

LOOKING UPWARD AND INWARD: RELIGION AND CRITICAL THEORY

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La vida es duda,
y la fe sin la duda es sólo muerte.¹

Several years ago, I somehow “fell into” writing about religion and the First Amendment. I was intrigued, for several reasons, by a case then in a Florida district court.² The case was unusual in a number of respects. It was perhaps the first time in this country that a babalawo (very loosely translated, a priest) in the Santería religion was attempting to set up a formal place of worship and ritual, which would include the sacrifice of animals. What was also unusual was that the babalawo, Ernesto Pichardo, had gone public with his intentions to establish such a place. Santería, for various historical reasons, has long been “underground.” Many people are aware of it, but it has not, until recently, intentionally gone public. As a Latina growing up in New York City, I was familiar with Santería. *Botánicas*³ were all over my neighborhood, and even people who were not formally initiated into Santería would often have Santería-related objects in their homes or engage in some practice that derived from that belief system. Having some familiarity with the religion, and knowing its general reputation for being, minimally, very private, I was surprised and amazed by Pichardo’s stated intentions. I wondered about his motives and worried about the possible repercussions for him, his plans, and for practitioners around the country. There were many reasons to fear that Pichardo’s attempt to bring Santería public would stir up profound feelings and antipa-

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1. “Life is doubt, and faith without doubt is only death.” HOWARD T. YOUNG, *THE VICTORIOUS EXPRESSION: A STUDY OF FOUR CONTEMPORARY SPANISH POETS — MIGUEL DE UNAMUNO, ANTONIO MACHADO, JUAN RAMÓN JIMÉNEZ, FEDERICO GARCÍA LORCA* 20 (1964) (citing a poem by Miguel de Unamuno).

2. *Church of Lukumi Babalú-Ayé v. City of Hialeah*, 508 U.S. 520 (1993).

3. A *botánica* is a store which sells various herbs, liquids, etc., that are often used in Santería rituals.

thies,⁴ and indeed, that was exactly what happened in Hialeah and elsewhere.⁵

After seeing Pichardo on a Spanish television news show, I became convinced that he was a man of good intentions and was trying to dispel many of the negative stereotypes that had developed about Santería. It was against this backdrop that I was drawn into writing about religion, but only as it specifically related to what have typically been designated "minority" religions. This is an interesting term that usually has two meanings. The first is meant to refer to religions that are, at least in the United States, numerical minorities in terms of adherents. The second, though, refers to those religious beliefs/practices that are followed by "minority" persons. It was really this last meaning that intrigued me the most.

If race and ethnicity have, indeed, been the hidden or not so hidden influences on the development of the law in this country, then that should also be reflected in the jurisprudence of the free exercise clause of the First Amendment. I was curious to see to what extent, if any, a dominant cultural perspective would manifest itself in the jurisprudence. As I, and others before me discovered, there was indeed a discernible monotheistic, Judeo-Christian ideological bent that resulted in less protection being afforded to "minority" religions.⁶ But lately, what has intrigued me even more is the fact that religion, generally, appears to be the only off-limit topic for discussion among many critical theorists. I am speaking of the virtual absence of any focused, critical examination of the role of religion in "the treacherous terrain of American racial politics."⁷ This omission cannot possibly be because religion is seen as either irrelevant to our lives or not worthy of discussion. I cannot, then, understand why religion has remained a virtually unexamined factor in the realm of critical theory.

I have no interest in making a claim that for people of color, religion is a more important force in our lives than for others. I do know, however, that religion has been a strong influence in many of our cultures and communities. Religion has also, historically, and through the present day, been a tool or mechanism for enhancing and destroying or reshaping cultures, and playing on or into racism,

4. See 508 U.S. at 541-42. (noting specific comments made by City Council members and others in reaction to Pichardo's announcement.)

5. See Verna C. Sánchez, *Whose God Is It Anyway?: The Supreme Court, The Orishas, and Grandfather Peyote*, 28 SUFFOLK U. L. REV. 39, 41 n.14 (1994).

6. See Russell Barsh, *The Illusion of Religious Freedom for Indigenous Americans*, 65 OR. L. REV. 363 (1986); Verna C. Sánchez, *All Roads Are Good: Beyond The Lexicon of Christianity in Free Exercise Jurisprudence*, 8 HASTINGS WOMEN'S L. J. 31 (1997).

7. KIMBERLÉ CRENSHAW ET AL., *CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT* xxxii (1995)

sexism and homophobia. It has been a means for confining and limiting the roles of many segments of society, especially, but not exclusively, women. Regina Schwartz has noted how monotheism has been grounded in violence: "Violence is the very construction of the Other."⁸ Christianity has also served as a frequently explicit, and more often implicit, influence on courts throughout this country over the last two hundred years.⁹ Thus, it has always puzzled me that of the many outstanding and creative writers producing provocative, innovative, and challenging analyses in the general area of critical legal theory,¹⁰ few have explored the role of religion.

