

# Michigan Law Review

---

Volume 121 | Issue 6

---

2023

## Nepantla/Coatlicue/Conocimiento

Gerald Torres

*Yale School of the Environment; Yale Law School*

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Chicana/o Studies Commons](#), and the [Legal Writing and Research Commons](#)

---

### Recommended Citation

Gerald Torres, *Nepantla/Coatlicue/Conocimiento*, 121 MICH. L. REV. 1147 (2023).

Available at: <https://repository.law.umich.edu/mlr/vol121/iss6/17>

<https://doi.org/10.36644/mlr.121.6.nepantla>

This Regular Feature is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact [mlaw.repository@umich.edu](mailto:mlaw.repository@umich.edu).

## NEPANTLA/COATLICUE/CONOCIMIENTO

Gerald Torres\*

BORDERLANDS/LA FRONTERA: THE NEW MESTIZA. By Gloria Anzaldúa. San Francisco: Aunt Lute Books. 1987. (Aunt Lute Books 2012 ed.). Pp. 300. \$22.95.

### INTRODUCTION

I was asked to review the twenty-fifth-anniversary edition of Gloria Anzaldúa's landmark book, *Borderlands/La Frontera: The New Mestiza*.<sup>1</sup> Even though the secondary literature on this book is voluminous,<sup>2</sup> interestingly, there is very little legal use of her work despite its centrality to feminist theory and its critique of identity politics as they had emerged in critical theory.<sup>3</sup> So what is she saying to those who study law, its uses, and its institutions?

Reading *Borderlands*, one is struck by how many of the ideas that Anzaldúa surfaces have become commonplace in legal literature, although such literature fails to reference Anzaldúa's critical use of these terms. She complicates ideas and fuses form and meaning in ways that challenge conventional readings. Her work gives necessary cultural articulation to methodologies of expression and standpoint epistemology. *Borderlands* is an example of how resistance to conventional expressive forms is part of the critique of those forms and their ideological baggage. Critical race theory (CRT) has often used this idea. For example, the early work of Patricia Williams and Derrick Bell illustrates this move.<sup>4</sup>

This Review will first examine the crucial concepts that Anzaldúa deploys in developing her theoretical perspective. It will then consider how these ideas have been used in legal analysis, especially in critical legal studies (CLS) and

---

\* Professor of Environmental Justice, Yale School of the Environment, and Professor, Yale Law School. I would like to thank the generous contributions of Professors Yxta Murray, Ella Maria Diaz, and Marc Spindelman who read and commented on an earlier draft.

1. Gloria Anzaldúa was a poet, author, and cultural theorist.  
2. *E.g.*, bibliog. The *selected* bibliography at the end of the 25th Anniversary Edition is over thirteen pages long.

3. Several essays in *THE LATINO/A CONDITION* (Richard Delgado & Jean Stefancic eds., 1st ed. 1998) reference the work of Anzaldúa, especially Margaret E. Montoya, *Masks and Identity*, in *THE LATINO/A CONDITION* 37 (Richard Delgado & Jean Stefancic eds., 1st ed. 1998). In that chapter, Professor Montoya confronts the question of the border and the mestizaje. Notably, she uses the idea of braided language and concepts that Anzaldúa used both to fully express subtle ideas and as an analytic device.

4. *See, e.g.*, DERRICK BELL, *AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE* (1989); PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* (1991).

CRT. Many will likely object that the ideas Anzaldúa uses were developed independently of the legal context, which is likely true because some of these ideas were in the air during certain historical moments. Whether they retain the critical cutting edge emblematic of Anzaldúa's work is a separate question but necessary to assess her work's impact in legal scholarship.

One of the critical things to remember is that Anzaldúa's work is an example of reflexive scholarship, which has marked the scholarship of both CLS and CRT.<sup>5</sup> Thus it was central to her work that she was a seventh-generation American, a Chicana, a lesbian, a type-1 diabetic, and a working-class activist. Her identity construction presaged labeling her analytic and epistemic position as intersectional.<sup>6</sup> Anzaldúa's work was embodied in this way. Her material position provided a vantage point into the historical conditions that gave birth to her situation and the necessity for a new *mestizaje* epistemic. Yet, despite her commitment to the materiality of knowledge (especially self-knowledge), she remains firmly nondeterminist.

For many Chicano students and scholars, and for Anzaldúa, the first step was to recognize the embeddedness of their experience to understand how it produced discontinuities with received historical narratives and observed social life.<sup>7</sup> The official stories were often one expression of the marginalization they experienced. José David Saldívar, a professor of comparative literature at Stanford, learned that “culture . . . always lived somewhere else—never in my

---

5. See, e.g., David Kennedy, *Spring Break*, 63 TEX. L. REV. 1377 (1985) (first-person description of human rights work).

6. In legal scholarship, intersectionality is linked importantly with Kimberlé W. Crenshaw and Pauli Murray. KIMBERLÉ W. CRENSHAW, *ON INTERSECTIONALITY: ESSENTIAL WRITINGS* (2017); Pauli Murray & Mary O. Eastwood, *Jane Crow and the Law: Sex Discrimination and Title VII*, 34 GEO. WASH. L. REV. 232 (1965).

7. In their book, *Forget the Alamo*, Bryan Burrough, Chris Tomlinson, and Jason Stanford triggered a conflagration over the sacredness of Texas history surrounding the Alamo. BRYAN BURROUGH, CHRIS TOMLINSON & JASON STANFORD, *FORGET THE ALAMO: THE RISE AND FALL OF AN AMERICAN MYTH* (2022). The controversy led to the cancellation of a book event at the Bullock Texas History Museum:

The cancellation comes amid a statewide and national firestorm surrounding critical race theory and how citizens should understand, teach and learn how racism has shaped American history. Abbott and other GOP state officials have pushed back against emphasizing the role of race in schools.

At issue is the book's challenge of traditional historical tenets surrounding the Battle for the Alamo, Texas' independence from Mexico and its origins related to preserving slavery.

