain connected to the community requires one to be Janus-faced, able to present one face to the larger society and another among our selves. Janus-faced not in the conventional meaning of being deceitful, but in the sense of having two faces simultaneously. One face is the adult one that allows us to make our way through the labyrinth of the dominant culture. The other, the face of the child, is one of difference, free of artifice. This image with its dichotomized char-

FROM "MASCARAS, TRENZAS, Y GREÑAS: UN/MASKING THE SELF WHILE UN/BRAIDING LATINA STORIES AND LEGAL DISCOURSE." 17 HARV. WOMEN'S L.J. 185 (1994); 15 CHICANO-LATINO L. REV. 1 (1994). Originally published in the *Harvard Women's Law Journal* and the *Chicano-Latino Law Review*. Reprinted by permission.

meter fails to capture the multiplicity, fluidity, and interchangeability of faces, masks, and identities upon which we rely.

Throughout history, masking and unmasking have been used to explore the inner self—the person hiding behind the public face. These themes can be found in works produced by Euro-American males included in the traditional academic canon. Shakespeare's "All the world's a stage/And all the men and women merely players"¹ illustrates this idea. Figuring out how to present oneself in public has elements of a theatrical performance for everyone.

Latinoamericano writers also have employed mask metaphors. Octavio Paz's analysis of the Mexican psyche pertains specifically to the experience of the Mexican immigrant:

The Mexican, whether young or old, *criollo* or *mestizo*, general or laborer or lawyer, seems to me to be a person who shuts himself away to protect himself: his face is a mask and so is his smile. In his harsh solitude, which is both barbed and courteous, everything serves him as a defense: silence and words, politeness and disdain, irony and resignation. . . . He builds a wall of indifference and remoteness between reality and himself, a wall that is no less impenetrable for being invisible. The Mexican is always remote, from the world and from other people. And also from himself.²

Blaming the Mexican for his remoteness, Paz shows little understanding of the mask as a strategy for resisting external subordinating forces. He concludes by urging humanity to tear off the mask, to eschew the disguise so that the naked self can find transcendence in the company of others locked in their own feelings of solitude.

The genre of contemporary Latin American poetry called public poetry eschews this concept of universality, reaching instead for solidarity and community through a celebratory return to 'ordinary' discourse and 'ordinary' experience."³

The legal profession provides ample opportunity for role-playing, drama, storytelling, and posturing. Researchers have studied the use of masks and other theatrical devices among practicing lawyers and in the law school environment. Mask imagery has been used repeatedly to describe different aspects of legal education, lawyering, and law-making. Some law students are undoubtedly attracted to the profession by the opportunity to disguise themselves and have no desire or need to look for their hidden selves. Some, however, may resent the role-playing they know to be necessary to succeed in their studies and in their relations with professors and peers. Understanding how and why we mask ourselves can help provide opportunities for students to explore their public and private personalities and to give expression to their feelings.

*Esto es el exilio
Este tenerme que inventar un nombre,
una figura,
una voz nueva.
Este tener que andar diciendo de donde soy
que hago aqui.
Esto es el exilio
esta soledad clavandose en mi carne. . . .*

This is exile
 this having to invent a name for myself,
 a face, a new voice.
 This having to go around saying
 where I'm from
 what I'm doing here.
 This is exile
 this solitude biting into my flesh. . . .⁴

My memories from law school begin with the first case I ever read in Criminal Law. I was assigned to seat number one in a room that held some 175 students. The case was entitled the *People of the State of California v. Josefina Chavez*.⁵ It was the only case in which I remember encountering a Latina, and she was the defendant in a manslaughter prosecution. The facts, as I think back and before I have searched out the casebook, involved a young woman giving birth one night over the toilet in her mother's home without waking her child, brothers, sisters, or mother. The baby dropped into the toilet. Josefina cut the umbilical cord with a razor blade. She recovered the body of the baby, wrapped it in newspaper and hid it under the bathtub. She ran away, but later she turned herself in to her probation officer.

The legal issue was whether the baby had been born alive, for purposes of the California manslaughter statute, and was therefore subject to being killed. The class wrestled with what it meant to be alive in legal terms. Had the lungs filled with air? Had the heart pumped blood? For two days I sat mute, transfixed while the professor and the students debated the issue. Finally, on the third day, I timidly raised my hand. I heard myself blurt out: What about the other facts? What about her youth, her poverty, her fear over the pregnancy, her delivery in silence? I spoke for perhaps two minutes, and when I finished, my voice was high-pitched and anxious.