Critical legal theory was born of a rejection of the classic liberal belief that American law relies on a "rational, apolitical and neutral discourse with which to mediate the exercise of social power."¹¹ Religion and its influence on the law would seem to be natural area of inquiry for such theorists. I do not mean to suggest that there are no articles out there exploring, from a critical theorist's perspective, the ideology and history of the interaction between religion and law and the effect of that on the lives of disenfranchised people. There are, but why are there not more? Scanning the Table of Contents of two important, fairly recent books on Critical Race Theory, for example, there are no articles that specifically explore, examine, or analyze the question of how religion intersects with questions of race.¹² I do not think it is because religion is irrelevant to questions of racism. Indeed, I think quite the opposite is true. In this country, religion, specifically Christianity has exerted tremendous influence in this area, both in perpetuating racism and in fighting against it. In the introduction to *Critical Race Theory: The Key Writings*, for example, the editors explain that two common points emerged from the writings collected there. The first point is "to understand

8. REGINA M. SCHWARTZ, *THE CURSE OF CAIN: THE VIOLENT LEGACY OF MONOTHEISM* 5 (1997).

9. An excellent work documenting this is FORREST WOOD, *THE ARROGANCE OF FAITH: CHRISTIANITY AND RACE IN AMERICA FROM THE COLONIAL ERA TO THE TWENTIETH CENTURY* (1990).

10. I am using this term to incorporate, by reference, all of the more specified areas within that umbrella—race, gender and sexuality.

11. CRENSHAW ET AL., *supra* note 7, at xviii.

12. For example, in *CRITICAL RACE THEORY: THE CUTTING EDGE*, there are a total of fifty pieces, by various scholars, on topics ranging from "Criticism and Self-Analysis" and "Critical Understanding of the Social Science Underpinnings of Race and Racism" to "Race, Sex, Class, and Their Intersections." None of these pieces, however, specifically consider the ideology and history of religion, its influence and impact on the rule of law or any relationship it may have to perpetuating or opposing sexism, racism or homophobia, for example. RICHARD DELGADO, *CRITICAL RACE THEORY: THE CUTTING EDGE* (1995). In CRENSHAW ET AL., *supra* note 7, there are 27 pieces, none of which address the subject of religion vis-à-vis people of color. I have selected these two fine collections of writings only because I think they represent a broad array of writers and topics.

how a regime of white supremacy and its subordination of people of color have been created and maintained in America. . . ."¹³ The second, is the "desire not merely to understand the vexed bond between law and racial power but to change it."¹⁴ I have difficulty understanding how it is that those points do not include a greater degree of scrutiny about the role of religion in all of that and why these writings have yet to appear in print. If critical race theory includes the insights that racism is normal and an "ingrained feature of our landscape"¹⁵ and that "culture constructs social reality that promotes its own self-interest . . ."¹⁶ then it would seem that religion should be seen as part of that discussion.

Religions (most specifically, those based in or derived from Judeo-Christian origins, which includes Islam) have often been used to both help and hurt people of color in this country and elsewhere. One does not have to look further than the Civil Rights Movement in this country, for example, to establish how much of the impetus for progressive social change came from various churches and religious leaders. In Central and South America, the social justice movement has often derived from Christian ideals and has been closely linked with priests, nuns and laity of the Catholic Church. Conversely, the Dutch Reform Church was an ardent and leading proponent of Apartheid in South Africa, and, for a long time, many Catholic and Protestant churches in this country practiced *de facto* segregationist policies. I do not think that we have looked far enough past the role of religion and churches to examine how it can be that churches and religions have often operated, implicitly or explicitly, against the social good of people of color and the poor.

Several years ago, I took a graduate class in Latin American politics, where we discussed the various movements for social change and revolution that had permeated Latin America, particularly during the 1960s and 1970s. That led to a discussion of liberation theology, which had taken hold all over the region. The question I had about liberation theology, which was never answered to my satisfaction, is how one could reconcile all of the principles and ideals of that ideological movement while remaining and operating within the confines of Catholicism and the Catholic Church. I believe as do others, that such a theology is antithetical to the Catholic Church and Catholic theology.¹⁷ For example, Gonzalo

13. CRENSHAW ET AL., *supra* note 7, at xiv.

14. *Id.*

15. *Id.*

16. *Id.*

17. See *e.g.*, THOMAS BRUNEAU, *THE POLITICAL TRANSFORMATION OF THE BRAZILIAN CATHOLIC CHURCH* (1974), where he notes that those working within the Catholic Church are not free actors. They are not autonomous or independent or free to set their own goals. *Id.*

Arroyo, who had been an exiled Chilean Jesuit, had written on what he considered to be the impossibility of the Church as an agent of social reform.¹⁸ Yet, there have been many brave and courageous people who have put themselves at risk in order to struggle for social justice, motivated by what they have identified as beliefs based on Christ's teachings. For me, as a woman of color, feminist and mother to a daughter, I can not look past the subordination of women inherent in Judeo-Christian religions. Yet, I recognize both that that is a personal and political choice I have made, and that others have in fact found ways to reconcile what, to me, are seemingly contradictory positions and ideologies. What troubles me has been the absence, until now, of any real public dialogue or discussion, either at conferences or in the literature of critical race/gender/sexuality theory about these ideas. I do not raise this point to offend, or to challenge others to defend their beliefs. Instead, I raise it as an example of what I am trying to urge in this essay.

I think there are many viable and important perspectives and discussions that should be taking place under the large umbrella of critical theory. I suggest that exploration of the significance and interplay of religion vis-à-vis race, gender, and sexuality and the development of the law is critical. I think it is a vital and necessary component of our ongoing intellectual contributions to legal scholarship as well as to our communities and ourselves. I welcome then, the door that this symposium seeks to open, and am thankful for the opportunity to raise these concerns. I look forward to a full and rich dialogue about all of these issues.

18. Ralph Della Cava, *Catholicism and Society in Twentieth-Century Brazil*, 2 *LAT. AM. RES. REV.* 7, 46 (1976).

