Academia in the Era of Homeland Security

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> Men are admitted into Heaven not because they have curbed & govern'd their Passions or have No Passions, but because they have Cultivated their Understandings. The Treasures of Heaven are not Negations of Passion, but Realities of Intellect, from which all the Passions Emanate Uncurbed in their Eternal Glory. The fool shall not enter into Heaven let him be ever so Holy. Holiness is not the Price of Enterance into Heaven. Those who are cast out are All Those who, having no Passions of their own because No Intellect, Have spent their lives in Curbing & Governing other People's by the Various arts of Poverty & Cruelty of all kinds. Wo, Wo, Wo to you Hypocrites. Even Murder, the Courts of Justice, more merciful than the Church, are compell'd to allow is not done in Passion, but in Cool Blooded design & Intention.
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> The Modern Church Crucifies Christ with the Head Downwards.
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> —William Blake (120-21)

We in the Western World, and in particular in the United States, are subject to ever-growing sectors of discretionary decision-making and widespread threats designed to limit perceived and actual action in all sectors of society—including the university. But even as this occurs, U.S. citizens are being bombarded with brazen propaganda that moves them to become ever more fearful and insular, leading them to gated communities from which they consume private education, corporate food, and private security. The only legal entity that is gloriously shielded from this tendency is the one that benefits from such trends, the corporation, which is finding itself protected by the Supreme Court, by the recent decision handed down in the Exxon Valdez case that mandated a 1:1 ratio between compensatory and punitive damages (Mauro n. pag.), or by the executive branch of the government, as in the recent agreement that shields cellphone carriers from lawsuits stemming from the FBI's egregious wiretapping activities under Bush-Cheney.[1] These same corporations are also being showered with tax benefits for work undertaken in war zones, the unprecedented $700 billion bailout packages for companies like Fannie Mae and Freddie Mac, weakened pollution laws for coal

burning plants, growing sources of natural resources for corporate pillage as in the new Bush propositions concerning offshore drilling and state park resource hunting, and weakened labor laws for everyone. In these troubled times, corporations are also drawing benefits from a system so clearly designed to foster the growth of large companies and undermine efforts at creating co-ops or small businesses through huge subsidies or no-bid contracts to established military contractors and construction firms, to smaller scale but significant practices offered to the most solvent of companies as favoring huge corporations for prime retail spaces or offering sub-prime loans and reduced banking charges. These policies, alongside of the ever-growing and related trends towards corporate sponsored homogenization of food, transportation, housing, and education, are the real threat to America and to Americans, on every possible level—not terrorism. But because terrorism is successfully highlighted, and remains as the backdrop to any discussion in these realms, there is a glass ceiling that is limiting and restricting discussion in the media, in public forums, and in educational settings. This resistance to non- or anti-mainstream thinking and this homogenization of action are concrete and tangible issues which can be described and addressed with reference to how "homeland security" is affecting thought and action in the university; this is the focus of my contribution.

We can talk about particularities, but the parameters cited above embody the overall trend. From it grows attitudes traceable to the actions described, the most blatant being the reactions our government has taken, and our citizens have generally supported, against terrorism. The examples that we've heard about in the media heighten our concern: new airport screening technologies that produce anatomically correct naked images of passengers who, so terrified by the carefully manufactured "fear factor," are actually willing to submit to this scrutiny (Rosen n. pag.), or cynical election tactics that allowed Bush to critique John Kerry's proposal to loosen restrictions on Canadian prescription drugs by referencing (unsubstantiated) "cues from chatter" by supposed al Qaeda operatives who planned to poison imported drugs (Weinberger n. pag.). Perhaps we'll come to realize, as the orange alerts turn to yellow, and then as the coding system itself fades into the distant past, that we have been bamboozled into outrageous military spending and unjustifiable wars and invasions at home and abroad, and that this has contributed to the disaster of our current economy.[2] More likely, though, is that the vagueness of the threat and the constant effort to reiterate potential consequences have shifted our political landscape in favor of fear-mongering, and communications from on high will from this point onwards morph into a ridiculously successful wooden rhetoric that, without any reference to facts, can convince the populace to swallow reductions in their civil liberties and human rights by paradoxically linking them to the growing threat to our ways of life.

We can look at "current events" as reported in the media to provide a sense of where we've been and, more worrisome still, where we're headed: ethnic profiling, detention, hate crimes, state crimes, torture, Abu Ghraib, Guantánamo Bay, and falsely reported claims toward the legitimacy and effectiveness of current tactics. Each example

suggests that there are varying government efforts aimed at keeping us in fear, on the one hand, and reassured on the other, as military spending, scapegoats, imminent threats, and the weakness of other alternatives are brought up simultaneously. From a discursive standpoint we can stand in awe to admire the amazing effectiveness of blatant tactics on a population that is wooed by quasi-mystical rhetoric supported by rumors, negative emotional language, empty words, blame, and the linking of concrete acts of violence to quasi-religious acts to either justify or demonize them, depending upon the outcome sought.[3] Perhaps this phenomenon can be attributed to the growing religious fanaticism at all levels of U.S. society, with one of the vanguards of the movement in the prayer-filled White House? Or is it just that the kinds of irrational fears drummed up by authorities play into areas of weakness in the human psyche, those areas that are targeted by, say, the endless array of horror films we consume in a given year? Whatever its source, it has led to a frightening *atmosphere* in this country that is unlikely to change even with the new president because it has entered into the social discourse of what it means to be American. Indeed, in many ways the "experts" from the hallowed halls are complicit in the process since they provide a façade of legitimacy to current debates. My objective is to set out some of the sources that feed into the current atmosphere and at the end of this essay to offer some tactics that can be employed to combat it from inside university classrooms.

An Atmosphere of Fear

Although a long philosophical or general rumination might offer the contours of what is currently occurring, I think it more appropriate to describe specific events which I believe contribute to the general mood that prevails currently in the United States, both within and outside of the university. For the last five years I've been working on issues relating to immigrant incarceration, which in its details provides a concrete framework and a catalog of materials that help us to understand how this atmosphere is being created.[4] I'll begin by describing what has happened in this realm since 9/11, with reference to U.S. Department of Homeland Security (DOHS) laws that have been proposed or created to unsettle and frighten 'foreigners,' by which I mean not only persons born on soil other than American, but also those who hold opinions that contradict or challenge mainstream ideas.

Because the regulations that have been designed to keep us in check are so numerous and so unstable, those who are called upon to enforce them are made to feel uncertain about each decision they make, particularly in cases involving foreigners. As a result, the application of these vague, shifting, and nebulous laws, which often disappear within a few weeks or months of being described in the media, is extremely uneven, creating a highly volatile realm of discretion as police officers, clerks, and government employees try to figure out where the law begins and ends. I don't see any way out of this situation. Anyone who might bravely stand up to the brazen lies promulgated in the name of security will be labeled "soft on

crime" or sympathetic to terrorists, and even a change in government as superficially significant as Bush to Obama cannot mean very much if almost a third of a billion of mostly corporate dollars have flowed into Obama's campaign to date; presidents' hands are tied by existing lobbyists, corporate pressure, and of course, the dominant social discourses (crime and security being unmovable ones), and I see no indication that things can be made significantly better with a change in regime. Since we cannot therefore hope for a remedy from on high, I'll propose concrete actions that can be taken within one of the only safe spaces left in society, the university, to preserve some degree of open discussion and to promote free and creative work within, and ultimately beyond, the ivory tower.