Abby Livingston & Isabella Zou, *State Museum Canceled Book Event Examining Slavery's Role in Battle of the Alamo After Texas GOP Leaders Complained, Authors Say*, TEX. TRIB. (July 2, 2021, 1:00 PM), <https://www.texastribune.org/2021/07/01/texas-forget-the-alamo-book-event-canceled> [perma.cc/9HKE-M37N].

own backyard.”<sup>8</sup> Professor Ella Maria Diaz goes directly to Anzaldúa to capture this sense of being in-between: “Flying away from the center of my universe . . . I entered a state of Nepantla in the Anzaldúan sense.”<sup>9</sup> She goes on to explain,

“Nepantla” is a Nahuatl word for “a space between two bodies of water, the space between two worlds.” Physically it is a limited space, but according to Gloria Anzaldúa, Nepantla is also conceptually infinite; it is a “space where you are not this or that but where you are changing.” A physically confining yet theoretically expansive space . . .<sup>10</sup>

As both Saldívar and Diaz describe, Anzaldúa also explains the process of needing to move away to understand the place you left.<sup>11</sup> By inhabiting an “in-betweenness,” you can construct critical and creative space that permits you to know how the processes that alienated you from the sources of authenticity were also those that tried to reduce the complexity of the identity that is at the heart of mestizaje.<sup>12</sup> An aesthetic and a political economy emerge from this third place. The aesthetic and political economy are transcultural and anticolonial.<sup>13</sup> Borders are crossed and recrossed, and language and expression generally become sites of contestation and manifestations of the multiple epistemologically required consciousnesses.<sup>14</sup> As I will discuss later, the con-

---

8. JOSÉ DAVID SALDÍVAR, *BORDER MATTERS: REMAPPING AMERICAN CULTURAL STUDIES* 160 (1997). David Montejano confronts this received narrative in his landmark book on Texas history. See DAVID MONTEJANO, *ANGLOS AND MEXICANS IN THE MAKING OF TEXAS, 1836–1986* (1987).

9. ELLA MARIA DIAZ, *FLYING UNDER THE RADAR WITH THE ROYAL CHICANO AIR FORCE*, at xii (2017).

10. *Id.* (citations and footnote omitted).

11. See p. 38.

12. See p. 19 (describing the alienation and exhilaration of living between two cultures).

13. See pp. 103–04.

14. See pp. 24, 77. In critical race studies, Mari J. Matsuda is famously associated with the articulation of the idea of multiple consciousnesses. See Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 14 *WOMEN’S RTS. L. REP.* 297 (1992); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 *STAN. L. REV.* 581 (1990). Of course, the idea of double-consciousness is most commonly associated with its expression by W.E.B. Du Bois in *The Souls of Black Folk*,

It is a peculiar sensation, this double-consciousness, this sense of always looking at one’s self through the eyes of others, of measuring one’s soul by the tape of a world that looks on in amused contempt and pity. One ever feels his two-ness,—an American, a Negro; two souls, two thoughts, two unreconciled strivings; two warring ideals in one dark body, whose dogged strength alone keeps it from being torn asunder.

W.E.B. DU BOIS, *THE SOULS OF BLACK FOLK* 2 (1994).

cept of *Nepantla*, or both personal and temporal inbetweenness, the links between where we are, where we are from, and where we are excluded physically and psychically, is at the root of both CRT and LatCrit.<sup>15</sup>

Before turning to Anzaldúa directly, I think it is important to point out that emerging literature criticizes her for erasing Blackness and essentializing Indigeneity.<sup>16</sup> While I will not explore this criticism in depth, it strikes me as missing the point of Anzaldúa's project. While she does not ignore the presence of Afro-descendants in the construction of the *mestizaje*, it is not a central focus of her inquiry and, in many ways, not central to the initial cultural milieu with which she was embedded. The same could be said of the elision of Asian presence. The point of Anzaldúa's construction of the border as a theoretical space is that it is perforce complex. Moreover, the colonial project that formed Mexican culture was, by the time Anzaldúa was writing, already a distinct admixture of Spanish and British imperial designs that took a specific form in Texas.<sup>17</sup>

The colonial project of the Spanish was distinct from that of the British and the French.<sup>18</sup> How each colonizing power dealt with native people was complicated by specific colonial projects. For example, native people in the Americas whom Spain colonized were made subjects of the crown and were not recognized as having a distinct political existence.<sup>19</sup> Labor was extracted from them and given a legal gloss through the institution of the *encomienda*.<sup>20</sup> The British colonial project excluded native people from the polity that the

15. Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 584 (1990) ("It is a premise of this article that we are not born with a 'self,' but rather are composed of a welter of partial, sometimes contradictory, or even antithetical 'selves.' A unified identity, if such can ever exist, is a product of will, not a common destiny or natural birthright. Thus, consciousness is 'never fixed, never attained once and for all.'"); see, e.g., Enid Trucios-Haynes, *Why "Race Matters": LatCrit Theory and Latina/o Racial Identity*, 12 LA RAZA L.J. 1, 37 (2001) ("Coalition building requires that each group openly acknowledge the ways in which it has assisted in the maintenance of racial hierarchy."); Keith Aoki, "Foreign-ness" & Asian American Identities: *Yellowface, World War II Propaganda, and Bifurcated Racial Stereotypes*, 4 ASIAN PAC. AM. L.J. 1, 48 (1996) (cautioning against "false homogeneity").

16. E.g., Madelaine Cahuas, *Interrogating Absences in Latinx Theory and Placing Blackness in Latinx Geographical Thought: A Critical Reflection*, SOC'Y & SPACE (Jan. 23, 2019), <https://www.societyandspace.org/articles/interrogating-absences-in-latinx-theory-and-placing-blackness-in-latinx-geographical-thought-a-critical-reflection> [perma.cc/DW76-GR93] ("Indeed, there is a troubling absence of Black life, thought and history in Anzaldúa's (2007) *Borderlands/La Frontera*, which has been a fundamental text in Latinx theory and Latinx Studies more broadly."). For a broad-ranging discussion of the relationship between Indianness, indigenous, and indigeneity, see Simón Ventura Trujillo, *The Pasts and Futures of Latina/o Indigeneities*, in OXFORD RSCH. ENCYC., LIT. 1 (2019). Of course, when discussing borders, especially borders in the West, the exclusion of Asian experience creates a gap that requires additional exploration.

