BEYOND/BETWEEN COLORS: DE/ CONSTRUCTING INSIDER/OUTSIDER POSITIONS IN LATCRIT THEORY

LatCrit III: *Introduction to Plenary Session Four*

ERIC K. YAMAMOTO*

INTRODUCTION TO PANEL FOUR: THE POLITICS OF THEORY IN ACTION AND POLICY[1]

In 1995, Dale Minami, a long time San Francisco civil rights attorney and teacher, said, "The progressive race theory, I've read recently is intriguing but not particularly helpful. It doesn't help us." And by "us" he meant the civil rights advocates and lawyers on the front line dealing with backlash in the courts, legislatures, city councils, state bureaucracies and businesses. By "us" he also meant those progressives seeking concepts, language and methods — practical theory — for combatting the neoconservative praxis fueling political movements against affirmative action, immigration and multiculturalism.

In May of 1998, at the LatCrit III Conference, Selina Rominy urged the congregation of law teachers, as a comparatively privileged body, to be more savvy — to "expand our power base" outside the academy. "We can't stay in the niche of law schools", she said. We need to get together and organize better. "A key piece of LatCrit should be *strategic knowledge*". Not knowledge for its own sake, but knowledge for the purpose of political strategy and collaborative social action. At the same conference, sounding a similar chord, Richard Delgado argued for an "engaged critical scholarship" — one that addresses mobilization and organization. And in delivering a conference keynote address, Maria Echaveste, special assistant to President Clinton, tied it together. She cited the crying need for progressive academics to participate actively in forming public policy.

What, more precisely, is the problem that collectively, and passion-

* Professor of Law University of Hawaii Law School.

1. Copyright 1999.

ately, engaged these speakers? Consider the following view of disjuncture in what some call "post-civil rights" America.

> In post-civil rights America progressive race theorists, political lawyers, and community activists encounter a disjuncture between race theory and lawyering practice.
> [U]nlike the close connection between neoconservative race theory and political activism, progressive race theory and political lawyering practice often seem to connect tenuously at best. Race theorists, particularly legal race theorists, and political lawyers often seem to operate in separate realms: the former in the realm of ideologies, discursive strategies, and social constructions; the latter in the realm of civil rights statutes, restrictive doctrinal court rulings, messy client management, discovery burdens, and politically conservative judges; the former in the ethereal realm of postmodern critiques of knowledge and power, the latter in traditional civil rights rhetoric and strategies.[2]

The LatCrti III Conference's plenary session on *The Politics of Theory in Action and Policy: LatCrit Lessons and Challenges* addressed this question of disjuncture. The session's program description provides a glimpse. It first acknowledged that the "relationship of theory to reality is a perennial, but increasingly pressing, concern of outsider legal scholars who today work amidst backlash." It then set the specific context for the session.

> The question arises in various forms: in the emphasis on practice; the call to translate theory into social and political action; the effort to connect outsider jurisprudence to teaching, to practice and to doctrine; and the insistence on material transformation. Most recently the application of theory to public policy making has also drawn LatCrit attention.

The following essays, by Guadalupe Luna, Cheryl Little, Lyra Logan and Virginia Coto, in widely varying ways, take on this task of translating theory into "strategic action." Through four case studies, the essays recount the pain, passion and practical politics of multiracial justice struggles. The first reaches back historically to pre-Civil War questions of citizenship for African Americans and Mexicans in America and offers emerging insights about comparative socio-legal treatment of racialized groups as a present-day foundation for progressive coalition-building. The second, at the regional level, concerns South Florida's reaction, along with the federal government, to the Haitian immigration "crisis" throughout the 1990s. The third, at the state level, is about Florida's state-funded affirmative action scholarship program designed to

2. Eric K. Yamamoto, *Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-Civil Rights America*, 95 MICH. L. REV. 821, 830-33 (1997).

increase the numbers of African Americans, Latinas/os and other minorities underrepresented in the bar. The fourth, at the local level, desribes an innovative legal organization addressing domestic violence and immigrant women.

These case studies are signficant because they provide ground-level insight into the dynamics, and possibilities and difficulties, of coalitional legal and political action across racial, gender, class and citizenship lines. They open opportunities for simultaneous theory building and theory using. Together, they also offer a comparative assessment of differing praxis methodologies.