We cannot speak of homeland security by restricting discussion to its actual workings because the web of its influence extends far beyond the specific application of its tenets. The current administration, through the passage of homeland security-inspired laws and through the invasions of Afghanistan and Iraq, has made it very clear that this country is "at war," and this oft-repeated declaration has generated a whole network of reactions which go beyond law enforcement. But the real war isn't a traditional one, "us" against "them" (al Qaeda, Saddam Hussein, the "Axis of Evil"), because there is no identifiable "them"; so instead, the war on terror and the domestic instrument called Homeland Security have created open warfare between the administration and U.S. citizens and, moreover, noncitizens, who are being taught in no uncertain terms that they should live in fear—of incarceration, deportation, questioning, even torture—if they step out of line. This can be observed by watching how terrified ordinary citizens are in the face of authority (although one might argue that this is only rational, given the dangers of standing up to power, and that those who don't act this way are just asking for trouble). But how this obedience is developed is harder to discuss than the more overt measures aimed at teaching us all who is in charge. The most obvious sign of the military nature of this operation is the well-reported and well-documented fact that in the post-9/11 juncture, many immigrants and virtually all asylum seekers are spending time in local, state, and federal prisons for violation of a host of newly enacted or newly enforced laws in a context of heightened security. This incarceration has as its justification a series of memos, laws, proposed laws, and programs, all aimed at "tightening up borders" and "cracking down" on "illegals." The range of rationales employed to incarcerate and deport migrants affects individuals throughout the immigration process, of course, but it's also sending out a clear message to everyone in the United States: We are under threat from foreign elements—and by "foreign" I'm including diversity of thought, language, and action, including those represented in contemporary artworks—and we need to all be on the same proverbial page so as to protect fundamental American values. We have also learned that if the administration needs to violate international regulations or strike down outdated approaches to law and order to protect the country from this incursion, then so be it. And if the success of the operation depends upon us promoting a way of thinking that is appropriately patriotic, and if this effort excludes diversity on a range of levels, then that's fine as well;

we can and should do whatever it takes. The resulting proposed laws in local, regional, state, and federal jurisdictions, including English-only proposals, crackdowns on illegal workers, fast-track deportations, and even indefinite incarceration, are all appropriate tools even if they obviously defy historical, judicial, and administrative norms in this country. This massive effort, which includes a dizzying array of new regulations at borders, of course, is also affecting how we hire, house, and govern the foreign born, and this set of legislations, widely reported in the press, is affecting our own sense of how we should act to protect ourselves and to keep away from the ever-extending arm of the law.

There have been such an array of programs and initiatives aimed at intimidating foreigners and foreign behavior that an exhaustive list would be a chapter-length work in itself, particularly if it included local, state, and federal initiatives. Indeed, during the very week in which this essay was completed, yet another policy was headlined in the media, Operation Streamline, which enforces criminal prosecutions against virtually every person caught illegally crossing stretches of the U.S.-Mexico border, leading to the usual array of media discussions and reports.[5] But rather than getting to the heart of the matter, which could have included a discussion on ways of opening up the border with Mexico for free movement of workers, the questions posed were more in the realm of tinkering: Should this be how law enforcement spends its precious resources? Should there be a blanket immunity instead followed by a major crackdown? Or is it the responsibility of employers to autoregulate themselves? This type of debate is a constant feature of media discussions, usually on the front page (or on leading broadcast headlines such as CNN), which creates an atmosphere of fear and uncertainty amongst the population targeted and amongst the domestic constituents who are trying to adopt their own position on the complex issues raised. But it always stops short of the real issues, like whether or not we should be criminalizing people moving around, and on that notion it seems we are all on the same page. A short survey of some well-publicized programs provides a sense of how destabilized immigrants must feel as they come to be subjected to ever new and ever more brutal measures.

1. Operation Streamline

This program, originally launched in 2005 and now being broadened, is aimed to increase criminal prosecutions of immigration violators, in part by filing minor charges against virtually every person caught illegally crossing some stretches of the U.S.-Mexico border. The officials quoted in the press reports have joyfully declared that the threat of prison and a criminal record is a "powerful deterrent" that is reducing illegal immigration along the U.S.-Mexico border. Before this program, most Mexican nationals who were caught at the border were fingerprinted and returned to Mexico without criminal charges, but now they are charged with federal offenses, and people other than Mexicans are generally held until removed. DOHS Secretary Michael Chertoff was quoted in testimony to Congress saying that

this new operation is "a very good program, and we are working to get it expanded across other parts of the border" because "it has a great deterrent effect" (Hsu n. pag.). In that same article, T.J. Bonner, president of the National Border Patrol Council, is quoted as saying that "this strategy pretty much has it backwards. It's going after desperate people who are crossing the border in search of a better way of life, instead of going after employers who are hiring people who have no right to work in this country" (Hsu n. pag.). More to the point, though, is the fact that the first time a foreign national crosses the border into the U.S. illegally, s/he commits a felony, with all of the horrendous consequences that thereafter follow.

2. Operation Compliance

Operation Compliance was introduced in Atlanta and Denver as a pilot program to curb the "chronic" problem of "absconders" in the immigration system, whose numbers run in the hundreds of thousands.[6] Because under the pilot program Immigration and Customs Enforcement officers are charged with arresting people who are ordered to leave the country after losing their cases to stay, the system is being overwhelmed by inmates who have been incarcerated for civil rather than criminal reasons. These individuals can now find themselves behind bars while pursuing their rights within the U.S. legal system, even in cases when they came to the U.S. to flee persecution in their own homeland, which leads to a sense of continued persecution and concomitant distress. Previously, foreigners who appealed an immigration decision that went against them were allowed to remain free, and those who lost and agreed to leave the country voluntarily were generally given time to get their affairs in order, usually after posting a bond. Currently, bonds are set at levels completely out of reach for most claimants, and counsel is difficult to procure because most of the immigrants charged have no resources or networks upon which they might rely for assistance. The role of public defenders in this realm is crucial, and the work that they undertake, for very little gain, is generally remarkable.

Authorities charged with overseeing this monumental new responsibility are facing logistical problems relating to costs, training, facilities, and manpower. There are only around twenty-thousand detention beds available nationwide at any given time, so the addition of civil cases from immigration courts is swamping detention facilities, particularly with indications that some people who end up in the system are condemned to remain there for long periods of time. This leads to uneven treatment of immigrants and asylum seekers based on the availability of individuals to adjudicate their claims and of prisons to house the growing number of people who are de facto committed to spending time therein.

3. The CLEAR Act

The research project that provides the data for this chapter was undertaken at the time when opponents from local police and governments, victim advocates, and even conservative pundits were

expressing vociferous opposition to legislation like the CLEAR Act (the Clear Law Enforcement for Criminal Alien Removal [CLEAR] Act, HR 2671, introduced by Representative Charles Norwood [R-GA]) that compels state and local police to become federal immigration agents. Bills like this one coerce state and local police into enforcing federal immigration laws by threatening current federal reimbursements if they don't take on these additional duties. The Senate bill goes even further by imposing new driver's license requirements on state departments of motor vehicles, once again tying the federal funding states currently receive to compliance with these new requirements. Police departments have worked to build good relations with immigrant communities and encourage immigrants to approach local law enforcement with information on crimes or suspicious activity. Both the CLEAR Act and the Homeland Security Enhancement Act (HSEA, S.1906, introduced by Senators Jeff Sessions [R-AL] and Zell Miller [D-GA] in 2003) are perceived as threats to the relationships police have built with these communities and harmful to law enforcement's ability to investigate and solve crimes ("State and Local" n. pag.). A small survey of commentary on these issues illuminates the inherent difficulties. James Jay Carafano, from The Heritage Foundation, was quoted on April 21, 2004, as saying:

> The act has the potential to shift police priorities so that officers spend their time tracking down immigration violators instead of solving and preventing crimes within their communities. It could also undermine immigrant communities' trust and confidence in law enforcement. Fear of deportation may make immigrants and aliens less likely to report crimes and suspicious activity. Furthermore, foreign nationals may refuse to assist in security investigations because of concerns about the immigration consequences.
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> [. . .] The proposed legislation is unnecessary. Police already have the authority to arrest aliens who commit crimes, and state and local authorities can help fight terrorism using already established statutory tools. (n. pag.)