An African American student in the back of the room punctuated my comments with "Hear! Hear!" Later other students thanked me for speaking up and in other ways showed their support. I sat there after class had ended, in seat number one on day number three, wondering why it had been so hard to speak. Only later would I begin to wonder whether I would ever develop the mental acuity, the logical clarity to be able to sort out the legally relevant facts from what others deemed sociological factoids. Why did the facts relating to the girl-woman's reality go unvoiced? Why were her life, anguish, and fears rendered irrelevant? The Law demanded that I disembody Josefina, her behavior and her guilt, that I silence her reality which screamed in my head.

Perhaps my memory has played tricks with me. I decide to look for the casebook and reread the *Chavez* case. I am surprised, after years of thinking about the case, to learn that her name was Josephine and not Josefina. My memory distorted her name, exaggerating her ethnicity, her differences. The facts in the opinion are even more tragic than I remembered:

The defendant was an unmarried woman about 21 years of age. She had previously had an illegitimate child, and at about 12:30 A.M. on March 31, 1946, she gave birth to the child here in question. She lived with her mother and sisters in a small house having two bedrooms, with a bathroom off the kitchen porch. On this night the mother slept in the

back bedroom, and the defendant occupied the front bedroom with her two sisters. She had attempted to conceal the fact of her pregnancy from her family by wearing a girdle and loose sweaters. . . .

After going to bed on the evening of March 30, she had several attacks of what she called "cramps." . . . She made a third trip [to the bathroom] about 12:30 A.M., the other members of her family being asleep. She left the doors open and no lights were turned on. As she was sitting on the toilet she "felt a little pressure on the lower bones. Then I knew the baby was going to be born." . . . She knew from her previous experience that the placenta had to be removed and so, after the baby was in the toilet "a little while," she expelled the placenta by putting pressure on her stomach. She did not notice whether the baby's head was under water, because the afterbirth fell over its head. It took two to three minutes for the placenta to come out. She then turned on the light and found a napkin and pinned it on herself. She then removed the baby from the toilet, picking it up by the feet, and cut the cord with a razor blade. She testified that the baby was limp and made no cry; that she thought it was dead; and that she made no attempt to tie the cord as she thought there was no use. She then laid the baby on the floor and proceeded to take further care of herself and clean up the room. The baby remained on the floor about fifteen minutes, after which she wrapped it in a newspaper and placed it under the bath tub to conceal it from her mother. She then returned to bed and the next day went about as usual, going to a carnival that evening. On the next day, April 1, her mother discovered the body of the infant under the bath tub.⁶

The legal issue in the case is also somewhat different from what I recall. The question presented is not only whether the baby was born alive for purposes of the California manslaughter statute, but also whether the statute required that the baby be entirely separate from its mother with the umbilical cord cut before being considered a person. The court concurred with the jury's finding that a baby in the process of being born but with the capability of living an independent life is a human being within the meaning of the homicide statutes. The appellate court affirmed the judgment of the lower court, concluding that a criminal act had been committed because of the mother's "complete failure . . . to use any of the care towards th[e] infant which was necessary for its welfare and which was naturally required of her."⁷

The appellate opinion focused on the legal personhood of the dead baby, but questions of criminal intent, *mens rea*, and diminished capacity thread through the case. Contextualization of the facts through the use of gender-linked and cultural information would inform our understanding of the latter legal issues. Contextual information should have been relevant to determining the criminality of her behavior. Josephine Chavez's behavior seems to have been motivated as much by complex cultural norms and values as by criminal intent.

A discussion raising questions about the gender-, class-, and ethnicity-based interpretations in the opinion, however, would have run counter to traditional legal discourse. Interjecting information about the material realities and cultural context of a poor Latina woman's life introduces taboo information into the classroom. Such information would transgress the prevalent ideological discourse. The puritanical and elitist protocol governing the classroom, especially during the 1970s, supported the notion that one's right to a seat in the law school classroom could be brought into question if one were to admit knowing about the details of pregnancies and self-

abortions, or the hidden motivations of a *pachuca* (or a *chola*, a "homegirl" in today's Latino gang parlance). By overtly linking oneself to the life experiences of poor women, especially *pachucas*, one would emphasize one's differences from those who seemed to have been admitted to law school by right.