Most intriguing, each of these studies employs a different methodology for illuminating "strategic knowledge." Guadalupe Luna's essay employs a methodology that might be called "comparative racialization" to explore, in a particular historical period, the complex dynamics of white supremacist legal ideology. An authority on land issues associated with the Treaty of Guadalupe Hidalgo, Luna turns her analytical lens on a comparison of the historically contemporaneous events that led to the denial of citizenship for African Americans in the Dred Scott case and to the awarding of partial citizenship for Chicanas/os pursuant to the Treaty. In *On the Complexities of Race: The Treaty of Guadalupe Hidalgo and Dred Scott*, Luna examines the political-legal history of this period and exposes insightfully the complex ways that law forms, and sometimes deforms, racialized identities and intergroup relations, whether through the courts' interpretation of miscegenation laws, their resolution of land disputes or congressional legislation mocking the language of a treaty.

From this grounded comparative racialization inquiry, with its compelling focus on the effects of law and legal process, Luna offers a preliminary LatCrit "lens . . . for connecting anti-subordination struggles . . . and cultivating intellectual community and progressive coalitions — reinvigorating in new context this fundamental tenet of internal colonialism theory."[3]

Litigator Cheryl Little's account of "Immigration Politics: The Haitian Experience in Florida" is a straightforward, compelling historical and legal account of the federal government's and South Florida communities' treatment of "refugees from Haiti, the world's first Black Republic, [who] have been singled out for special discriminatory treatment and [for whom] the fundamental principles of refugee protection [have been] abandoned time and again." The account traces Haitian persecution from 1963 through the 1980s Haitian immigrant liitigation and

3. ROBERT BLAUNER, INTERNAL COLONIALISM (1973).

the 1990s harsh INS repatriation policies. It also compares Haitian experiences with the more-favorable legal treatment of lighter-skinned Cuban immigrants leaving communist Cuba.

Perhaps most important, it identifies a small but significant "silver lining" in the United States' stormy treatment of the Haitian immigrants — the forging of new alliances across ethnic and citizenship boundaries. "Nicaraguans, Cubans, African Americans, Republicans and Democrats alike in South Florida have raised their voices on behalf of the Haitians. Groups that seldom, if ever, communicated before in any meaningful way. . .are now doing so. . . .Moreover, Haitians and their advocates are calling for equal treatment for the Guatemalans, Salvadorans, Hondurans and others."

What Little's powerful, detailed account of the Haitian immigrant legal experience does not do is offer a framework for interpretation and translation. It does not draw explicitly from critical theories of immigrant identity and political-legal treatment or from emerging human rights literature examining linkages between race and citizenship.[4] Nor does it endeavor to tease out larger conceptual insights from the factual description. In short, Little's methodological approach is to tell the story, and tell it well, and leave the theorizing — and translation work for strategic action — to the reader.

By contrast, attorney-administrator Lyra Logan describes the intricate African American and Latina/o coalitional politics involved in establishing Florida's statewide Minority Participation and Legal Education Scholarship Fund. She draws from those messy political struggles several coalition-building principles for multiracial, demographically-shifting areas "still. . .very much a part of the Deep South." Logan tells the story of the state's closure of the historically Black Florida A & M University Law School and its reincarnation in the largely white University of Florida Law School — one effect of that closure-reincarnation was to exacerbate the already stark underepresentation of African Americans in the bar.

Logan also tells the story of the initial divergence in the political responses of Black and Latina/o groups — with African Americans favoring reopening a law school at Florida A & M and Latinas/os favoring opening a law school at the largely Latina/o-populated Florida International University. Finally, Logan describes Black and Latina/o coalitional efforts forged from two real-politik acknowledgments: that separate strategies meant defeat for both and that, as a Florida Supreme Court commission found, without some concrete ameliorative action

4. *See* Kevin Johnson, *The Magic Mirror*, 73 IND. L. REV. 1111 (1998).

"the critical shortage of minority law students, attorneys and judges [would continue to be] a major impediment to the fair dispensation of justice to [all] minorities in Florida." From these acknowledgments emerged collaborative political efforts among African Americans, Latina/os (both liberal and conservative) and liberal whites, efforts culminating in the legislature's creation of the Minority Scholarship Program.

From this lucid account, within the deeper backdrop of the early 1990s multiracial Miami riots, Logan offers general insights about the importance of the search for common ground and the necessary linkage of politics to law and, conversely, about the dangers to fragile coalitions of diverging group interests and continually shifting political terrain. While these prescriptions and caveats are not new, when grounded in the particulars of the dynamic political and legal struggles underlying the Minority Scholarship Program, they are poignantly made. This methodology — telling a multilayered story and teasing out theoretical insights — works here to underscore afresh strategic knowledge about coalition building and maintenance in an intensely mixed racial setting.