17. For a comprehensive history of the various imperial projects in North America, culminating in the Anglo-Mexican conflict in 1830s Texas, see T.R. FEHRENBACH, *LONE STAR: A HISTORY OF TEXAS AND THE TEXANS* (Open Road Integrated Media ed. 2000) (1968).

18. See, e.g., ANTHONY PAGDEN, *LORDS OF ALL THE WORLD* (1995).

19. See FEHRENBACH, *supra* note 17, at 74.

20. See LESLEY BYRD SIMPSON, *THE ENCOMIENDA IN NEW SPAIN* 6 (2008 ed.) (1950).

settlers were constructing, and the native nations were recognized as having a separate political existence. Thus, treaties were initially a device for regulating Native people even as the wars of extermination continued.<sup>21</sup> Each European power brutally oppressed the people it encountered, but each had a fundamentally different juridical basis for doing so.<sup>22</sup> The large maroon communities in Central and South America added a layer of complexity.<sup>23</sup> They linked the post-colonial fate of Afro-descendants and Indigenous people in ways fundamentally different from how their destinies are linked in Anglo-North America.<sup>24</sup>

The impact of slavery and Afro-descendants on the colonial projects similarly had complex implications that differed from country to country, especially after the colonies claimed their independence. Black people were always present but in different ways. Black people were present in the Western and Latin American colonial expansion if for no other reason than that a Muslim Caliphate occupied the Iberian Peninsula for over 700 years. The Muslim colonists came out of North Africa and into the Iberian Peninsula, creating the administrative territory of Al-Andalus.

It is instructive to remember that Pueblo historian Joe Sando wrote, “The first *white* man our people saw was a *black* man.”<sup>25</sup> Sando was referring to the Moroccan guide, Esteban, who was the first non-Native to enter Pueblo territory.<sup>26</sup> The extension of empire by the United States with its annexation of Texas made Black chattel slavery legal again in a territory that had outlawed it almost eleven years earlier. In the years before Texas’ independence, fewer than 500 enslaved Black people were in the region, and it is likely they were smuggled in by the settlers from the east. The foundational law of the Republic of Texas annulled Mexico’s Emancipation Proclamation and stripped Black residents of citizenship. This change in juridical condition meant that free Texas residents of African descent could be re-enslaved, opening the door to reimposing slavery as an institution.

21. *The New England Colonies and the Native Americans*, NAT’L GEOGRAPHIC, <https://education.nationalgeographic.org/resource/new-england-colonies-and-native-americans> [perma.cc/MXT6-QK6E].

22. See SIMPSON, *supra* note 20, at 6; ROBERT T. ANDERSON, SARAH A. KRAKOFF & BETHANY BERGER, *AMERICAN INDIAN LAW* 16–26 (4th ed. 2020).

23. See Silvia W. de Groot, Catherine A. Christen & Franklin W. Knight, *Maroon Communities in the Circum-Caribbean*, in 3 *GENERAL HISTORY OF THE CARIBBEAN* (Franklin W. Knight ed., 1st ed. 2003).

24. See *id.*; Mark Anderson, *When Afro Becomes (Like) Indigenous: Garifuna and Afro-Indigenous Politics in Honduras*, 12 *J. LATIN AM. & CARIBBEAN ANTHROPOLOGY* 384 (2007).

25. JOE S. SANDO, *PUEBLO NATIONS: EIGHT CENTURIES OF PUEBLO INDIAN HISTORY* 50 (1992).

26. I describe the encounter at length in my essay. Gerald Torres, *Who Is an Indian?: The Story of United States v. Sandoval*, in *INDIAN LAW STORIES* 109, 109–45 (Carole Goldberg, Kevin K. Washburn & Philip P. Frickey eds., 2011).

Nonetheless, the ideology of racial purity was driven onto the rocks of the *mestizaje*.<sup>27</sup> In Texas and elsewhere, Afro-mestizos complicated the picture. Though they were initially treated as Blacks and were thus subject to re-enslavement or deportation, the imperatives of social reality intruded. Professor Martha Menchaca described the process:

Later that year, after many Anglo Americans claimed the Act was unjust, on 12 December 1840 the Texas Congress revised its position and exempted some Blacks from enslavement and deportation. This policy change allowed certain free Blacks to remain in Texas if they could prove that during Spanish and Mexican rule they had not been slaves. The exemption was passed in recognition that in Texas it was common for Mexicans to be of mixed Spanish, Indian, and Black ancestry, and thus they were not part of the enslaved Black population brought to Texas by Anglo settlers.<sup>28</sup>

Rules governing marriage and property further unsettled efforts to reproduce in Texas the same racial regime that existed in other parts of the American South. As the new leaders of Texas tried to institute firm rules against miscegenation, they had to confront the reality that interracial marriage was common in Mexico. If the new regulations of the Republic of Texas made those marriages invalid, the claim of heirs would be insecure.<sup>29</sup> Land, an essential

---

27. Despite the charge that Anzaldúa erases or ignores Blackness, she recognizes that in both Mexican and American culture, Blackness plays a crucial role: “As long as woman is put down, the Indian and the Black in all of us is put down.” P. 106.

28. Martha Menchaca, *The Anti-Miscegenation History of the American Southwest, 1837 To 1970*, 20(3) CULTURAL DYNAMICS 284 (2008) (citation omitted) (citing the Act for the Relief of Certain Free Persons of Color, 12 December 1840, in *Laws of Tex. Supp., 1822–1897*, at 549 (1898)).

29. Professor Menchaca captured the dynamic well:

Texas Congress, in recognition that during Mexican rule intermarriage was common between Whites and people of African descent, chose to validate miscegenetic marriages if contracted before 1836 (Smith, 1972: pp. ix–6). Such a liberal action was not legislated for altruistic reasons but for economic need. Texas congressmen validated all marriages occurring prior to independence in efforts to legalize the inheritance rights of Anglo land grant heirs (*Smith v. Smith*, 1846; *Nicholas v. Steward*, 1855). If Mexican marriage laws were not upheld, the nuclear family of Anglo American land grantees could be deemed illegitimate because under English common law, the system of law adopted in the Republic, an illegitimate family could not inherit property. This was a monumental problem that had to be quickly resolved. To do so, the Texas Congress decreed in the Act of 5 June 1837 that all certified marriages enacted prior to that date were valid and the children of these marriages were legitimate and capable of inheritance (Act of 5 June 1837, s. 1, in *Laws of Tex.*, vol. 2, 1898, p. 640). Miscegenetic marriages contracted before that date were also validated under the Act—as Congress declared that marriages contracted under the customs and practices of Spain and Mexico were valid. Interracial marriages, therefore, were legally upheld because they had never been prohibited in Mexico. Under section 2 of the Act, Texas congressmen also upheld Mexico’s common law marriage statute.

source of wealth, would be up for grabs. Even the wealth of established families would become unstable.<sup>30</sup> It was a situation that required accommodating the reality of social life in the colonized territory.