And former Georgia Representative Bob Barr has written:

> [I]n the mid-1990s, Congress authorized the attorney general to enter into cooperative agreements with state and local law enforcement officers to allow the latter to serve as immigration officers. Respectful of the principles of federalism and separation of powers between federal and state interests, however, such power was and is strictly voluntary and limited. These precedents, and others, reflect the proper role of the federal government—to enforce federal laws—and the proper responsibility of state and local governments—not to enforce federal laws. The CLEAR Act would throw this important principle out the window in the name of 'fighting the war against illegal immigration.' While this war may be worthwhile, the means of achieving it proposed in the CLEAR Act is not.
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> [. . .] As a practical matter, forcing local law enforcement to pick up the slack for the federal government's abject

> failure to use its powers and resources to enforce federal immigration laws, will simply afford the feds another excuse for not doing what they are supposed to have been doing all along. The United States has never before stood for a national police force. Now is not the time to take the first tangible steps in that direction; no matter how appealing the reason. (Barr qtd. in "Conservatives and Cops Agree")

4. Operation Predator

Another example of how these new security-minded powers are being used is Operation Predator (Title 8 C.F.R. 3.19 [i][1][2]), which automatically jails immigrants convicted of sex offenses before deporting them. The mass arrests have put hundreds of immigrants, legal and illegal, behind bars for months while they await deportation. A recent report found a federal judge expressing "serious" doubts about the way the DOHS is using an administrative rule, written to combat terrorism, against sex offenders. The rule is "wooden," and it produces cases that are based on "quicksand." Further, it "may be an abuse" of civil rights, as suggested by U.S. District Judge Faith S. Hochberg to the U.S. Attorney's office from the bench (Edwards n. pag.). The rule has come up in at least six cases in New Jersey and dozens more around the nation, according to attorneys on both sides. The suits charge that programs implemented to guard national security are being used on everyday criminals:

> The regulation was written on Oct. 26, 2001, to enable the government to detain Muslims suspected of being linked to terrorist groups. It allows the [DOHS] to ignore bond decisions or release orders by immigration judges and the Board of Immigration Appeals. It also allows the [DOHS] to keep immigrants in jail at the attorney general's discretion. Although Operation Predator is intended to send home foreign rapists and child molesters, it also has swept up a number of men whose offenses were minor, whose convictions were served out years ago and who have lived law-abiding lives since. (Edwards n. pag.)

5. Antiterrorist Incarceration Techniques

The war on terror has led for calls amongst officials to use stronger tactics in questioning potential terrorists, which places asylum seekers and those experiencing difficulties with their immigration claims in particularly precarious situations. It is also contributing to a significant rise in the population of immigrant and asylum seekers in U.S. prisons, with the host of complex issues it raises for detainees and officials. Much of this is novel for both sides, since recent changes make it such that immigrants who have been incarcerated pending decisions or asylum seekers who don't have sufficient identification or evidence for their stories can find themselves incarcerated for indeterminate periods of time while authorities try to simultaneously balance their obligations to uphold security and international law. This situation is rendered more complex by messages sent from Washington to local law enforcement and incarceration officials.

In a May 5, 2004, piece entitled "The Fragility of Our Freedoms in a Time of Terror," Stuart Taylor, Jr., notes that Deputy Solicitor General Paul Clement argued before the Supreme Court for President George W. Bush's claim that "the military can grab any American suspected of being an 'enemy combatant,' anywhere, at any time, and hold him incommunicado for months, years, even for life, with no chance to see a lawyer or tell a court that he is an innocent civilian" (n. pag.). The implications of this message are ominous to detainees, lawmakers, and officials, since federal review of military determinations of who is an enemy combatant could "amount to a mere rubber stamp, result[ing] [in] escalating numbers of Americans [being thrown] into the black hole of incommunicado detention" (n. pag.). Evidence abounds. For instance, on January 27, 2004, the American Civil Liberties Union (ACLU) filed a complaint to a United Nations' working group concerning the detention of more than a dozen Arab and Muslim men held by the U.S. without charge following the September 11, 2001, attacks. "According to the ACLU the indiscriminate arrest of these men and hundreds of others, with no links to terrorism or crime, and their prolonged detention without charge or access to lawyers, violate U.S. commitments under international human rights law" (Zagaris n. pag.).

Immigration Prison Complex

For those who violate any regulations on this ever-growing list of (proposed and active) immigration laws, there exists a massive prison complex, which variously serves as a waiting area, a clearing house, a detention center, or an incarceration facility for the criminal, the mentally disabled, and, increasingly, for the foreigner. The collection of jails and prisons in the U.S. is already holding more than two million people, and the current influx of foreigners is creating strains within a correctional system that was not designed to offer corollary immigration detainment facilities. On top of this, the correctional system is not well equipped to address the heavy linguistic and cultural burden that is increasingly placed upon it. This is similar to the strains placed upon the system when it was suddenly forced to house those who had been previously treated in the now-defunct mental institutions in this country. The reasons for which a person who was born outside of the U.S. might be arrested or held, reasons beyond criminal activity, include (but are limited to) the following:

- Refugee claimants who arrive in the U.S. or who make a claim for refugee status after entering the country are almost always summarily detained and can be held indefinitely pending proper identification or the outcome of the refugee determination hearing.
- All persons awaiting appeal of refugee determination claims are subject to incarceration or detention.
- "Illegal" aliens can be detained or arrested on account of their irregular status. This can flow from their having entered the country illegally in the first instance, having allowed for the expiry of their visa, or failing to inform officials of change in residence.

• All persons suspected of involvement in terrorist activities can be incarcerated indefinitely.
• Nonnative-born residents of the U.S., even those holding permanent residency, can be arrested for criminal offenses which can be exacerbated, during sentencing, by virtue of their being noncitizens. In certain cases, including any case involving a federal offense, this can lead to arrest, incarceration, and summary deportation.
• Any individual who is deported cannot return to the U.S. without permission from U.S. officials, an extreme rarity; those who do, for whatever reason, are likely to be subjected to long prison terms.

The array of rationales for incarceration or detention is, therefore, diverse and in regular flux; furthermore, the subjective rationale that can be invoked makes it such that discretion becomes a factor, indeed even *the* factor, in determining who will be detained and under what circumstances. And it's much worse for those deemed "illegal" and those accused of committing federal offenses. This discretionary power allocated to officials at all levels has grown in the past decade, and especially since 9/11, due to a higher degree of fear within the population of persons from "out there." The effects of this begin before immigrants even arrive on U.S. soil. For instance, recent legislation restricting or controlling foreigners' access to the U.S. is creating tensions outside the country amongst persons who find themselves suddenly and unexpectedly excluded from, or else subjected to, new forms of scrutiny. This affects everything from university applications to visa applications to family reunification for those seeking to join family members already residing in the U.S. Widespread use of fingerprinting, new passport and visa requirements, and more detailed scrutiny is even affecting business travelers who find themselves delayed or harassed by authorities who come to be seen as gate-keepers rather than facilitators.

For those who arrive on U.S. soil, tensions increase with each unwanted or unwarranted interaction with immigration authorities or individuals assigned with assuring the legal status of the immigrant (i.e., in banks, post offices, jails, public gatherings, and so forth). Expectations that people in America have the right to be left alone, upheld by well-diffused tenets inscribed within the Bill of Rights and the Constitution, are being violated as individuals are questioned or searched without warrants and as individuals from outside and inside of the country learn about domestic spy programs, wiretapping, extrajudicial spaces, and so forth. And, particularly for those who are outside the U.S. system, there is the whole network of rumors, gossip, and advice, well-meaning and otherwise, that further confounds those deciding to come to America.

There is also heightened tension within immigrant communities as individuals respond to the increasing reliance upon incarceration in the place even of deportation, and face the expansive (and often either ill-defined or unevenly-applied) reasons for which one can do hard time, actions which in the past would have led to simple fines. All of this hardens the lines between lawmakers, police officials, and the communities that they are attempting to regulate. The problems are particularly acute in the case of "illegals" who, through

lack of resources or knowledge of how the system works, are often forced to proceed either without legal counsel or on the basis of commonly diffused and often misconstrued information about how they should navigate in it. But individuals on more solid green card ground or on temporary visas are also affected, and a large number of these individuals either study or work in the education sector, notably higher education. As I was researching this project, I was subjected to a new rule that prohibited visa holders or undocumented immigrants from having a regular driver's license; the "driver's certificate" that was issued in its place was deemed to be invalid for purposes of identification, which led to the amazing day when I was denied (temporarily) access to the prison where I was doing research for the Tennessee Department of Corrections because the only document that can be presented at the entrance is a driver's license. The prison guard had to make a determination about whether to allow entry to a full professor at Vanderbilt University who was doing research that was sanctioned by his warden and, higher up, by officials from the State of Tennessee. This kind of determination is increasingly prevalent as contradictory, temporary, and intrusive laws and regulations are reported, proposed, and (sometimes) passed.