The methodolgy informing Virgina Coto's account of "LUCHA — The Struggle for Life: Legal Services for Battered Women" is the most complex and, ultimately, the most illuminating of the four case studies. The organization described by Coto, "LUCHA: A Women's Legal Project (Florida Immigrant Advocacy Center)," itself employed theoretical critiques of law, social justice and the material and emotional well-being of battered immigrant women in shaping, creating and maintaining its legal project. The group's organizers drew upon theoretical insights about the limitations of law and legal process, about the difficulties of obtaining social justice for non-citizen/non-white/non-male/non-English speaking and sometimes undocumented immigrant women of color, and about the limited purchase of the traditional legal services model in the domestic violence context. The organizers therefore shaped the project around principles of education, personal empowerment, assistance of others and community-building — Coto aptly details the specifics of this innovative effort to engage immigrant women in the process of dealing with a serious personal and social problem in a largely alienating legal system.

In addition to the details, Coto's account explicitly develops new strategic knowledge — and this is her account's great strength. It first describes the underlying theoretical insights that were translated into the LUCHA program of social action. It then engages in a preliminary critique of the program's first year of operation and the utility of the theories informing it. Thus in Coto's essay we have two levels of theory

operating — insights guiding the formation of the organization and concepts for critiquing its operation — both wrapped around immensely engaging particulars. In doing this, Coto offers us a powerful view not only of battered immigrant women and the law, but also of the real-world linkage of theory and social action.

The four essays just described — which center Latina/o experience in statewide, regional and local legal politics — are thus significant not only for the compelling particulars they describe. They are also significant because their accounts and the methodologies they employ contribute to an emerging crucible of LatCrit theory — the politics of theory in action and policy. In the 1997 Harvard Latino Law Review symposium on LatCrit theory, four essays explicitly laid the foundation for a developing LatCrit praxis. George Martinez stressed the importance of "legal self-definition" for contemporary litigators representing Mexican Americans);[5] Enrique Carrasco challenged LatCrit scholars to "use theory and criticism to ignite a progressive consciousness between ourselves and 'organic intellectuals' in our communities";[6] Laura Padilla argued for making praxis, rooted in communities, an integral part of antisubordination scholarship and teaching;[7] and Margaret Montoya connected activist teaching and scholarship (in clinics and beyond) and suggesting that this activism concretely "focus on the needs of Latinas/os."[8]

In 1998, that kind of praxis theorizing translated into concrete action on the streets during the nation's law school's annual meeting (American Association of Law Schools). The Society of American Law Teachers' action campaign against the implementation of California's anti-affirmative action Proposition 209 culminated in a 1,000 law professor and supporters march and protest rally in downtown San Francisco. The "theory-in-action" materials for the campaign — in terms of both coalition-organizing and substantive positions — were generated in principal part by LatCrit scholars, including Frank Valdes, Lisa Iglesias, Margaret Montoya and Sumi Cho. The campaign's organizational chart, appended to this essay, illustrates the need for continuing commitment to a legal praxis that addresses needs of communities of color in concrete ways.