What this illustrates is that certain borders were made to be secure for reasons that both revealed and upended the prevailing racial ideology. The erasure of Blackness in the description of *mestizaje*, whether rooted in Vasconcelos<sup>31</sup> or elsewhere, was in the service of material conditions and economic imperatives as much as it was in anti-Blackness. Of course, this erasure does not discount the anti-Black reality of a slave state or the anti-Black animus in American racial ideology. Still, any closed racial classification system would come undone when confronting the facts on the ground. However, the failure was not for want of trying.

California tried similar tactics during the same period, although it was not a slave state. “Indians and mestizos were allowed to marry any race, but Whites were prohibited from marrying ‘negroes or mulattos [sic].’”<sup>32</sup> Again, this presented problems of enforcement. California legislators felt compelled to adopt blood quantum policies because the population the new Anglo-colonial Californians confronted was as racially mixed as that in Texas. The legislature thought it had no choice but to say who was White.<sup>33</sup> Yet, it had to do it in a way that continued to preserve the emerging social order and wealth that could not be stolen.

This activity to reframe and preserve Whiteness was undertaken as tribal Indians were expelled from Texas,<sup>34</sup> and treaty-making with tribes was largely halted in California.<sup>35</sup> Against this material background, the threat of reclaiming the border as a space for exploring identity opens a history that is dynamic and subject to reassessment. It reveals the uses of racial formation as a technique to control and discipline a population whose agency was feared. As a place for theorizing, the borderlands are capacious, as Anzaldúa’s use of *auto-historia-teoría* demonstrates, reaching across worlds, incorporating dreams,

---

This validation was necessary, as many Anglo Americans had not been married by a priest or certified clerk. Mexico’s marriage laws were called *Las Siete Partidas* and were originally adopted from Spain.

*Id.* at 285.

30. *Id.* at 285–87.

31. José Vasconcelos, who was a complicated figure, laid out one version of the *mestizaje* in *La Raza Cósmica*. JOSÉ VASCONCELOS, *LA RAZA CÓSMICA* (Didier T. Taén trans., Johns Hopkins Univ. Press 1997) (1925).

32. Menchaca, *supra* note 28, at 290 (citing Act of Apr. 22, 1850, ch. 35, § 3, 1850–1853 Cal. Compiled L. 175, 175).

33. “People were considered White if they had less than one-half Indian ancestry or less than one-eighth Negro ancestry.” Menchaca, *supra* note 28, at 290 (footnote omitted).

34. See, e.g., John H. Reagan, *The Expulsion of the Cherokees from East Texas*, 1 Q. TEX. STATE HIST. ASS’N 38 (1897).

35. See Edward D. Castillo, *Short Overview of California Indian History*, CAL. NATIVE AM. HERITAGE COMM’N, <https://nahc.ca.gov/resources/california-indian-history> [perma.cc/67L8-A6JU].



confounding time and myth, and, through her embodied experience and political resistance, producing knowledge. Her method begins with the world as it is and as it is experienced without privileging and interrogating the epistemology of that standpoint. The world-building that Anzaldúa sketches out does not include every possibility but remains a place where alternative options are always present. Her use of *autohistoria-teoría* demands an open texture to knowledge and experience.

## I. SHEDDING A COLONIAL SKIN

### A. *Nepantla*

In briefly outlining some of the key ideas in Anzaldúa's approach to theorizing the border, I will telescope some aspects of her argument and only suggest how transcategorical and multilingual her method is. Central to her *autohistoria* is her recognition of her indigenous roots and her use of Nahuatl ideas and language. Of course, the use of Nahuatl, in some measure, obscures the internal pre-Columbian empires that had their own kind of colonial domination. Nonetheless, its importance as one of the distinct transformative influences on the Spanish language is emblematic of the interweaving of cultures and cultural influence so that we all use the language of the Aztec empire.<sup>36</sup> It is also a living language, so it continues to vivify the imaginary we inhabit. Thus, Anzaldúa's turn to Nahuatl makes sense, especially as she tries to make sense of the spaces in which her identity was created.

As Anzaldúa explained,

*Nepantla* [ ] is a Nahuatl word for the space between two bodies of water, the space between two worlds . . . . So, *Nepantla* is a way of reading the world. You see behind the veil, and you see these scraps. Also it is a way of creating knowledge and writing a philosophy, a system that explains the world. *Nepantla* is a stage that women and men, and whoever is willing to change into a new person and further grow and develop, go through. The concept is articulated as a process of writing: it is one of the stages of writing, the stage where you have all these ideas, all these images, sentences, and paragraphs, and where you are trying to make them into one piece, a story, plot or whatever it is all very chaotic. So you feel like you are living in that mist of chaos. (p. 276)

The feeling of "inbetweenness" creates uneasiness, destabilizing the stories that anchor our narratives. Those stories provide a meaning that seems to be a given rather than made. The process of challenging received wisdom is chaotic, it is threatening, but it is ultimately illuminating. Moving through and across borders requires constantly changing perspectives and, in turn, points

---

36. If you think you don't, then you have never used the word chocolate, avocado, or tomato, to name just a few examples. 8 *Words from Nahuatl, the Language of the Aztecs: Avocado, Chocolate, and More*, MERRIAM-WEBSTER WORDS AT PLAY, <https://www.merriam-webster.com/words-at-play/words-from-nahuatl-the-language-of-the-aztecs> [perma.cc/PVP6-HNZT].

of view. The imperatives don't come from nowhere; they are driven by the need to make sense of the world you inhabit that tells you things you know are not true, or at least that don't ring true in your experience.

