Law & Society REVIEW

Looking and Seeing, Meanwhile

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Laura Gómez's meditation on race invites us to think again about where we have been and where we are headed—as a professional association, as an intellectual community, and as individual scholars. Reading these pages brings back the exhilaration of the event: the sense of hearing said something that needed saying, that was possible to say without misunderstanding. The implicit "now" in that understanding reminds us how short the history of that possibility is. The personal and analytical generosity of President Gómez's address is integral to the force of its rendering visible a constitutive "we"—inclusive and yet still partially concealed to itself by virtue of the unintended consequences of standard disciplinary practices.

If we were looking for race, how could we mistake its absence for presence? And in that absence, what else were we not seeing? How did race come to be submerged or hidden, even as we were "looking for it" and perhaps even thought we were studying "it"? The nineties were yesterday, and yet another world. What kind of meanwhile was this?

Meanwhile: Identity

The 1990 annual meeting was held on the theme of identity. At the time, this was a relatively new theme for LSA, drawn onto the list of keywords from new scholarship on social movements. Identity was not a euphemism for race; it was an alliance across race, class, gender, and ethnicity. No one could have foreseen how pervasive the term would become, but its critical edge was in plain sight, sharpening as rights movements suffered significant setbacks

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during the George H. W. Bush and Clinton administrations. Scholars and activists, meanwhile, held on to rights movements from their existential and experiential side, outside the state.

Over the course of the 1990s, the critical valence of identity was shaped in part by major bipartisan "reforms"—softening antidiscrimination rights in the employment context (the Civil Rights Act of 1991), terminating key welfare entitlements (the Welfare Reform Act of 1996), and toughening immigration law with strong criminalization and deportation provisions (IIRAIRA). The national partisan debates on these issues were intense—conservative rights critics playing prominently on "identity politics" as reverse racism and, more fundamentally, as a drag on enterprise. In that context, the currency of the keyword *identity* in sociolegal studies and related disciplines signaled resistance to the political mainstreaming of those negative associations, particularly with regard to race. The term spoke to law's hegemony, but not to legal institutions as such.

In the United States, neoliberalism's mainstreaming took place mainly through national electoral platforms keyed to these same debates. In debates over civil rights, for example, congressional proponents of raising the bar for legal remedies consistently tied rights to reverse discrimination on the grounds that employers would adopt quotas to avoid litigation. Productivity and consumption became the new norms of citizenship. Taxpayers became the new public, and shareholder value became the new idiom of rights. Welfare reform was tied to the defense of marriage, and immigration reform was cast as a defense of the American middle class. These debates contributed to normalizing and popularizing neoliberalism—playing heavily on an older discourse of moral economy, racializing that discourse as a strategy for rallying the public against "burdening" national economic security with the costs of litigation and entitlements.[1]

Meanwhile: Structure and Agency

The relevance of this observation is not limited to discourse and rhetoric. These legislative movements reconfigured the forms of political community most closely associated with classic law and society scholarship—distancing rights movements from law's new means and ends, and "social inquiry" from "empiricism and . . . its commitment to value freedom" (Ewick 2001: 21). This was a multidimensional, multiscalar shift: the very distinctions between the public and private sectors, between law and politics, and between

[1] Following President Gómez's lead, I have reviewed the contents of *Law & Society Review* from the 1990s. This section draws on Greenhouse (2010, 2011).

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law and markets (among other things) changed *through* race. While we were looking for race in all the wrong places as we followed the law in its flight from the Great Society, some of the "right" places might have included these political locations where structure and subjectivity were in the process of being wound around each other (in theory and practice) in new ways before our very eyes.

Looking back at the *Law & Society Review* from the nineties, as Laura Gómez has also done, numerous articles register the effects of law on social groups (notably women), but largely as the unintended effects of impersonal institutions (see Engel 1990: esp. 333–336). Stabilizing law within a conventional distinction between structure and agency made it difficult to capture the politicization of law that was sharply central to the repositioning of race ongoing at the time. Gender appears to have been the "category" more visible to sociolegal scholarship, even if its theoretical and experiential instability was registered mainly as a methodological "choice" (Menkel-Meadow & Diamond 1991: 223–224).

Meanwhile: The United States

The political installation of neoliberalism did not proceed in the same way everywhere. The thumbnail narrative above tells a story about the United States Congress and national electoral platforms. There are many other stories to tell, at home and abroad. Most *LSR* articles of the 1990s deal with formal institutions in the United States at the state and national levels. U.S. experience is significant to the global story, but the identity implications of neoliberalism are everywhere different, depending on what came before, the interplay of interests, and how the policy mandate was accomplished, among other things. Neoliberalism as such was never a grassroots movement; its politicization in the United States and elsewhere played on the rhetoric of various anti-immigrant, nationalist, probusiness, and antigovernment movements in various combinations.