Information about the cultural context of Josephine Chavez's life would also transgress the linguistic discourse within the classroom. One would find it useful, and perhaps necessary, to use Spanish words and concepts to describe accurately and to contextualize Josephine Chavez's experience. In the 1970s, however, Spanish was still the language of Speedy Gonzales, José Jimenez, and other racist parodies. To this day, I have dozens of questions about this episode in Josephine Chavez's life. I yearn to read an appellate opinion which reflects a sensitivity to her story, told in her own words. What did it take to conceal her pregnancy from her familia? With whom did she share her secret? How could she have given birth with "the doors open and no lights . . . turned on?"⁸ How did she do so without waking the others who were asleep? How did she brace herself as she delivered the baby into the toilet? Did she shake as she cut the umbilical cord? I long to hear Josephine Chavez's story told in what I will call *Mothertalk* and *Latina-Daughtertalk*. *Mothertalk* is about the blood and mess of menstruation, about the every month-ness of periods or about the fear in the pit of the stomach and the ache in the heart when there is no period. *Mothertalk* is about the blood and mess of pregnancy, about placentas, umbilical cords, and stitches. *Mothertalk* is about sex and its effects. *Mothertalk* helps make sense of our questions: How does one give birth in darkness and in silence? How does one clean oneself after giving birth? How does one heal oneself? Where does one hide from oneself after seeing one's dead baby in a toilet?

Latina-Daughtertalk is about feelings reflecting the deeply ingrained cultural values of Latino families: in this context, feelings of *vergüenza de sexualidad* ("sexual shame"). Sexual experience comes enshrouded in sexual shame; have sex and you risk being known as *sin vergüenza*, shameless. Another *Latina-Daughtertalk* value is *respeto a la mamá y respeto a la familia*. Families are not nuclear nor limited by blood ties; they are extended, often including foster siblings and *comadres y compadres, madrinas y padrinos* (godmothers, godfathers, and other religion-linked relatives). Josephine Chavez's need to hide her pregnancy (with her head-to-toe mask) can be explained by a concern about the legal consequences as well as by the *vergüenza* within and of her familia that would accompany the discovery of the pregnancy, a pregnancy that was at once proof and reproof of her sexuality. Josephine's unwanted pregnancy would likely have been interpreted within her community and her familia and by her mother as a lack of *respeto*.

I sense that students still feel vulnerable when they reveal explicitly gendered or class-based knowledge, such as information about illicit sexuality and its effects, or personal knowledge about the lives of the poor and the subordinated. The legal academy even today affords little opportunity to use Spanish words or concepts. Students respond to their feelings of vulnerability by remaining silent about these taboo areas of knowledge.

The silence had profound consequences for me and presumably for others who identified with Josephine Chavez because she was Latina, or because she was female.

or because she was poor. For me, the silence invalidated my experience. I reexperienced the longing I felt that day in Criminal Law many times. At the bottom of that longing was a desire to be recognized, a need to feel some reciprocity. As I engaged in His/Their reality, I needed to feel Him/Them engage in mine.

Embedded in Josephine Chavez's unfortunate experience are various lessons about criminal law specifically and about the law and its effects more generally. The opinion's characteristic avoidance of context and obfuscation of important class- and gender-based assumptions is equally important to the ideological socialization and doctrinal development of law students. Maintaining a silence about Chavez's ethnic and socio-economic context lends credence to the prevailing perception that there is only one relevant reality.

As a child I had painstakingly learned my bicultural act: how to be a public American while retaining what I valued as Mexican in the most private parts of my soul. My childhood mask involved my outward self: how I looked, how I sounded. By college, my mask included more subtle aspects of my personality and intellect: a polysyllabic vocabulary, years of tested academic achievement, and a nascent political philosophy wrapped up in the ideology of being Chicana. Law school, however, challenged the effectiveness of my mask and jeopardized its coherence. My mask seemed brittle and permeable. At other times, it seemed solid and opaque. My cache of cultural, linguistic and gender-linked disguises seemed inadequate; the private me was threatened with unwanted exposure. The private me was suffocating. The private me was leaking out.

I recall that my Criminal Law professor supported my comments, even though his own Socratic dialogue had neither invited such remarks nor presented Josephine Chavez as a complex person worthy of our attention. I remember that he later invited me and a small number of students for a social gathering at his home. I sensed that the invitation was a significant gesture of inclusion, that he viewed me as belonging in the same way the other students belonged and in a way that I never felt. Over time, I figured out that my interpretations of the facts in legal opinions were at odds with the prevailing discourse in the classroom, regardless of the subject matter. Much of the discussion assumed that we all shared common life experiences. I remember sitting in the last row and being called on in tax class, questioned about a case involving the liability of a father for a gift of detached and negotiable bond coupons to his son. It was clear that I was befuddled by the facts of the case. Looking at his notes on the table, the professor asked with annoyance whether I had ever seen a bond. My voice quivering, I answered that I had not. His head shot up in surprise. He focused on who I was; I waited, unmasked. He became visibly flustered as he carefully described the bond with its tear-off coupons to me. Finally, he tossed me an easy question, and I choked out the answer. [For additional discussion of the case of Josephine Chavez, see chapter 82—Eds.]