One of the virtues of Anzaldúa's work is that it requires the reader to understand both rootedness and rootlessness. By switching between poetry and prose, from English to Spanish to Nahuatl to Caló, Anzaldúa forces the reader to move between the worlds that language creates. The history that attaches to language is part of the challenge that Anzaldúa poses. Her discomfort is given form.

By occupying a space that is neither here nor there, Anzaldúa also plays with temporality. By rejecting the linearity of time, Anzaldúa introduces myth, dreams, memory, and history. For example, when the Catholic Church sanctified *la Virgen de Guadalupe* and made her the equal of the Virgin Mary, they did more than concede the presence of God in the new world; they validated the existence of God through an Indian body. But *la Virgen de Guadalupe* does more; she also mediates the Indian, Spanish, and African content of the *mezizaje* (pp. 50–53). Importantly, hers is a continual presence. The appearance of *la Virgen de Guadalupe* to Juan Diego was not just a historical moment but also the creation of a conduit for multiple cultures to flow from the past to the present. It also worked in reverse by providing a European vessel for Native spirits. Anzaldúa occupies all these spaces and brings a critical eye as she pulls the myths, histories, and conventional wisdom apart. Unfortunately, it leaves her in-between, where she is obliged to create a standpoint that becomes the basis of emerging identity claims.

*Nepantla* requires analytic and expressive hybridity. Anzaldúa's hybrid innovations are tied to how her identity is complicated and her explorations of that complication. By forcing the reader (and herself) to confront conflicting discourses, Anzaldúa creates a path out of the chaos, even if it is only provisional. Her use of different forms is essential to explore how knowledge is created in addition to exposing the limitations of received learning. Her method is a direct challenge to cultural orthodoxy.

### B. *Coatlicue*

Closely related to the knowledge revealed in *Nepantla* is the space Anzaldúa calls *Coatlicue*. She describes this as the *Coatlicue* state. To give yourself a sense of what she means, reflect on the following:

*Coatlicue* is a rupture in our everyday world. As the Earth, she opens and swallows us, plunging us into the underworld where the soul resides, allowing us to dwell in darkness.

... For me, *la Coatlicue* is the consuming internal whirlwind, the symbol of the underground aspects of the psyche. *Coatlicue* is the mountain, the Earth Mother who conceived all celestial beings out of her cavernous womb. Goddess of birth and death, *Coatlicue* gives and takes away life; she is the incarnation of cosmic processes. (p. 68; footnotes omitted).

She describes cosmic processes that refer to the synthesis of rational duality that yields a third space where creativity can take place. The myths on which *Coatlicue* stands are commonly portrayed as contradictory, but according to Anzaldúa, those interpretations miss the point. The fusion of opposites creates a place where the conscious mind is “occupied or immobile[ and where] the germination work takes place in the deep, dark earth of the unconscious” (p. 69). The immobility, however, is merely apparent because *Coatlicue* is a dynamic state. The transformation discussed in the section on *Nepantla* is part of what is going on in *Coatlicue*:

I am again an alien in new territory. And again, and again. But if I escape conscious awareness, escape “knowing,” I won’t be moving. Knowledge makes me more aware, it makes me more conscious. “Knowing” is painful because after “it” happens I can’t stay in the same place and be comfortable. I am no longer the same person I was before. (p. 70)

This state is both painful and generative. In her discussion, Anzaldúa uses the metaphors of birth and shells cracking open to describe things being released by the presence of *Coatlicue*. The Serpent Goddess *Coatlicue* possessed her. She explains the emergence of the myth as both ancient and partially a response to the male domination of the Aztec-Mexica culture. The earliest representations of the Goddess were sinister. “She had a human skull or serpent for a head, a necklace of human hearts, a skirt of twisted serpents and taloned feet” (p. 49). Though the Spanish tried to make the Indian deities works of the devil, they ultimately reconciled them in the person of Guadalupe, who was homophonous with the Nahuatl word *Coatlaxopeuh*, the Goddess of serpents.

In the *Coatlicue* state, Anzaldúa confronts the contradictions of the cultures, but because of the fluidity of time, she is not merely discussing the transformation with anthropological distance. She is talking about the process of investigation and creation that has both external and internal aspects. Her political work is contingent on her reconstruction of identity. Reconstruction is an ongoing task that defines and makes her work possible. It is the work of confronting borders wherever they are.

The work of understanding the existence of borders and how they limit conceptions of the possible is what Anzaldúa is describing. When she says she identifies as *Raza*, she is gathering all the myths and histories that combine to create the possibility of such an identity. She also explains the concrete cultural expressions of *Chicanismo* and the opportunities for resistance that it expresses. Her discussion of the *Coatlicue* state captures both a personal and a political process, a current and a historic moment.

### C. *Conocimiento*

The concept of *Conocimiento* captures the passage through *Nepantla* and the *Coatlicue* state. *Conocimiento* is not an endpoint but a provisional position that contains the wisdom revealed through the traversing of borders. One of the most potent revelations that emerges from *Borderlands/La Frontera: The*

*New Mestiza* is the attempt to decolonize knowledge.<sup>37</sup> Decolonial thinking is a critical project. It is a project of critical theory.<sup>38</sup> *Conocimiento* might, on one level, be characterized in the way Professor Saldívar characterizes it: as a bridge consciousness. Anzaldúa “explore[s] and exploit[s] [her] double vision as both participant and observer and as [a] displaced subject[] across multiple discourses.”<sup>39</sup>

The open wound of the border is the trauma that compels Anzaldúa into extended meditation on the coloniality that anchors border thinking and frees her from the necessity of conceding epistemic priority to any particular colonial history. The Rio Grande represents that wound, but it marks only one border.

Bridge consciousness as critical theory builds knowledge by confronting multicultural histories, politics, and symbology. The method adopted by Anzaldúa is designed to create the same constantly shifting balance points she provokes in the reader. *Conocimiento* is knowledge of self, place, and structure that emerges only after actively engaging with the forces that form the critical matrices of identity and recognizing the coloniality of that identity. At that point, self-knowledge becomes decolonial knowledge. It is at that stage that a new consciousness can emerge.