These dynamics are clearer when viewed transnationally and comparatively, but the transnationalization of law and society scholarship was still ahead of us in the early 1990s. In 1990, when President Gómez's story line begins, there was a growing international presence, but CRNs had not yet been invented, and LSA had not yet held its first international meeting. The first issue of *LSR* to include a majority of international authors did so in the name of improving context contingency in sociolegal studies (Diamond 1990: 647). A few years later, the special issue on law in Southeast Asia gave explicit emphasis to the potentially transformative effect of comparison on the idea of law itself (Lev 1994: 415). In that same comparative spirit, recognizing the Americanness of the imbrica-

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tion of race, federal power, and neoliberal reform would make race inescapable as an analytic central to sociolegal studies—at the same time resisting its universalizing essentialism and illuminating other "categories" (revealing race and gender, for example, to be neither unrelated nor mutually substitutable). With such openings, law's entwinement in (and *as*) transnational fields also became visible—notably through labor, movement across borders, social mobility, and security.

Looking back over the *LSR* of the nineties, we were focused mainly on the present-day United States—though with important exceptions dedicated to international scholarship. Paradoxically, perhaps, this made the specificities of U.S. experience difficult to see, past *or* present, particularly under an elision of globalization and Americanization. To be sure, no one journal—not even our cherished *LSR*—can yield access to an entire field.[2] But the analytical zones where race-as-variable (see Gómez, these pages) was called into question and contestation were easily caught out by the lines that divided disciplines, methodologies, and modernities from their varied posts (Santos 1995).

And Still . . .

On that June afternoon in San Francisco, Laura Gómez guided us along a terrain where we could see we'd been "looking for race in all the wrong places." I found myself caught by her generous premise: that the absence of race should be ascribed not to indifference, but to literally mistaken (mis-taken) relations. Some of those mis-takes (including my own) were endemic to the times, as the prevailing politics of law in the land involved a calculated inversion of subject for object, contingency for condition, specifics for a general state of affairs, implication for inclusion—sweeping up and away the ground under LSA's foundational commitment to studying law through social science as way of advancing equality (see Garth & Sterling 1998).

The arc of Laura Gómez's message encompasses that rough decade through the lenses of membership and methods, and relates these as evidence of another accounting to be made. She argues convincingly that paying more attention to race means paying attention in new ways (emphatically plural)—recognizing that race is not one topic among others, but an analytic at the core of sociolegal studies understood as a comparative and transnational field. Her formulation of race as constitution is a far-reaching challenge to

[2] See themed sections of *LSR* devoted to the scope and state of sociolegal scholarship in 1995 (29(4)), 1998 (32(2)), 2001 (35(1)), as well as presidential addresses over the years.

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think afresh about the fundamental interpretive demands of our field. She offers a vision of novel collaborative engagements that would broaden the theoretical and methodological diversity of inquiry. The excitement of that lunch hour in San Francisco did not end with the standing ovation. There was a palpable sense of shared stakes and possibility—a possibility of learning in new ways from a past that is both over and not over, and of building on foundations that are both our own and not our own.

References

Diamond, Shari Seidman (1990) "From the Editor," 24 *Law & Society Rev.* 647–650.

Engel, David M. (1990) "Litigation across Space and Time: Courts, Conflict, and Social Change," 24 *Law & Society Rev.* 333–344.

Ewick, Patricia (2001) "Mending Fences: Beyond the Epistemological Dilemma," 35 *Law & Society Rev.* 21–24.

Garth, Bryant, & Joyce Sterling (1998) "From Legal Realism to Law and Society: Reshaping Law for the Last Stages of the Social Activist State," 32 *Law & Society Rev.* 409–471.

Greenhouse, Carol J., ed. (2010) *Ethnographies of Neoliberalism*. Philadelphia: Univ. of Pennsylvania Press.

——— (2011) *The Paradox of Relevance: Ethnography and Citizenship in the United States*. Philadelphia: Univ. of Pennsylvania Press.

Lev, Daniel S. (1994) "Foreword. Law & Society in Southeast Asia," 28 *Law & Society Rev.* 413–415.

Menkel-Meadow, Carrie, & Shari Seidman Diamond (1991) "The Content, Method, and Epistemology of Gender in Sociolegal Studies,"25 *Law & Society Rev.* 221–238.

Santos, Boaventura de Sousa (1995) "Three Metaphors for a New Conception of Law: The Frontier, the Baroque and the South," 29 *Law & Society Rev.* 569–584.

Public Laws Cited

Civil Rights Act of 1991, P.L. 102-166, 42 USC 1988.

Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) of 1996, P. L. 104-208, Div. 3; 110 Stat 3009-546.

Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA or "Welfare Reform Act") of 1996, P.L. 104-193; 110 Stat. 2105.