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POWER, PEDAGOGY, & PRAXIS: MOVING THE CLASSROOM TO ACTION

INTRODUCTION TO THE SALT CONFERENCE

*Sumi Cho**

Historically, SALT¹ Teaching Conferences have charted new substantive ground by modeling treatments of race, gender, sexuality, class, and disability that could be used throughout the law school curriculum. The conferences have also showcased innovative teaching styles, formats, and exercises, that challenge formal distinctions between clinical and traditional law pedagogies.² At this year's conference, hosted by the Loyola Law School of Los Angeles,³ we seek to continue providing cutting edge approaches to law teaching by focusing on ways of extending our teaching beyond the classroom and into the area of political engagement.

Toward this end, the conference attempts to reconfigure the pedagogical by placing the "classroom" more consciously and directly into relationship with external power arrangements and community activism. We believe that the conditions of "teaching to transform" have changed dramatically in the past five years, in the

* Associate Professor, DePaul University College of Law since 1998; Ph.D. and J.D., University of California, Berkeley (1992, 1990). I thank Gil Gott and Jane Dolkart for their editorial assistance, Amy Kastely for her description of the second plenary, and my conference co-coordinators: Elvia Ariola, Karen Czapanskiy, Jane Dolkart, Amy Kastely, Lisa Ikemoto, and Robert Westley. All requests for republication of excerpts from this article or of this article in full for use in formally published course books, textbooks, and treatises should be addressed to the author.

1. Society of American Law Teachers.

2. See Jane Dolkart, *SALT Teaching Conference: Reconceiving Legal Pedagogy: Diversity in the Classroom, Clinic, Theory and Practice*, Sept. 26-27, 1997, in *THE SALT EQUALIZER* 1, 9 (Sept. 1997).

3. Hosted on October 15-17, 1998.

era of *Adarand*⁴ and the Fifth Circuit's *Hopwood*⁵ decision, Propositions 187⁶ and 209⁷ in California, the Welfare-to-Work⁸ and Defense of Marriage Acts,⁹ and Solomon II.¹⁰ Progressive law teachers cannot ignore how the intensified cultural climate and shifting power dynamics have impacted our classrooms. Regressive tropes of "welfare queens," "reverse discrimination," "no special rights," "political correctness," and "illegal immigrants" permeate classroom discussions, thereby normalizing subordination and too often silencing students who feel hypervisible in such classroom settings. We need to question whether the standard liberal response of promoting and enabling this discourse for fear of curbing debate represents a moral

4. *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995).

5. *Hopwood v. Texas*, 84 F.3d 720 (5th Cir. 1996).

6. Proposition 187 intended to curtail illegal immigration by making illegal aliens ineligible for public education, public social services, and public health care services. Proposition 187, *in* CALIFORNIA BALLOT PAMPHLET, GENERAL ELECTION 30-33 (Nov. 8, 1994) (codified at CAL. PENAL CODE §§ 113, 114, 834(b) (West Supp. 1999); CAL. WELF. & INST. CODE § 10001.5 (West Supp. 1999); CAL. HEALTH & SAFETY CODE § 130 (West Supp. 1999); CAL. EDUC. CODE §§ 48215, 66010.8 (West Supp. 1999); CAL. GOV'T CODE § 53069.65) (West Supp. 1999).

7. Proposition 209 eliminated affirmative action by banning preferences in public employment, education, or public contracting on the basis of race, sex, color, ethnic or national origin. Proposition 209, *in* CALIFORNIA BALLOT PAMPHLET, GENERAL ELECTION 30-33 (Nov. 5, 1996) (enacted as CAL. CONST. art. I, § 31).

8. I.R.C. § 51 (1998) (enacted to assist persons hired among a group that has a high unemployment rate or another special employment need).

9. 28 U.S.C. § 1738C (1998) (providing that no state shall be required to give effect to any public act, record, or judicial proceeding of any other state respecting a relationship between persons of the same sex that is treated as a marriage under the laws of that other State, or a right or claim arising from such relationship).

10. Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, § 514(b), 110 Stat. 3009, 3009-271 (1996). The first Solomon Amendment, now dubbed Solomon I, sought to cut off defense research contracts and grants and defense loans and grants to institutions that restricted military recruiting. *See* National Defense Authorization Act for Fiscal Year 1995, Pub. L. No. 103-337, § 558, 108 Stat. 2663, 2776 (1994). Because few law schools receive such funds, the amendment had little practical effect. By extending the threats to cut-off funding for federally funded financial aid programs, the revised Solomon Amendment, Solomon II, could affect nearly ninety percent of American law schools. Omnibus Consolidated Appropriations Act, § 514(b).

collapse and political default that further dispossesses those students most marginalized by the recent political retrenchments.

This year's teaching conference will focus on ways to integrate pedagogy, theoretical critique, and political engagement into an "action pedagogy" in three substantive plenary sessions, a media training session, a keynote address, and the series of small group subject area discussions that form the core of the weekend's critical pedagogy project.

Following Professor Czapanskiy's opening remarks,¹¹ the first plenary will undertake a sober assessment of the external threats to progressive law teaching such as national and state legislation, court decisions, political culture, and media consolidation.¹² We will reveal the current "big" and "little murders" occurring at law schools with alarming frequency with respect to hiring, promotion, and tenuring trends; conservative coups to overthrow "diversity" deans; resentful and arrogant challenges by students to the authority of transgressive teachers, particularly professors of color, women and gay, lesbian, bisexual and transgendered faculty; the entrenchment of the ideology of meritocracy as a rationale to exclude; the reassertion of the "objectivity versus advocacy" distinction in scholarship; the coincidence of the entrance of outsider academics to law teaching with the calls for increased standards for tenure and discussions to abolish tenure. The first panel will then examine the role of intellectuals in the era of neosegregation.

The second plenary will present three different experiences reflecting the integration of social justice projects into traditional law school classes.¹³ Professors Barbara Bezdek and Glenn Omatsu address three questions: (1) How can a teacher engage students in progressive projects as a part of substantive law school courses? (2) What are the opportunities for progressive teaching created by such projects and what are the risks? (3) How can praxis-oriented law

11. See Karen Czapanskiy, *Opening Remarks from the SALT Teaching Conference*, 32 LOY. L.A. L. REV. 703 (1999).

12. The first plenary speakers are Professors of Law Joel Handler and Catherine Wells, and law student and sociology doctoral candidate Kaaryn Gustafson. The moderator is Professor of Law Sumi Cho.

13. The second plenary speakers are Professors of Law Elvia Arriola and Barbara Bezdek, Professor of Asian American Studies Glenn Omatsu, and law student Angela Liang. The moderator is Professor of Law Amy Kastely.

school courses challenge both the usual detachment of legal education from the notion and promotion of community well-being and lawyers' usual nonresistance to—if not complicity in—systems of power?¹⁴

To help envision how to formulate and implement such social justice projects in our classes, a series of concurrent teaching demonstrations in a range of subject areas will follow the second plenary. Law teachers who have integrated social justice projects into their substantive classes will share their projects' objectives, theoretical and conceptual underpinnings, and the rewards and challenges involved in developing such pedagogy.¹⁵ Among these demonstrations, Professor Cynthia Grant Bowman and public interest lawyer Eden Kusmiersky will present their creative work on domestic violence and clemency petitions in the form of a six-act play.¹⁶ And Professor Enrique Carrasco will explain his e-book on international finance and development. Kristen Berg, a law student and doctoral candidate in Education, will assist Professor Carrasco in demonstrating how they use this technology for a transnational teach-in that promotes community-based social justice on a global scale.¹⁷

Immediately following the demonstrations, we will break into small discussion groups to plan one class that integrates a social justice project within substantive areas of law, including: Constitutional law, torts, contracts, property, civil procedures, criminal law, environmental law, employment discrimination, international law, immigration law, professional responsibility, family law, and feminist

14. See Barbara L. Bezdek, *Reflections on the Practice of a Theory: Law, Teaching, and Social Change*, 32 LOY. L.A. L. REV. 707 (1999); Glenn Omatsu, *Teaching for Social Change: Learning how to Afflict the Comfortable and Comfort the Afflicted*, 32 LOY. L.A. L. REV. 791 (1999).