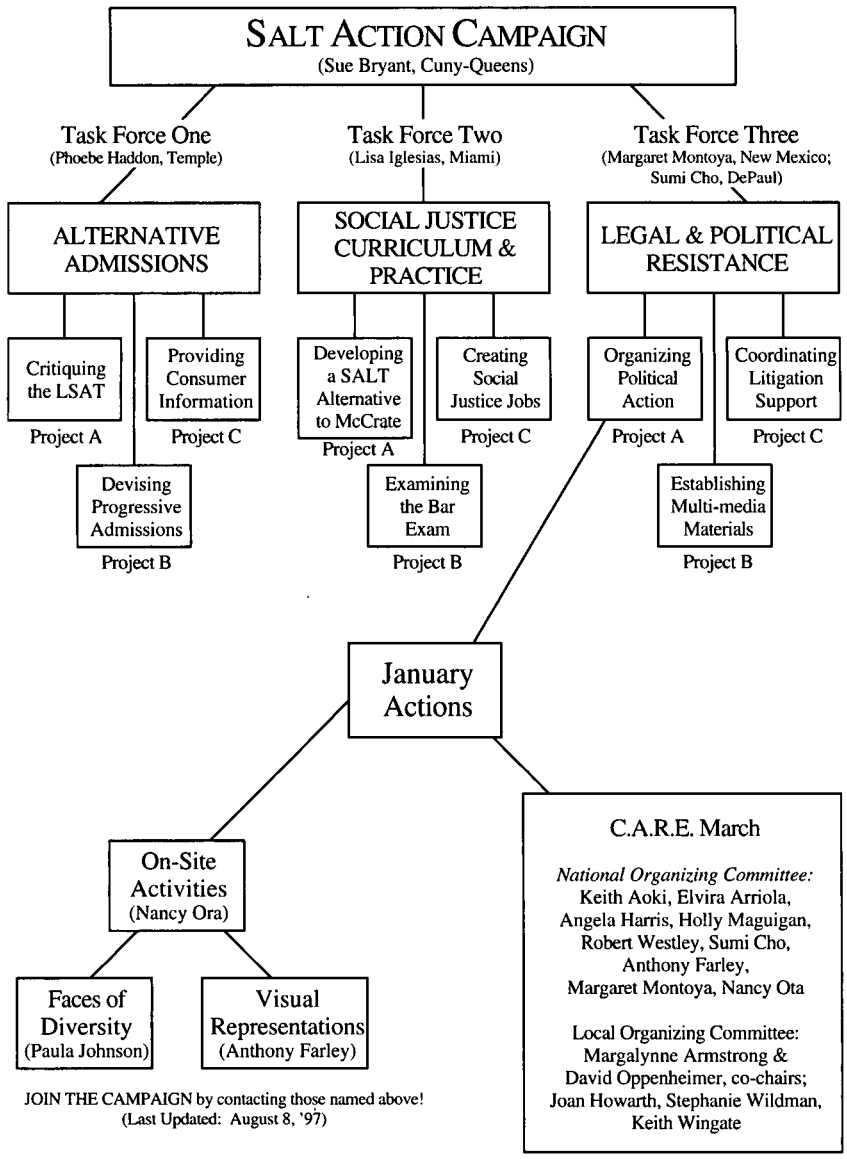
---

5. George Martinez, *The Legal Construction of Race: Mexican Americans and Whiteness*, 3 HARV. LATINO L. REV. 321 (1997).

6. Enrique Carrasco, *Introduction to Panel Three: Intellectuals, Awkwardness, and Activism: Toward Social Justice Via Progressive Instability*, 3 HARV. LATINO L. REV. 317 (1997).

7. *See* Laura M. Padilla, *LatCrit Praxis to Heal Fractured Communities*, 3 HARV. LATINO L. REV. 375 (1997).

8. Margaret E. Montoya, *Academic Mestizaje: Reproducing Clinical Teaching and Re/framing Wills As Latina Praxis*, 3 HARV. LATINO L. REV. 349, 351 (1997).


SALT ACTION CAMPAIGN
(Sue Bryant, Cuny-Queens)
Task Force One
(Phoebe Haddon, Temple)
Task Force Two
(Lisa Iglesias, Miami)
Task Force Three
(Margaret Montoya, New Mexico; Sumi Cho, DePaul)
ALTERNATIVE ADMISSIONS
SOCIAL JUSTICE CURRICULUM & PRACTICE
LEGAL & POLITICAL RESISTANCE
Critiquing the LSAT
Project A
Providing Consumer Information
Project C
Developing a SALT Alternative to McCrate
Project A
Creating Social Justice Jobs
Project C
Organizing Political Action
Project A
Coordinating Litigation Support
Project C
Devising Progressive Admissions
Project B
Examining the Bar Exam
Project B
Establishing Multi-media Materials
Project B
January Actions
On-Site Activities
(Nancy Ora)
Faces of Diversity
(Paula Johnson)
Visual Representations
(Anthony Farley)
JOIN THE CAMPAIGN by contacting those named above!
(Last Updated: August 8, '97)
C.A.R.E. March
National Organizing Committee:
Keith Aoki, Elvira Arriola, Angela Harris, Holly Maguigan, Robert Westley, Sumi Cho, Anthony Farley, Margaret Montoya, Nancy Ota
Local Organizing Committee:
Margalynne Armstrong & David Oppenheimer, co-chairs; Joan Howarth, Stephanie Wildman, Keith Wingate