The consequences for the victim of the legislation are terrifying, and for the legislator who is called upon to make such decisions, the easy route is to be draconian. Current laws and practices therefore also negatively impact law enforcement officials, particularly in light of post-9/11 legislation or the post-9/11 application of severe laws passed earlier in 1996. This shift even impacts the very job description of police officers and other government officials who are suddenly being asked or in some cases compelled to make decisions on the basis of complex immigration data or regulations. Charged with enforcing vaguely defined and inconsistently applicable laws and regulations relating to migration, police departments are in some cases forced to choose between complying with federal regulations and fighting local crime. This leads to the inevitable outcome that some zealous superior officers are anxious to fill local police coffers through the financial incentives offered by the federal government, while others are more reluctant, finding the task unsavory, expensive, and inappropriate in relation to the crime-reducing mission. In either case, officers and administrators face many tasks in relation to these new paradigms, for which they are demonstrably ill-equipped. For example, in cases of migrants who have found themselves on the wrong side of the discretionary fence, the ability to be "heard" is far from obvious because it takes a kind of linguistic ability, if not the political or judicial will, to allow this to occur. The level of training offered to police or, even more egregious, lower-level administrators, is abominable, which leaves us with an upper level of government bureaucracy with nefarious aims and a rough-and-tumble group of administrators who are poorly equipped to understand the immigrant plight. These are people who work graveyard shifts in prisons, desk shifts in jails, or patrol shifts in police cars for inadequate salaries, and who, if the night is too long, *The O'Reilly Factor* too convincing, or the donuts not fresh, just might decide to make all of the worst after-hours phone calls to DOHS, Immigration and Customs

Enforcement (ICE), or the FBI, the little gestures that can wreak such havoc. If the stories that I recorded in the course of my research about this weren't so dreadful, they would be comical, particularly as told by some lawyers—and this one, on the very issue at hand, is worth quoting at length:

> The problem is, you can take fifteen illegal immigrants out in this parking lot, put them in a van, and start calling the police on them, one after another over a twenty-four hour period. Some of them will be taken out, booked, make bond, and they're gone. Others will be taken out, get booked, and be picked up by INS, and it's only because Bubba came out on the midnight shift, and Bubba, who is making $5-an-hour to be a jailer—and the only reason you'd take that job is because you want to fuck with people. (Why would you want $5-an-hour in a dungeon? You are indoors, you ain't seeing the sunshine, and you're dealing with unhappy miserable people who don't want to be where they are)—Bubba don't like the fact that these damned Mexicans are walking around here anyway, so Bubba, if they don't speak good English, is calling INS. And there's no rhyme or reason. You get one guy on aggravated assault who gets a bond and goes home, you get another for driving with no license and he gets an INS hold. (See author note)

Once a police officer has decided to take an immigrant into custody, a range of possible actions will occur with tremendous consequences for the prisoner. The ostensible issue is whether immigration officials will be contacted at any point during the investigation, and if therefore the individual's legal status in the country, or his or her past contact with immigration officials, will have a bearing upon how the case is treated. If an immigrant is held, in a jail or prison, prior to or subsequent to conviction, he can at any point be subjected to inquiries made by incarcerating officials or by any party to the case, particularly if there is any federal offense that is part of the case. This can lead to a heightened and sustained destabilization on the part of the prisoner, who knows that at any time DOHS could possibly get involved. And if he is part of an immigrant community, there is as well the fear that those who are involved with or related to the prisoner will also come under scrutiny, either in the course of the investigation or even in the course of a visit to the incarceration facility.

Fictional Law

What this all adds up to is an atmosphere of fear and intimidation that is bolstered by the growing corpus of laws and regulations that are so ill-defined and unevenly applied that they are akin to what I would call "fictional law." We're accustomed in this society to thinking that there are different types of law for different people, depending upon whether they're black or white, rich or poor, and those of us in the academy are well aware that it's different to be arrested, interned, suspected, or found guilty on college campuses and by campus police than it is in the "real world" that lies beyond the gates. But the

fictional law of immigration procedures hits universities hard, because institutions of higher learning, and large corporations, tend to be places that attract and support immigrants. Corporations have less to worry about, because the employees are toeing the corporate line, presumably. But universities are not so safe, particularly if the immigrant in question has "foreign" ideas or ideals, as this can set him up for all of the contingencies of fictional law.

What I mean by this is that there are legal situations where an invoked law used to initiate an action follows a series of procedures that are so discretionary in nature as to render arbitrary the law for which the punishment is justified. In these cases, the law is no more real than the series of haphazard circumstances that led to it being invoked, so what characterizes the law is not its formal qualities, but rather its arbitrariness; it is neither formalized, predictable, nor linked to the actions which eventually occur. Under these conditions, for all intents and purposes, the law is a fiction. As such, the "ground-breaking" idea that those of us interested in dismantling disciplinary boundaries by working on law and literature, or literature and law, needs to be further extended into the elimination of these sometimes arbitrary classifications altogether. In other words, we need to break new ground by suggesting that sometimes law isn't *like* fiction, in the way that it is interpreted or in the issues it raises, but it *is* a fiction, and the real world consequences that occur in its name are as arbitrary as the discretionary conditions that led to it being invoked in the first place.

Studying migrant incarceration in the southern U.S. demonstrates that the discretionary and the arbitrary so outweigh the formal application of law as to make it appropriate to suggest that the cases are often not "legal" or related, except by name, to the law. For instance, imagine if you will the millions of people living "illegally," or "without papers," in this country. These are people who may have been in the U.S. for a few minutes or for a few decades, who in some cases may have literally grown up, married, and worked in this country, and who may even have American wives or husbands with whom they have raised American children. They may have worked for large corporations, like Wal-Mart, or they may run their own businesses, paying taxes, employing Americans, and contributing to the community. They may have lived their whole lives, as long as they can remember, in this country, confident with the knowledge that their children will not live in a betwixt-and-between world, having been born U.S. citizens. They can, in short, live out the American Dream, and may very well be more successful here than they could have been "back home," assuming, of course, that a range of existing laws on local, state, and federal levels don't someday join forces to prosecute them. How can this happen? It can all start with a traffic stop: They can be pulled over for a burnt-out taillight, be flagged by a zealous cop who is unsatisfied with the driving certificate that is issued to people in Tennessee in lieu of a regular license, be taken downtown for being "illegal," be unable to meet bail fast enough to avoid the paper-pusher in the prison who makes late-night phone calls to DOHS or ICE, be sent to a holding institution (jail, penitentiary) to await deportation and, a few days or months later,

find themselves "back" in a country that some of them have not seen for the better part of their lives. If they return to, say, continue their lives with their families, and if they happen to have any kind of "felony" charge in their past, including domestic abuse, simple possession of marijuana, or DUI, they are eligible, if stopped again for whatever reason—including a random search—to be sent away for fifteen years with no chance for parole, followed by automatic deportation. What happens inside the university isn't any different, except in terms of the actions that trigger the incarceration. Conceivably, a student on a visa who is filmed by police participating in an "illegal" demonstration—that is, a demonstration that has not received prior sanction by the university and the city—can easily be targeted, identified for questioning, and possibly even, if all actions go against her, arrested. And arrest, for picketing, for smoking pot, or for underage drinking, is the first step towards being singled out—an action which for foreigners can easily be disastrous. When the visa runs out, the individual may request a renewal for work or further study, but with any black mark on the record, her chances of success are considerably reduced. Of course, this also means that someone might want to get rid of a student on account of her ideas or attitudes; in a situation when so many actions can be deemed illegal, this isn't difficult. And if the student is denied an extension, for whatever reason, and then decides to overstay the visa, then all of the previously mentioned mechanisms can come in to play against her. If she is reidentified and deported, she has committed a felony, with mandatory prison time and a virtual guarantee that she'll never be allowed back into the country.

