Unmasking Law: Women of Color
Pioneering Critical Outsider Scholarship

Francisco Valdes*

A Reflection on Margaret Montoya, Máscaras, Trenzas, y Greñas:

When Margaret Montoya composed Máscaras, Trenzas, y Greñas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse (hereinafter Máscaras), she was doing what she always does: making and marking history. Published in 1994 concurrently by the Harvard Women’s Law Journal1 and the UCLA Chicano-Latino Law Review,2 Máscaras was emblematic both of a time and a life. It embodied a breakthrough in legal scholarship, and helped to catalyze a paradigm shift within the U.S. legal academy that is both accomplished and lively today. Though perhaps this was not well understood then, it should be by now.

In 1994, women of color had just begun to penetrate legal academia, and among them Latinas were a true rarity. Like other groups historically excluded from the academy, women of color had begun breaking barriers and working their way through mainstream institutions in the 1970s, and by the 1990s were beginning to reach the unfriendly gates of the legal professorate. Along the way, they had to do, on the fly, many of the things that people still write about to survive and prosper in hostile or indifferent institutions.3 At that time, the “imperial” academy reigned with near

*Professor of Law, University of Miami. Many thanks to the organizers and editors of this symposium for the opportunity to express and record these thoughts, and many thanks to Professor Montoya and her compañeras de color for making law and life a little bit better. All errors are mine.

1 Margaret E. Montoya, Máscaras, Trenzas, y Greñas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse, 17 Harv. Women’s L.J. 185 (1994) [hereinafter, Montoya, Máscaras].


3 See, e.g., Presumed Incompetent: The Intersections of Race and Class for Women in Academia (Gabriella Gutiérrez y Muhs, Yolanda Flores Niemann, Angela P. Harris and Carmen Gonzalez eds., 2012).
hegemony. Realism had been substantially assimilated and domesticated, while the critical legal scholars had been decimated, scattered, and almost silenced.

Under these personal and structural circumstances, Professor Montoya and her academic generation pioneered overlapping fields of legal studies sharing and blending a critical and outsider perspective. Whether in critical race theory, feminist legal theory, LatCrit theory or queer legal theory, women of color have been at the forefront. They have altered the intellectual landscape forever with the force of their ideas and the persistence of their examples, with an impact that has spanned both substance and method. Substantively, women of color have refused to accept the unstated premises and imperatives of the legal or social status quo, and have begun their work with challenges to oftentimes-hidden foundations. Their counter-normative pioneering has helped reshape fields of law ranging from employment to property to criminal. It has helped to expose and destabilize the grip of patriarchy and other identity-based ideologies of inequality over law and policy, and over culture and society.

Methodologically, women have challenged analytical abstraction and uncritical empiricism, insisting instead that voices from the “bottom” be heard. They have sought to center in knowledge and policy the insights born of experience with subordination. For decades, they have worked diligently and brilliantly to promote a critical kind of contextualized empiricism focusing on “shifting bottoms” in a way that combines social science and experiential knowledge to challenge the limitations and impositions of academic imperialism.

---


Notably, that generation of pioneers championed the technique of storytelling as legal method.\textsuperscript{10} This turn to critical legal narrative became a potent method for conveying substantive insights and knowledge historically kept suppressed or marginal by the norms, incentives, and politics of imperial scholarship. When dismissed by self-anointed gatekeepers of imperial tastes,\textsuperscript{11} they persisted in the novel combination of traditional and non-traditional approaches to legal scholarship.\textsuperscript{12} While the terms of engagement were seriously in contest, Margaret Montoya captured the sense of that historical moment:

The exploration of personal agency through autobiography and the seizure of discursive space formerly denied to Latinas are regenerative acts which can transform self-understanding and reclaim for all Latinas the right to define ourselves and to reject uni-dimensional interpretations of our personal and collective experience . . . The emphasis of critical scholarship (critical race theory, feminist jurisprudence, critical legal studies) on narrative affirms those of us who are Outsiders working within the objectivist orientation of the legal academy and validates our experimentation with innovative formats and themes in our teaching and in our scholarship.\textsuperscript{13}

But this work on substance and method went beyond the advancement of criticality and narrativity from outsider perspectives.