This was one instance of feeling publicly unmasked. In this case, it was class-based ignorance which caused my mask(s) to slip. Other students may also have lacked knowledge about bonds. Maybe other students, especially those from families with little money and certainly no trust funds, stocks or bonds, also would have felt unmasked by the questioning. But I felt isolated and different because I could be ex-

posed in so many ways: through class, ethnicity, race, gender, and the subtleties of language, dress, make-up, voice, and accent.

For multiple and overlapping reasons I felt excluded from the experiences of others, experiences that provided them with knowledge that better equipped them, indeed privileged them, in the study of The Law, especially within the upper class domain that is Harvard. Not knowing about bonds linked the complexities of class-jumping with the fearful certainty that, in the eyes of some, and most painfully in my own/my mother's eyes, I would be seen as *grenuda*: dirty, ugly, dumb and uncombed. [See chapter 7 for further discussion of Montoya's famous hair metaphor—Eds.]

It was not possible for me to guard against the unexpected visibility—or, paradoxically, the invisibility—caused by class, gender, or ethnic differences that lurked in the materials we studied. Such issues were, after all, pervasive, and I was keenly sensitive to them. Sitting in the cavernous classrooms at Harvard under the stern gaze of patrician jurists was an emotionally wrenching experience. I remember the day one of the students was called on to explain *Erie v. Tompkins*. His identification of the salient facts, his articulation of the major and minor issues, and his synopsis of the Court's reasoning were so precise and concise that it left a hush in the room. He had already achieved and was able to model for the rest of us the objectivity, clarity, and mental acuity that we/I aspired to.

The respect shown for this type of analysis was qualitatively different from that shown for contextual or cultural analysis. Such occurrences in the classroom were memorable because they were defining: rational objectivity trumped emotional subjectivity. What They had to say trumped what I wanted to say but didn't. I have no memory of ever speaking out again to explain facts from my perspective as I had done that one day in Criminal Law. There was to be only one Latina in any of my cases, only one Josephine. While I was at Harvard, my voice was not heard again in the classroom examining, exploring, or explaining the life situations of either defendants or victims. Silence accommodated the ideological uniformity, but also revealed the inauthenticity implicit in discursive assimilation.

I had arrived at Harvard feeling different. I understood difference to be ineluctably linked with, and limited to, race, class, and gender. The kernel of that feeling I first associated with Josephine Chavez, that scrim of silence, remains within me. It is still my experience that issues of race, ethnicity, gender, or class are invisible to most of my white and/or male colleagues. Issues of sexual orientation, able-bodiedness, and sometimes class privilege can be invisible to me. My truths require that I say unconventional things in unconventional ways.⁹

Speaking out assumes prerogative. Speaking out is an exercise of privilege. Speaking out takes practice.

Silence ensures invisibility. Silence provides protection. Silence masks.

NOTES

1. William Shakespeare, *As You Like It*, act 2, scene 7.
2. Octavio Paz, *THE LABYRINTH OF SOLITUDE* 29 (1961).

3: Mike Gonzalez and David Treece, *THE GATHERING OF VOICES: THE TWENTIETH-CENTURY POETRY OF LATIN AMERICA* xiv-xv (1992).

4: *Id.* at 345 (quoting Giaconda Belli, Gonzalez & Treece, trans.).

5: *People v. Josephine Chavez*, 176 P.2d 92 (CAL. APP. 1947).

6: *Id.* at 92-93.

7: *Id.* at 96.

8: *Id.* at 92.

9: Jerome M. Culp, Jr., *You Can Take Them to Water but You Can't Make Them Drink: Black Legal Scholarship and White Legal Scholars*, 4 U. ILL. L. REV. 1021 (1992). Culp illustrates the way in which Professor Patricia Williams challenges how we come to understand what is law:

So *The Alchemy of Race and Rights* has transformed madness into knowledge and knowledge into a different way of looking at law, and that is what legal scholarship must be about—but seldom is. If white scholars are to understand some of what black scholars and people are saying, they must begin to appreciate stories that are unconventional. Only in the madness of the unconventional is it possible for truth to be found—at least a truth that includes the lives and experiences of black people.

Id. at 1040-41.