This same student, these same people, with exactly the same situations, can also be let go at any point in this process, and indeed they are likely to escape any serious punishment if anywhere along the line someone stops the procedures for whatever reason, including the fact that, say, the policeman is part of the university police force, or if the jailer or administrator happens to think that the "illegal" is an ordinary *schmo* who just happens to paint the houses, restock the Wal-Marts, pick the corn, or whatever, in the local community. This is not "law enforcement," in other words. This is a realm of legal procedures which can be invoked, or not, according to such malleable norms of discretion that they might as well not even be considered to exist in any credible way as "laws." This is not to say that the consequences of the legal procedures undertaken against migrants and immigrants don't have real world consequences. On the contrary, one of the reasons why the current situation for even green card-carrying migrants is so preposterous is because of many mutually contradictory ways the (contradictory) laws can be applied or not. Again, the net effect of unequal application of law, high levels of discretion at every step of the process, and the degree to which local, state, and federal laws can contradict or annul one another on specific issues renders the idea of "law" dubious, and in many cases moot. I also suggest that at the current juncture other legal settings in which discretion prevails, such as immigration or refugee law, provide such a high level of arbitrariness as to render suspect any idea of codified legal norms.

The Upshot: Useful and Nefarious Discretion

Are we right to be concerned? Is this just liberal claptrap impeding real progress? In the Supreme Court case *INS v. St. Cyr,* on the effects of the 1996 laws on Enrico St. Cyr,[7] Justice Ruth Bader Ginsburg responded to Deputy Solicitor General Edwin S. Kneedler's argument that "when it comes to immigration, the courts must respect the tradition of granting the Executive practically unlimited power" and that deportation waiver is a matter of executive discretion with the following: "There's a lot of discretion in Federal agencies, but there's also a concept of abuse of discretion, and you seem to be saying no, there isn't [. . .]. The discretion is there but it's kind of lawless discretion. Is that what you're telling us?" (Ginsburg qtd. in Dow n. pag.). The way this worrisome scenario plays out "on the ground" is the clearest indication that the discretion described above is, to put it bluntly, as nefarious as can be.

Discretion in law can be a positive force if the will is there to use it as such. The problem is, in the current juncture, the negative decisions tend to be heavily discretionary and the positive ones not, leaving those with potential goodwill in the system forced to uphold laws with which they don't necessarily agree. One example is in the realm of sentencing, where positive discretion could be a mediating force; this has been reduced to judges being forced to hand out federally mandated sentences no matter what the circumstances. (The recent Supreme Court ruling on sentencing guidelines did affect the system somewhat, but this is not expected to last as Congress works on new, probably more stringent, rules.) A public defender states:

> Immigrant clients, like many clients, think that we're part of the system: not much different than the prosecutor, we're just trying to shuffle them through [. . .]. The problem is that the news we have to tell them is so bad, they just cannot believe that we're just doing our job. [That is] until recently, when they changed the sentencing via a case in the Supreme Court [and made] it very discretionary again, at least for a time. Before that we were going with the grid, [sentencing] within eight months. And [these clients] cannot believe it. They say: "I did five years before I was deported for that crime, and now you're telling me that they're changing my sentence from one to five years? I already served out the time for that crime." They say this is the biggest mafia in the world. (See author note)

What's striking about the system is that there's discretion, at the first level, where decisions are made about whether to file charges or call ICE, and then there's no discretion, when it comes to the courts. The upshot is predictable. Those who are connected, or part of the university community, can be rescued before the truly draconian laws are exercised. This means that if we are going to encourage our students to be active politically on issues that matter, we *must* ensure that they'll be protected by their own, that is to say, by their university police force. This also means that they cannot risk going outside, beyond the ivory tower, because, as the public defender I interviewed makes clear, there's no positive discretion out there:

> A lot of these crimes have no defense; the guidelines were very high, like five or more years. Your ability to get them better sentences is almost nonexistent. Unless you can get the whole case thrown out on a suppression issue, like an illegal stop. Otherwise there's not much you can do. I also understand that in Mexico, your success in court depends on the prestige of your lawyer. If they have had a contact with the legal system, then they come to a public defender without any faith that someone who comes for free can be effective. I certainly don't think that's the situation here. (See author note)

So here, goodwill on the part of the public defender or even the judge cannot serve to remedy an unfair sentencing practice. What is remarkable in interviewing people who are part of this system is the degree to which many are willing to help incarcerated immigrants. Often, through travel and from contact with cultures outside the country, people in the system develop an intimate connection with their foreign clients. Notwithstanding the desire to aid the less fortunate, however, the ability of well-intentioned judges and lawyers to assist is limited:

> I had a guy who asked me yesterday, he was lost, and he needed his permit. So I go up, and it took me twenty minutes to walk him through the process of getting his driver's license. But there was one case that was still pending, and he never went to court on it, so it was a formal thing, to get the court to waive it, or throw it out and be done with it [. . .]. I take kids over to municipal court all the time, though; they have the same thing, some tickets but no license, no proof of insurance, because you can't get insurance without a license. And they had been caught speeding, or whatever the excuse the cop used to stop them. Occasionally, I would just group them together, four or five at once, because it's easier on me to take care of it, and then I'll give them a ride home when they're done, like five guys. They say afterwards "what does this cost?" and I say "$20 between all of you, for gas." But then I get a call six weeks later—"My brother is charged with murder"—so I invite them in and they say, "What will this cost?" and I say "$15,000, easily," and they say, "But you did my other ticket for $20!" (See author note)

As we saw earlier, the question of vague legal categories and unclear definitions leads to a disproportionately severe application of laws and procedures, not positive discretion or leniency. The reason for this is that it's difficult to argue against presumptions of, say, the client being either a flight risk or a danger to the community. Who, given the stringency of the laws and the possibility of returning home, would not flee if given the chance? And if they are in the U.S. illegally, they will generally be taken to an ICE facility in Louisiana, even if their lawyer is in Kentucky or Tennessee, which means that lawyers have no meaningful way to contact them before

trial. One attorney summed up this situation as follows: "It would be impossible for us to show that someone who was here illegally was not a risk for flight; even if we knew that to be the case, it would be hard to convince a federal magistrate judge that this person is not a risk for flight. But even if we were able to accomplish that, and the person was released pending trial, there would be a retainer placed on that person and they would be taken to an immigration holding facility" (See author note).

The vagueness of legal categories is a problem that has been greatly exacerbated, with public and congressional approval, since 9/11, even in the face of evidence that this approach is simply not working. In response to questions about 9/11, a lawyer replied:

> Changes since 9/11? I'm trying to be nuanced, but I think that it's all negative. I think that the studies that have been done on the national level have shown that the special registration program failed. It showed that there were not positive benefits; they didn't find any relevant information. Many people were incarcerated in an arbitrary way, lost their jobs and their business based on incarceration. I think that the detention of asylum seekers is outrageous. There was a large dispute in the advocacy world about ankle bracelets, with this question of a pilot temporary release. But I think that the idea of treating asylum seekers as though they're on probation is outrageous. And it plays into this mass hysteria, besides being patently unfair to the people involved. (See author note)

So while the motivation here is to defend against terror, the effect is the negative side of arbitrariness and discretion—which has become the norm, regrettably.