Anzaldúa claims that exploring the nature of the *mestizaje* is vital to creating a new consciousness. However, because she has complicated the idea of the *mestizaje*, it does not follow conventional constructions even though she begins by referring to José Vasconcelos and his argument for creating a new race, *La Raza Cósmica*:

Opposite to the theory of the pure Aryan, and to the policy of racial purity that white America practices, his theory is one of inclusivity . . . [T]his mixture of races, rather than resulting in an inferior being, provides hybrid progeny, a mutable, more malleable species with a rich gene pool. From this racial, ideological, cultural and biological cross-pollinization, an “alien” consciousness is presently in the making—a new *mestiza* consciousness . . . It is a consciousness of the Borderlands.<sup>40</sup>

---

37. I am conscious of the critique of the loose use of the idea of decolonization. For more on this concept, see Eve Tuck & K. Wayne Yang, *Decolonization Is Not a Metaphor*, 1 *DECOLONIZATION: INDIGENEITY, EDUC. & SOC'Y* 1 (2012), as well as how it is used by Walter D. Mignolo, Introduction, *Coloniality of Power and De-colonial Thinking*, 21 *CULTURAL STUD.* 155 (2007).

38. I am following the description of critical theory that originated with the Frankfurt School. See, e.g., MAX HORKHEIMER, *CRITICAL THEORY: SELECTED ESSAYS* (Matthew J. O'Connell et al. trans., 1992); MAX HORKHEIMER, *ECLIPSE OF REASON* (2004). There are many kinds of critical theory, but at minimum, for a theory to be critical, it must aim for human emancipation through social transformation, and it must be normative as well as explanatory and practical.

39. See JOSÉ DAVID SALDÍVAR, *BORDER MATTERS: REMAPPING AMERICAN CULTURAL STUDIES* 109 (1997) (footnote omitted).

40. P. 99. As discussed previously, Vasconcelos is a complicated figure, but in her notes, Anzaldúa suggests that her use of his idea is her own. P. 119 n.1.

Anzaldúa says the first step in creating this consciousness is to take inventory of all you have inherited from all sources. Then there must be “a conscious rupture with all oppressive traditions of all cultures and religions” and a reinterpretation of history through new symbols and myths (p. 104). The realm of necessity, which that conventional narratives of the life into which you were thrown suggest is natural, is instead destabilized and understood as a function of the social situation of knowledge. Exposing the social construction of knowledge in its most profound sense is what Anzaldúa aims to do. Only by achieving that can the bridge consciousness of the mestiza emerge. She maps a practical path to liberation, but as her text stresses, it is complex and painful.

## II. EVERY MEMORY IS A PALIMPSEST: ANZALDÚA AND THE LAW

With this brief introduction to the complex thought of Gloria Anzaldúa, the question remains: why review her text in a law journal? It is beyond peradventure that Anzaldúa’s reach has extended into the realm of feminist theory, queer theory, and cultural studies.<sup>41</sup> It is also true that each of these areas of inquiry has had expression in legal scholarship.<sup>42</sup> Thus, to the extent that Anzaldúa has influenced these subfields, it could be said that she has impacted legal scholarship. The genealogy has, to my knowledge, never fully been traced. Yet, the critical nature of the theory Anzaldúa advances has a home in most critical legal theories.

Unfortunately, the complexity of Anzaldúa’s text leaves her open to misinterpretation. In a critique of Professor Samuel Huntington’s book, *Who Are We?*, Professor Charles Venator Santiago, a political scientist, suggests that “Latino/a borderlands narrative[s] such as those articulated by Chicana writers like Gloria Anzaldúa” merely reproduce the nationalist argument advanced by Huntington, only this time in brownface.<sup>43</sup> What is more, he suggests that “rather than engaging concrete material injustices, both Huntington and Anzaldúa resort to founding racial myths and ideological psychobabble in order to substantiate what turns out to be a project that reifies a

---

41. A cursory look at the secondary literature on Anzaldúa, especially her entire body of work, supports this claim. *See, e.g.*, bibliog. The works cited there cover thirteen pages, including feminist theory, queer theory, cultural studies, postcolonial studies, and Latino studies, as well as studies of modern poets. *See also* CRITICISM IN THE BORDERLANDS: STUDIES IN CHICANO LITERATURE, CULTURE, AND IDEOLOGY (Fredric Jameson, Héctor Calderón, José David Saldívar & Stanley Fish eds., 1991).

42. As early as 1993, there was a volume collecting the essential essays in feminist jurisprudence. *See, e.g.*, FEMINIST JURISPRUDENCE (Patricia Smith ed., 1993). Similarly, queer theory was also generative. *See, e.g.*, FEMINIST AND QUEER LEGAL THEORY: INTIMATE ENCOUNTERS, UNCOMFORTABLE CONVERSATIONS (Martha Albertson Fineman, Jack E. Jackson & Adam P. Romero eds., Routledge 2016) (2009); Francisco Valdes, *Afterword & Prologue: Queer Legal Theory*, 83 CALIF. L. REV. 344 (1995); Naomi Mezey, *Mapping a Cultural Studies of Law*, in THE HANDBOOK OF LAW AND SOCIETY 39 (Austin Sarat & Patricia Ewick eds., 2015).

43. Charles R. Venator Santiago, *Huntington’s White Patriotism and Anzaldúa’s Brown Nationalism*, 4 FIU L. REV. 33, 44 (2008).

capitalist status quo.<sup>44</sup> On the contrary, Anzaldúa explicitly recognizes the materiality of culture (p. 38). The material conditions out of which cultures are created include the economic systems of production and primitive and modern forms of accumulation. The system Anzaldúa traces is deeply historical and dynamic. Her method, which Venator Santiago disparagingly refers to as “psychobabble,” instead represents a different way of qualitative theorizing recognized in anthropology and other disciplines.<sup>45</sup> Her *autohistoria-teoría* is a kind of autoethnography. This reflexive scholarship is a form of qualitative research that explores wider cultural, political, and social meanings by expressing those meanings in the author’s lived experience.