15. The group demonstration speakers are: Professors of Law Fran Ansley, Margalynne Armstrong, Frank Askin, Cynthia Grant Bowman, Raymond Brescia, Enrique Carrasco, Karen Czapanskiy, Cecelia Espenoza, Grover Hankins, Marina Hsieh, Sherrilyn Ifill, Chris Littleton, Nadine Taub, Attorney Eden Kusmiersky and law student Kristen Berg.

16. See Cynthia Grant Bowman and Eden Kusmiersky, *Praxis and Pedagogy: Domestic Violence*, 32 LOY. L.A. L. REV. 719 (1999).

17. See Enrique R. Carrasco and Kristen J. Berg, *Praxis-Oriented Pedagogy: The E-Book on International Finance and Development*, 32 LOY. L.A. L. REV. 733 (1999).

jurisprudence.¹⁸ Professor Deseriee Kennedy provides a glimpse into the intense work of these small groups on the topic of civil procedure.¹⁹

We will meet in three taskforces, throughout the conference, to continue the work of SALT's multi-year Action Campaign to Reconstruct Merit. Taskforce One on Alternative Admissions, Taskforce Two on Social Justice Curriculum and Practice, and Taskforce Three on Legal and Political Resistance, address the conference theme by providing an organized way to address external structures as a collective group of committed law teachers. Together, we will mount a critique of standardized testing from the LSAT to the bar exam, devise progressive admissions criteria, reconceptualize law school curriculum, organize strategic interventions to support affirmative action, coordinate support for litigation, and establish multimedia materials. The conference will provide a special session of media training by a public relations firm to assist us with the goal of bringing our message to the media.²⁰

We will close with a synthesis of conference themes and conclusions about negotiating power, praxis pedagogy and SALT's Action campaign. The third plenary will articulate future-oriented conclusions based upon our plenary and small group work during the conference.²¹ We will consider how we structure individual and collaborative efforts to develop a power-sensitive teaching method that embraces student-community activism. The last session's facilitators will identify the personal and collective commitments necessary to

18. The small group discussion leaders are: Professors of Law Jody Armour, Bob Benson, Barbara Bezdek, Bob Chang, Donna Coker, Anthony Farley, Eileen Gauna, Theresa Glennon, Neil Gotanda, Dennis Greene, Sharon Hom, Joan Howarth, Suzanne Jackson, Paula Johnson, Deseriee Kennedy, Jane Larson, Cynthia Lee, Guadelupe Luna, Deborah Maranville, Nell Newton, David Oppenheimer, Bernida Reagan, Raul Sanchez, Winona Tanaka and Eric Wright.

19. See Deseriee A. Kennedy, *Witnessing the Process: Reflections on Civil Procedure, Power, Pedagogy, and Praxis*, 32 LOY. L.A. L. REV. 753 (1999).

20. Facilitated by media specialist Leila McDowell of McKinney & McDowell.

21. The third plenary speakers are SALT Presidents and Professors of Law Phoebe Haddon and Stephanie Wildman, and law student and counter Prop 209 organizer Andrea Guerrero. The moderator is Professor of Law Robert Westley.

carry out such an agenda and summarize how law professors can teach to transform and transform to teach.

One highlight of the conference will be a keynote address by Eric Mann, Executive Director of the Labor and Community Strategy Center, a multiracial think tank.²² Mr. Mann, who is trained as a lawyer and community organizer, will share with SALT his work on the Los Angeles Bus Riders' Union and the "No Seat/No Fare" campaign. He will critically examine the relationship between lawyers and community activists in that movement. Based upon this case study and other grassroots movements, Mr. Mann will provide both inspirational and cautionary tales about merging progressive lawyering, critical pedagogy, and community involvement.

The conference takes a serious look at how conservative political and cultural forces have impacted legal education since the height of the movement for diversity in higher education around 1990. As the largest membership organization of law professors in the United States, SALT is well positioned to counter the conservative shift both inside and outside of the classroom. The plenary sessions, small group work, demonstrations, keynote address, and Action Campaign meetings strive to link local micro-aggressions to macro-oppressions, culture to structure, and to suggest ways of reconceiving our work and resistance under these contemporary conditions.

22. See Eric Mann, *Radical Social Movements and the Responsibility of Progressive Intellectuals*, 32 LOY. L.A. L. REV. 761 (1999).