Discretion almost always results in a negative outcome when it comes to the treatment of foreigners, because officials are more likely to err on the side of prudence (i.e., law and order) when dealing with highly complex and inconsistent legal practices in realms that are culturally incomprehensible; this applies to both sides of the discussion, the perpetrator and the victim. The net effect is that those who enforce the law and those against whom it is being enforced are in the same boat. A lawyer notes that an agent from

> the Department of Justice [. . .] said we are going to prosecute gun crimes. His approach was to say "I'm an ardent supporter of the Second Amendment, and I want to expand the rights of gun owners, but in order to do that I'm going to crack down on all people who shoot and have guns. So anyone who has been convicted of a felony, like anyone who has been convicted of a felony and has been deported, cannot own a gun." Now there are these federal prosecutions called felony possessions, and they are looking at [very] stiff sentences; if you are pulled over for speeding, you have a prior felony conviction, any felony, and police find a gun under your seat, then they'll prosecute you in federal court. (See author note)

This is a tough one to follow, because on the one hand, the law of the U.S. land favors the sale and distribution of guns, and the protection of the rights of gun owners. On the other hand, if you have certain kinds of things on your record, committed either in this country or elsewhere, then even having a gun can lead to your being charged with a felony. The lawyer's approach favors education, but he makes it clear that it's very hard to explain the links that one would need to understand:

> I think that it's critical to have outreach in communities where guns are part of the fabric of that community saying, "I don't know if you're aware of this, but when you pled out to some small crack charge when you were nineteen years old, you cannot have a gun, to protect yourself, your family, or anything. You cannot use a gun." I think we'd be doing a great service to the lower-income community if we got out and explained that to people, because fathers, sons, and brothers are going away for crimes that they've already served time for. (See author note)

If the crack charge, or indeed any drug or gun charge, happened in Mexico, it still counts, as does previous deportation, so the law about guns, otherwise relatively straightforward, can come to be modified completely in particular situations. This goes to a broader point about education: few Americans understand the fundamental constitutional right as to why they shouldn't accede to having their car searched, even if they have nothing to hide. When it comes to the highly complicated business of immigration law, particularly for repeat offenders, the chances of people knowing their rights and the consequences of particular actions as regards future prosecutions are tiny. As it turns out, one place to think about such things would be in prison, particularly for that crucial first offense, whatever it is. But even there, there are virtually no educational possibilities, and none whatsoever in, for example, Spanish, and there's also no useful source of legal information:

> There's a Supreme Court law regarding access to the courts which requires that they have a law library, but it's so antiquated in most of these facilities that there's no meaningful access. That's when word of mouth comes in lieu of access. And most of these guys have a limited educational background anyways. They just get someone who has been there for a while [for counsel], and this is who the inmates speak to. There's no real resources that I've seen. (See author note)

So the image of legal fiction grows through arbitrary actions committed by officials with unclear levels of discretion who are dealing with populations from different cultures, often without proper legal counsel. It's a lethal combination. At some point, however, the fiction can become reality, and often with the scribble of a pen upon a page of text which is undecipherable to the person doing the signing. As migrants move through the system, from local to state to federal

jails, they are quite literally moved from place to place, but also from one set of officials to another, with all of the uncertainty this entails. And along the way, imprisoned migrants can make some terribly consequential mistakes:

> It's still an open question as to how long it is taking people to get into that national loop and what rights they are giving away before that happens. There's a fairly developed legal rights education system going on in Florence, AZ, and places like that, where they enter the National Immigration Detention Center system that will lead to their deportation. But if people are spending thirty to ninety days in Blank County before then and being asked to sign voluntary departure—they are being asked to sign away custody to their kids, to make all these really important legal decisions without the advice of counsel and without any sense of what their legal rights are. That's very disturbing. And many, many attorneys in this area are unaware of rights immigrants have [. . .]. So I am nervous that people are giving up their rights; and the issue of kids is also important, because there are many citizen kids with undocumented parents, and they're not getting good counsel about what their options are in those situations. (See author note)

So where's the law in all of this? It's there, and it's not there, depending upon how lucky you are, or how well you know the traffic cop, or if you speak the right language, or have the right color of skin, or if you commit the crime on university grounds—or not. As a student (or a faculty member), you can have a little discussion with the campus policeman, and perhaps the dean, and receive a lecture on speaking out on campus. Outside the ivory tower, you can follow the law and head to the courthouse to pay a parking ticket, but while doing so, you can be picked on by a DOHS officer who has decided to ask for your status in the country. You can stay out of jail but when your friend lands in jail, you can find yourself arrested because you went to visit and had your name run through the system after you signed in. The only predictable part of it is that if you "ain't from here," you're a sitting duck in a shooting gallery of arbitrary actions. So it's true that you have a better chance in the university, because there are offices that are on the side of the students or the faculty. With this level of arbitrary legal application, these offices could be turned against the student or the faculty member. But with this level of complexity, there are some cases in which literally nothing can be done in advance of the many deadlines that come to bear upon immigration cases.

What to Do

This doesn't mean that the information required to challenge this movement doesn't exist. On the contrary, any newspaper could feed the fodder of non- or anti-status quo thinking with the day's reported news or the constant new and powerful indictments of the government's self-proclaimed "holy war" on terror that have appeared almost

daily, from former aides, White House staffers, military personnel and others who have worked inside of the executive or legislative bureaucracies. Perhaps these are the kinds of questions we are supposed to ask and address in an academic setting distinct from the brutal capitalist world that surrounds and supports it. And sometimes we do. There is for example a growing academic body of work that describes how, in light of 9/11 or the actions of other "evil empires," our government is exacting revenge by producing scapegoats who permit the political machinery to weaken key democratic principles developed to protect all people against the abuses of government power. And indeed, the academic environ, gloriously askance of these social evils, has characteristics that can allow it to resist some of these tendencies, if the people therein are willing to live and act and think independently, creatively, and courageously. This demands their brazen use of the tenure system as a shield against conformity and dullness.

Instead, however, for many academics on the tenure track and beyond, the hallowed halls have become the harrowed corridors of dreaded confrontation with personal demons who come to haunt late night séances by turning laptop computers into endless blank pages, to be discarded not by the somewhat satisfying crush and toss, but rather by block and delete, whole days' works flushed into oblivion. There is as well the constant fear of arbitrary decisions by deans or provosts, favoritism by more powerful colleagues, *faux-pas* in front of pointy-headed administrators, grudges by the dim-witted, vendettas by the resentful, or crushes from students whose favors come to be seen as worth the gamble. This would seem to be enough to drive those fortunate enough to have survived similar plights and blights while on the path to the PhD into uncontrolled conniptions. But alas, we survive or can survive to bathe in the glow of glaring inequality between tenured and adjunct, full and assistant, those who work within the walls of ivory towers and thus receive treatment akin to what one should expect from an industrialized society in terms of psychiatric care, health care, security, pension, and respect, and, well, those who don't.

And at the end of the day, even good academic work hardly matters, because even with all that we know about this war on terror (the utterance of these words still delivers a good amount of wishful—and in some instances magical—thinking), the battle against terrorism is not reduced to symbolic ritual in lieu of pragmatic policy. When called to justify their actions, we do see the effects of nefarious academic notions, however, in the mumbo jumbo hearings by Alberto Gonzales or John Woo, the Yale Law School-trained and former Justice Department Office of Legal Counsel official, who, as Peter Brooks recently noted in the 2007 MLA forum The Humanities at Work in the World, seems to have assimilated the postmodern and deconstructionist approach very well (thank you very much), as torturing prisoners turns into a word game about what such actions means, in what utterance, at which point. But if we can teach nefarious things in nefarious ways, then presumably we can also do the opposite, and I'd like to suggest some ways in which we can improve classroom teaching by promoting diversity of thought and by encouraging people to think and act in freedom.

Teaching Different Material

One way to promote different notions in the academy, the type that will challenge the current security-minded setting, is to focus upon different writers and thinkers. In the realm of philosophy, for example, there is much discussion of Hegel, Kant, and the continental philosophers, remarkably little from the Enlightenment periods, and even less from classical liberal, libertarian, or anarchist thinkers like Bakunin, Goldman, Humboldt, Luxemburg, or Rocker. In literary and language theory, much is made of the "postmodern" work, which is mostly politically useless if not harmful, and little is done to promote more libertarian-minded writers, like Mikhail Bakhtin, who can serve as an example for what we are discussing herein. A brief foray into his writings may offer an antidote that is highly appropriate to the discussion at hand.