CRT has long used this method as a way to analyze the meanings that law creates.<sup>46</sup> CLS and CRT are both reflexive theories,<sup>47</sup> which is a defining characteristic of Anzaldúa’s method. If you take the premises that undergird CRT, you find parallels in Anzaldúa’s work. First is that racism in its many forms has been naturalized into American life (the work in the Black Radical Tradition demands that we take American life as only one cultural example of this process).<sup>48</sup> Second, and consistent with this, the social production of knowledge must be complicated with alternative histories, myths, and stories to decenter power.<sup>49</sup> Third, interest convergence is the socially limiting factor in change.<sup>50</sup> Finally, as I discussed earlier, experiments with form and expression also mark CRT.

In *Borderlands*, Anzaldúa not only exemplifies these premises but also dives deeply into the historical roots of her identity to understand why the received knowledge sits uneasily in her mind. There is no pure form that she recurs to for redemption. She opposes idealism through her reconstruction of the mestiza and, with it, the entire mestizaje. One other link between CRT and

44. *Id.* at 42.

45. *E.g.*, David M. Hayano, *Auto-Ethnography: Paradigms, Problems, and Prospects*, 38 HUM. ORG. 99 (1979).

46. *See, e.g.*, Paulette M. Caldwell, *A Hair Piece: Perspectives on the Intersection of Race and Gender*, 1991 DUKE L.J. 365 (1991); Margaret E. Montoya, *Máscaras, Trenzas, y Greñas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse*, 17 HARV. WOMEN’S L.J. 185 (1994). These are just two examples. CRT scholarship is replete with examples.

47. Frank Munger & Carroll Seron, *Critical Legal Studies Versus Critical Legal Theory: A Comment Method*, 6 L. & POL’Y 257 (1984); Mustafa Emirbayer & Matthew Desmond, *Race and Reflexivity*, 35 ETHNIC & POL’Y STUD. 574 (2012).

48. *E.g.*, pp. 29, 99; *see* OLÚFEMI O. TÁÍWÒ, RECONSIDERING REPARATIONS 30 (2022) (explicating the work of Cedric Robinson, among others: “Robinson argued that capitalism, which spread after European global conquest, came to the rest of the world bundled with cultural mores and tendencies that affected social organization much more broadly than did its labor and production schemes” (footnote omitted)).

49. *See, e.g.*, p. 90.

50. Mary L. Dudziak, *Desegregation as a Cold War Imperative*, in CRITICAL RACE THEORY: THE CUTTING EDGE 110, 111 (Richard Delgado ed., 1st ed. 1995) (noting how interest convergence theory is associated with the work of Professor Derrick Bell).

Anzaldúa is the space she creates for both a pluralism of cultural expression and pluralism of the good.<sup>51</sup>

Being open to the ways in which knowledge is created is central to the project undertaken both by CRT and Anzaldúa. Anzaldúa's concept of *Coatlicue* recognizes the third space where creativity can take place as well as a process of conflict and strife that is reflected in the sometimes euphoric and sometimes productively discordant consciousness-raising processes within CRT. *Coatlicue* and *Conocimiento* are linked in the creation of knowledge, and this has been true in the evolution of CRT and LatCrit. The hybridity reflected in the work of scholars like Montoya, Matsuda, and Harris shows that these theories hold hands with Anzaldúa. This relationship is apparent if you conceive of CRT as a legal experiment trying to root out ideological bias and the colonial habits that infect our thought, as described, for example, by Mary Coombs and Berta Hernández-Truyol.<sup>52</sup> These processes are also reflected in the cognition-trauma work of people like Susan Bandes.<sup>53</sup> Remembering that people everywhere are engaged in the process of creating meaning is central to the political and legal project of CRT. As historian E.P. Thompson put it:

[O]utside the university precincts another kind of knowledge-production is going on all the time. I will agree that it is not always rigorous. I am not careless of intellectual values nor unaware of the difficulty of their attainment. But I must remind a Marxist philosopher that knowledges have been and still are formed outside the academic procedures. Nor have these been, in the test of practice, negligible. They have assisted men and women to till the fields, to construct houses, to support elaborate social organizations, and even, on occasion, to challenge effectively the conclusions of academic thought.<sup>54</sup>

The practical knowledge and the social justification for one practice or another are at the heart of the *autohistoria-teoría* employed by Anzaldúa. That she unwinds myths to understand why we see things the way we do now, but also to resist normalizing oppressive relations, is aligned with the critical method of CRT. David Graeber and David Wengrow tossed a bomb into the

---

51. *Eg.*, pp. 52–53. I make just this point about CRT in Gerald Torres, *Critical Race Theory: The Decline of the Universalist Ideal and the Hope of Plural Justice—Some Observations and Questions of an Emerging Phenomenon*, 75 MINN. L. REV. 993 (1991).

52. *See* Mary I. Coombs, *Outsider Scholarship: The Law Review Stories*, 63 U. COLO. L. REV. 683, 712 (1992); Berta Hernández-Truyol, Angela Harris & Francisco Valdes, *Beyond the First Decade: A Forward-Looking History of LatCrit Theory, Community and Praxis*, 17 BERKELEY LA RAZA L.J. 169, 201–02 (2006) (discussing the “productive tensions” in LatCrit, an annual CRT conference, wherein people question “‘Do Black people belong in LatCrit?’ or ‘Do Asian people belong in LatCrit?’ or even ‘Do Indigenous people belong in LatCrit?’”).

53. *See* Susan A. Bandes, *Feeling and Thinking Like a Lawyer: Cognition, Emotion, and the Practice and Progress of Law*, 89 FORDHAM L. REV. 2427, 2428–29 (2021); *THE PASSIONS OF LAW* (Susan Bandes ed., 1999) (anthology of original interdisciplinary essays about emotion and the law).

54. E.P. THOMPSON, *The Poverty of Theory or An Orrery of Errors*, in *THE POVERTY OF THEORY & OTHER ESSAYS* 1, 8 (1978).

ways we understand the past.<sup>55</sup> When they suggested that the Enlightenment moved from west to east, rather than the reverse, the scorn heaped on them was as much ideological as evidentiary.<sup>56</sup> Similarly, the emergence of borderland theory and critical legal theories recognized the value of understanding how the people themselves produce knowledge as well as the constraints they face in challenging “what everybody knows.”