At the heart of Bakhtin's work is his approach to the carnivalesque in literature and in life, as well as the generally cited notions of polyphony, dialogism, heteroglossia, and, moreover, laughter, which he refers to in "Rabelais and the History of Laughter" as the "second nature of man" (*Rabelais* 75). One element that might draw you to such ideas, presumably, is that you are drawn to the idyllic, utopian, open-ended world he describes therein. I'd go further to suggest that the language he uses to describe the betwixt and the between, the carnival, dialogic narratives, or the force of heteroglossia, for example, are prescriptive glimpses of the world as it could and indeed should be. He doesn't dislike poetry because it's monologic, nor does he avoid focusing upon the dialogic novel because he isn't interested in the Tolstoyian elements he so denigrates therein. He doesn't celebrate laughter because it has been ignored as a subject in scholarly work. Rather, he does so because these are spaces in which the human organism truly lives, in all of its rich diversity—its unpredictable creativity, its total insanity, its ever-present bizarreness, its uncontrolled passion, its raucous humor, its smelly shit, its celebratory orgasm, and its life-giving cum. Endless passages prove this point, beginning with his description of language itself, which, "like the living concrete environment in which the consciousness of the verbal artist lives—is never unitary" (*The Dialogic Imagination* 288). For Bakhtin, "actual social life and historical becoming create concrete worlds, a multitude of bounded verbal-ideological and social belief systems; within these various systems (identical in the abstract) are elements of language filled with various semantic and axiological content and each with its own different sound" (*The Dialogic Imagination* 288), a description which corresponds to Angenot's formulation of the social discourse universe.

This general description extends throughout Bakhtin's corpus into specific linguistic forms such as the salient features of novelization of other genres, described in "Epic and the Novel" as follows:

> They become more free and flexible, their language renews itself by incorporating extraliterary heteroglossia and the "novelistic" layers of literary language, they become dialogized, permeated with laughter, irony, humor,

> elements of self-parody and finally—this is the most important thing—the novel inserts into these other genres an indeterminacy, a certain semantic open-endedness, a living contact with unfinished, still-evolving contemporary reality. [. . .] [A]ll these phenomena are explained by the transposition of other genres into this new and peculiar zone for structuring artistic models (a zone of contact with the present in all its open-endedness [. . .]). (*The Dialogic Imagination* 7)

The writing here is characteristically passionate, erotic nearly, overfilled and oozing, permeated and resonating with pasts and with unimaginable futures. It's for this reason that his texts are filled with the "unmediated," "interwoven," "unfolding," "vivifying," "revivifying," "evolving," "interillumination," "degradation," "renewal," "travesties," "transformation," "reversal;" in short, everything that brings renewal and brings to life fixed forms and static bodies. And of course this all culminates in the foundational text that underwrites and names his overall approach, *Rabelais and His World*, in which he suggests that the carnivalesque is the cultural manifestation of a profound inclination that is at the very heart of our nature as human beings, present in all societies and at all times, but in different forms.

The idealized terms of an unfolding, unbounded existence come in contrast to the demons he so loves to denigrate, which come in the form of words like "closed," "monotony," "prepackaged," "unchanging," "monologic," "fixed," "cold," "sacrosanct," and in passages describing the sterility of everything that is "walled off" or surrounded by an "impenetrable boundary" (17), and even that which is the result, a "deaf monoglossia" ("Epic and the Novel" 12). That this latter category is the object of Bakhtin's scorn is also evident in such passages as the following, in which he describes the epic: "We come upon it when it is already completely finished, a congealed and half-moribund genre. Its completedness, its consistency and its absolute lack of artistic naïveté bespeak its old age as a genre and its lengthy past" (*The Dialogic Imagination* 16). Or in "Rabelais and the History of Laughter," in which he recalls with evident scorn that in the Middle Ages,

> laughter was eliminated from religious cult, from feudal and state ceremonials, etiquette, and from all the genres of high speculation. An intolerant, one-sided tone of seriousness is characteristic of official medieval culture. The very contents of medieval ideology—asceticism, somber providentialism, sin, atonement, suffering, as well as the character of the feudal regime, with its oppression and intimidation—all these elements determined this tone of icy petrified seriousness. (73)

Taken together, these statements provide a remarkably coherent world view, in my opinion, one which specifically excludes any interest in closed, finished, or completed communities whatsoever, most descriptions of what we now call postmodernity, or, chronologically, poststructuralism. To care about Bakhtin's world is to be interested in a world of mixedness, diversity, movement, and open-

endedness, but not for any specific political reason or purpose and not for its own politically correct sake. But rather, because it's simply healthy for the organism, as such concern accords with its deepest nature. To extend the metaphor, that it's healthy to send your kid to daycare or into public spaces so that he can be exposed to a diversity of germs or enzymes in the environment, or that it's good to have a rich library in your home to promote the opening up of new and creative channels of thinking, or that we should protect an environment which sustains and promotes diverse wildlife around us, so too is it of obvious benefit to acknowledge, to embrace, indeed to foster maximal contact between different elements in the universe for the benefit of the organism, at all levels right up to the state. We should laugh and then panic when we see our fellow shoppers wiping down the shopping cart with an antigerm towelette after gleefully purchasing the week's worth of Hostess Twinkies, Wonder Bread, and salmonella-infested growth hormone pumped into perfectly red but tasteless tomatoes from the national tomato factory in Hellhole, Illinois, because it is an act that recalls the gleeful eradication of difference that is becoming the hallmark of contemporary corporate culture.

This approach to Bakhtin's work, which I'll take to be the obvious outgrowth of reading his oeuvre, points to a world which is at direct odds with what is being fostered and funded in the United States at virtually every level of society, including the university. Similarly, authors such as Artaud, Baudelaire, Byron, Dostoevsky, Flaubert, Genet, Ginsberg, Joyce, Miller, Nabokov, Rabelais, or Zola, who defied socially acceptable approaches to genre, form, theme, or subject and found themselves on the wrong side of laws, aimed to promote cultural conformity or some vision of what we all ought to be, or at least read. These writers offer other avenues to explore, and their work is not only provocative and anti-status quo, it's brilliant, and the texts that they have written, in many cases because they have been subject to legal challenges, have become "classics," entirely appropriate for a university classroom even of the most traditional liberal arts sort.

For classes beyond literary studies, there is, of course, the work of Noam Chomsky, which in its diversity can be included on syllabi for a remarkable range of classes. Or Seymour Melman, who first predicted and then lived long enough to watch the Pentagon act as a Soviet Union-style autocracy whose sole role is to unabashedly pour half of the U.S. federal budget into the coffers of large and increasingly unaccountable corporations. It's strange to witness this in a country which leans so heavily upon a legacy of pragmatism; one which promotes, at least discursively, an idea of fiscal responsibility and accountability that is clearly manifest in the unmovable and hard-nosed bank managers and accountants who sternly reject mitigating circumstances as grounds for relieving individual debt or personal suffering—a trend that has grown with the much-revered passage of the new and unforgiving bankruptcy laws in the U.S. under George W. Bush. Only in the U.S. could you have a "three strikes you're out" law pass and then be enforced against people who repeatedly, say, steal bread to feed their starving families. And only

in the U.S. can you have such an imbalance between what is preached on the family or local level and what is practiced further up by federal administrators, who with a straight face manage to deplete Medicare budgets in the name of fiscal responsibility even as they fund everything from $10.4 billion helicopter budgets for their head of state's personal travel to $700 billion bailouts for crooked Wall Street firms. In short, there are ways to have these discussions while not only fulfilling, but indeed exceeding, the expectations of a student body starved for ideas and forums seeking to express their own concerns.

Conclusion: The Classroom as "Safe Space"

Perhaps we need to go back to the pleasures of reading and the risks of creating, inside of and beyond the classroom, but these efforts will have to be differently conceived than in the past, because even relative to the Vietnam era or the Cold War, we ourselves have allowed for policies that have raised the stakes of engagement and creative action to a level that is for most people unaffordable, if not unfathomable.

As teachers, then, we can look back to those who have made a difference to find some inspiration and evidence for the power of daring: Antonin Artaud, Marquis de Sade, Allen Ginsberg, Antonio Gramsci, Henry Miller, or Emile Zola, examples of those whose public vilification was, to use the words of the prosecutor in the Gramsci trial, a conscious effort to stop the "Gramsci brain" from functioning for twenty years. And we have the great contemporary model of Noam Chomsky, who was once asked: "You've been called a neo-Nazi, your books have been burned, you've been called anti-Israeli—don't you get a bit upset by the ways your views are always distorted by the media and by intellectuals?" His characteristically humorous but somewhat sardonic reply?

> No, why should I? I get called anything. I'm accused of everything you can dream of: being a Communist propagandist, a Nazi propagandist, a pawn of freedom of speech, an anti-Semite, a liar, whatever you want. Actually, I think that's all a good sign. I mean, if you're a dissident, you're typically ignored. If you can't be ignored, and you can't be answered, you're vilified—that's obvious: no institution is going to help people undermine it. So I would only regard the kinds of things you're talking about as signs of progress. (qtd. in Barsky, *The Chomsky Effect* 52)

But maybe Chomsky's answer is from another era, another sign that we are in a different kind of crisis today, just as his pride in having been arrested for civil disobedience is a badge of honor that can no longer be worn in the same way as he does. Being labeled a *négationniste*, a Nazi, or an anti-Semite could very well be the kiss of death for our work, as "spook" was to Coleman Silk in Philip Roth's *The Human Stain*. And the jail time that many of us fondly invoke to prove our engagement can't be reasonably advocated to

our students at a time when a criminal record can, with one fell swoop, instead obliterate their chances for travel outside the country, for certain kinds of employment, or for credit, and when they are starting their professional lives in massive student loan debt. The examples of how this works are astonishing. If, for example, one of our students chooses to participate in an "illegal demonstration" and gets arrested, charged and sentenced, she may never have a chance to question any kinds of authority again, ever. And if while in prison doing time for the great crime of speaking out for what s/he believes in she mistakenly makes a call to a cellphone, officially barred by the arbitrariness of administrative decisions taken within the prisons, the penalty can be two years of lockdown, two years at twenty-three hours per day in an 8'x10' cell where she shits and sleeps. So although it has been possible in recent years for Stanley Aronowitz, Norman Mailer, Seymour Melman, Noam Chomsky, Edward Said, and generations of others to use university affiliations or careers like writing to protect them from the consequences of overt social critique, and though it has been okay for people like them to celebrate and recall prison time for their dissidence, it's much easier to advocate this when penalties aren't as lasting as eternity.

So how then do we change the world, alter attitudes, fight for decency; how do we get the humanities to work in the world? After a talk I recently gave about public intellectuals, one audience member suggested that convincing right-wing hawks that a course of violent action is wrong is virtually impossible for reasons that he described as biological and chemical. The only way we can truly challenge notions, he suggested, is through dramatic actions, like experiments with hallucinogenic drugs or creative amorous exchanges, of the type practiced by our much-loved and canonized poets and writers. But a productively turned-on Voltairine de Cleyre or Mary Shelley or Lord Byron or Allen Ginsberg could not function in the current security-minded setting. If they were alive today, these great "canonical" authors could not travel, they could not publish, and they would likely have zero access to a public beyond the prison cell. They probably wouldn't even be brought to a much-publicized trial that could promote their actions or spread their ideas, as was the case for previous generations of people like Timothy Leary or Jerry Rubin. And using our critical powers to deconstruct the documents that those in authority have commissioned (from our own former students, most likely), which is in fact an after-thought in an era when anything short of unrestrained action is deemed "sissy," is usually a hopeless "I told you so" action that provides legitimacy for a lost cause.

But let us at least do what we in the humanities can do, and let's delimit some safe havens for the planting of new ideas and the provoking of real ideals, within and therefore beyond the humanities. We can start by instilling our students, and ourselves, with a belief that the "future could fundamentally surpass the present," to cite Russell Jacoby in *The End of Utopia*, that "the future texture of life, work and even love might little resemble that now familiar to us," "to the idea that history contains possibilities of freedom and pleasure hardly tapped" (xii). We as teachers and students need to know how

to be free, and in that freedom stimulate the unexpected, which means that we need to rethink rigid requirements and the idea of business as usual within the "discipline"—the word is particularly apt in this context—and instead look to more promising experiments, like studying questions and catalyzing approaches thereto in whatever genre or style one might think up. This can be practiced in our classrooms if we offer our students the possibility of addressing, for example, literary questions creatively rather than programmatically. Such approaches may need practice, though. Students are afraid of doing creative work in classrooms, in part because high schools are usually factories which teach our kids how to take tests. Relatedly, universities are often considered places that award certificates to allow for social climbing, suggesting that students need to just provide what the professors want to hear, just as the professors need to produce what the tenure committee wants to read. To teach freedom to students, to get them to drop their well-honed guard, to develop in the academy a saner relation to arbitrary but brutally enforced power, we almost have to get over the problem of the outcome from the very beginning, so that students might be willing to take the risk of real thought without the concomitant risk of low grades. That's the easy one, a moratorium on consequences, teachers and students prancing in joyful embrace in fields of "A"s, because the mindset of punishment for creative resistance reinforces the fear of real resistance to spending a trillion or so dollars per year in this fake and endlessly trumped up obsession with the paper tiger's den called security. So let's create safe spaces for intellectual risks in the humanities. It's a start.

And so I would suggest a moratorium on consequences in our classrooms, because if you are living in the "real world" illegally and are deported, your return to the U.S. will cost you three years; do it with a record of any kind, and you can easily be looking at ten years. It doesn't take much. And we aren't protected from administrative regulations because we happen to be employed in the hallowed halls, particularly if we happen to be immigrants. As a permanent resident I have ten days to report a change of address; failure to do so can lead to deportation proceedings: a tiny example of our newfound lust for government-sanctioned arbitrariness, brutality, violence, and disproportionate consequences for minor actions.

But the moratorium I've described here only sets out the ground. The earth to nourish the seeds of productive resistance and unexpected creation probably needs the sodomizing psychedelic farfetched orgasmic fictional unexpected exploded gesture, the nature of which I cannot even cognize. I think that to survive this era we do need to look to explosive examples from the past, and hence the importance of recalling, rereading, and teaching *Sexus*, *La Philosophie dans le Boudoir*, *Lady Chatterley's Lover*, *Una vita violenta*, *Don Juan*. But, even more importantly, we all need to hear something we hadn't expected, and it's our task as teachers, as catalysts in an era that promotes gated communities within and beyond our own minds, to set out the spaces to make this work possible, in the hope that this malady of freedom might leak out from our classrooms and ooze its corrupting influence into our terrified worlds. I hope it's as contagious as can be.

Notes

Author note: For all citations of lawyers, public defenders, and others, I cannot provide names or other information, as asserted in the Institutional Review Board accord that is signed for this project. This applies to quotes on pp. 106, 109-13.

[1] It's worth noting here that both Obama and McCain supported the bill.

[2] For a prescient assessment of where we've been, and where we're headed, see Melman n. pag.

[3] See Welch, as well as my review thereof in *Labour/Le Travail* 61 (2008): 270-72.

[4] See for example my work on "Activist Translation" 17-48; "Methodological Issues"; and "From Discretion" 116-46.

[5] See for example "'Operation Streamline.'"

[6] See Alonso-Zaldivar n. pag.

[7] See Zielbauer. See also Herszenhorn. Prior to his June 2001 Supreme Court immigration hearing victory, St. Cyr "had been held at the Hartford Correctional Center by the Immigration and Naturalization Service since May 1999, when he completed a three-year state prison sentence for selling about $100 worth of cocaine" (Herszenhorn B7). Because of "strict federal laws enacted in 1996 regarding immigrants convicted of certain crimes, immigrants like Mr. St. Cyr faced automatic deportation without the right to seek a waiver of deportation from a federal judge" (Herszenhorn B7).

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