#### CONCLUSION

What I hope I have illustrated is that wrestling with Gloria Anzaldúa’s book, *Borderlands/La Frontera: The New Mestiza*, will continue to open new lines of inquiry that are useful for critical theories of law. Her method permits the formation of questions that legal scholars should consider. Let me end with one example; recently, the Supreme Court seemed ready to grapple with the *Insular Cases*.<sup>57</sup> Most commentators, including Justice Gorsuch, think that it is past time to do so. As reported in Forbes,

Justice Neil Gorsuch had said the Supreme Court should take up the *Insular Cases* in April in a separate case concerning benefits for Puerto Ricans, arguing the cases “rest on racial stereotypes”—the decisions argue territory residents shouldn’t have equal rights because they’re “alien races” who shouldn’t be governed “according to Anglo-Saxon principles”—and “deserve no place in our law.”<sup>58</sup>

---

55. DAVID GRAEBER & DAVID WENGROW, *THE DAWN OF EVERYTHING: A NEW HISTORY OF HUMANITY* 48–59 (2022).

56. *Eg.*, Ian Morris, *Against Method*, 126 *AM. J. ARCHEOLOGY* E065 (2022), <https://doi.org/10.1086/720603> (evidentiary critique); Chris Knight, *In Fundamental Ways Incoherent and Wrong*, *CLIMATE & CAPITALISM* (Dec. 17, 2021), <https://climateandcapitalism.com/2021/12/17/the-dawn-of-everything-gets-human-history-wrong> [perma.cc/C8VV-ZKW8] (ideological critique).

57. The *Insular Cases* are usually considered to include only the original six opinions issued concerning territories acquired through the 1898 Treaty of Paris: *De Lima v. Bidwell*, 182 U.S. 1 (1901); *Goetze v. United States*, 182 U.S. 221 (1901); *Dooley v. United States*, 182 U.S. 222 (1901); *Armstrong v. United States*, 182 U.S. 243 (1901); *Downes v. Bidwell*, 182 U.S. 244 (1901); and *Huus v. New York & Porto Rico Steamship Co.*, 182 U.S. 392 (1901). See Juan R. Torruella, *One Hundred Years of Solitude: Puerto Rico’s American Century*, in *FOREIGN IN A DOMESTIC SENSE* 241, 243 n.14 (Christina Duffy Burnett & Burke Marshall eds., 2001). However, others have expanded the list to include *Grossman v. United States*, 182 U.S. 221 (1901); *Dooley v. United States*, 183 U.S. 151 (1901); *Fourteen Diamond Rings v. United States*, 183 U.S. 176 (1901); and other cases decided as late as 1922. See Efrén Rivera Ramos, *The Legal Construction of American Colonialism: The Insular Cases (1901–1922)*, 65 *REVISTA JURÍDICA UNIVERSIDAD DE PUERTO RICO* 225, 240 & n.40 (1996); PEDRO A. MALAVET, *AMERICA’S COLONY: THE POLITICAL AND CULTURAL CONFLICT BETWEEN THE UNITED STATES AND PUERTO RICO* 38 (2004).

58. Alison Durkee, *Supreme Court Won’t Consider Rights for U.S. Territory Citizens—Even After Neil Gorsuch Slammed Its Racist Precedents*, *FORBES* (Oct. 17, 2022, 10:54 AM), <https://www.forbes.com/sites/alisondurkee/2022/10/17/supreme-court-wont-consider-rights-for-us-territory-citizens-even-after-neil-gorsuch-slammed-its-racist-precedents> [perma.cc/L9H4-Q8FH].



In declining to review the case of *Fitisemanu v. United States*,<sup>59</sup> which would have determined whether residents of the territory of American Samoa would have American citizenship, the Supreme Court declined to reassess the grounds on which the *Insular Cases* rest. In the cases below, the district court said yes, residents of American Samoa are citizens; the Tenth Circuit said no, and the determination rests with Congress.<sup>60</sup> This case is redolent of the early Indian law cases, especially *United States v. Sandoval*, where the Court held that only Congress could say what the legal status of colonized people was.<sup>61</sup>

Anzaldúa's method counsels an understanding of the distinctions between the various people subject to the rules of the *Insular Cases*. She would urge us, as my late colleague Professor Frickey did, to do the "hard work":

[D]o the hard work . . . to challenge rather than to accept blindly assumptions rooted in colonialism, of which there are many today; to interpret documents of positive law flexibly in order to promote the ongoing sovereign-to-sovereign relationship of the tribe and the federal government; to keep the judiciary out of the business of imposing new forms of colonialism; and to refuse to relieve Congress of the responsibility to determine expressly whether future exercises of colonialism should occur.<sup>62</sup>

In a brilliant essay, James Campbell argues precisely for this outcome.<sup>63</sup> The people in the territories should be the agents of their own future. To do this, to adopt the legal position that would enable that result, requires the kind of searching inquiry Anzaldúa models. To be converted to legal use merely means that the skills we bring to the task as lawyers need to be sensitive to the knowledge the people themselves produce.<sup>64</sup>

---

59. 1 F.4th 862 (10th Cir. 2021), *rev'g* 426 F. Supp. 3d 1155 (D. Utah 2019), *cert. denied*, 143 S. Ct. 362 (2022) (mem.).

60. *Fitisemanu*, 1 F.4th 862.

61. 231 U.S. 28, 45–46 (1913).

62. Philip P. Frickey, *Marshalling Past and Present: Colonialism, Constitutionalism, and Interpretation in Federal Indian Law*, 107 HARV. L. REV. 381, 428 (1993).

63. James T. Campbell, *Aurelius's Article III Revisionism: Reimagining Judicial Engagement with the Insular Cases and "The Law of the Territories"*, 131 YALE L.J. 2542, 2560, 2639–42 (2022).

64. For a compelling expression of this view, see Yxta Maya Murray, *The Takings Clause of Boyle Heights*, 43 N.Y.U. REV. L. & SOC. CHANGE 109 (2019); Yxta Maya Murray, *Blights Out and Property Rights in New Orleans Post-Katrina*, 68 BUFFALO L. REV. 1 (2020); Yxta Maya Murray, "FEMA Has Been a Nightmare:" *Epistemic Injustice in Puerto Rico*, 55 WILLAMETTE L. REV. 321 (2019).