Moved not only by a sense of history but also by a sense of mission, Professor Montoya and her generation strove to reconstruct the very being of the profession to help bridge existing gulfs between law and justice. Pushing always for the linkage of theory to action—of legal knowledge to social change—they have modeled a new kind of academic activism that values service and teaching as much as scholarship in the pursuit of

\textsuperscript{11} In response to the innovations of critical outsider scholars, including the embrace of legal narrative, some white scholars raised numerous objections—some startling, all wrong—in defense of traditional, imperial “standards” of “real” scholarship. \textit{E.g.}, Daniel A. Farber & Suzanna Sherry, \textit{Is the Radical Critique of Merit Anti-Semitic?}, 83 \textit{Calif. L. Rev.} 853 (1995) (illustrating traditionalist attacks).
\textsuperscript{12} \textit{E.g.}, Margaret E. Montoya, \textit{Celebrating Racialized Narratives, in CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY} 243 (Francisco Valdes et al. eds., 2002). (rejecting traditionalist attacks).
\textsuperscript{13} Montoya, \textit{Máscaras, supra} note 1, at 214–15.
equality, opportunity, and dignity. They not only have launched new lines of inquiry and fields of scholarship but also have refined the very basics of the profession to make academic work holistically relevant to social justice in personal, collective, and sustained terms.

As a result, legal criticality has prospered. From the vantage point of the present, we know that Máscaras has helped to make and mark this history. It is no coincidence that Margaret Montoya of Las Vegas, New Mexico, composed this text when and how she did. It is no coincidence that we celebrate it today.

Combining the granular with the structural, the institutional with the individual, the personal with the political, Máscaras reflects and projects the convergence of three major forces. The first is Margaret Montoya herself—her life, her story, her heritage, her family, her times. The second is the unfolding of “diversity” as a social and political phenomenon across the U.S., both within the academy and throughout society, in the mid-to-late twentieth century. The third is the emergence of critical and outsider studies from within the legal academy of the United States at precisely this moment, which has opened new chapters and possibilities in the academic production of legal scholarship. This text seamlessly, magically interweaves these three themes or forces to become the classic it has become today.

Opening with a choice bold even today, Professor Montoya begins with a revealing and powerful account of growing up Mexican in mid-1950s New Mexico, and the epistemological and political ramifications of that upbringing which were to follow:

I remember being assigned to tutor another second-grader in reading. He wore denim overalls, had his hair shaved for some medical procedure and spoke mostly Spanish. I think of him now, and perhaps thought of him then, as being exposed—exposed by not being able to read, exposed by not having a uniform, exposed by not having hair, exposed by not knowing English. From my perspective as a child, it all seemed connected somehow—Spanish-ness, sickness, poverty and ignorance.

By the age of seven, I was keenly aware that I lived in a society that had little room for those who were poor, brown, or female. I was all three. I moved between dualized worlds: private/public, Catholic/secular, poverty/privilege, Latina/Anglo. I moved between these worlds. My trenzas and
school uniform were a cultural disguise. They were also a precursor for the more elaborate mask I would later develop.14

Using the metaphor of the mask, the article then takes us through a detailed, deep (and sometimes sadly common or familiar) review of the multiple and varied ways in which identity and power intersect in law and society to privilege some at the expense of others.

Expanding the scope of this framing, Professor Montoya uses trenzas—braids—and greñjas—unruly hair—to explore and narrate the process of un/masking set up by the use of the máscaras metaphor. This process of masking and unmasking produces, in different ways at different times, acts of revelation—unmaskings that reveal the unruly roots or circumstances of our othered identities, the exposed greñjas resulting from the display of characteristics or features disfavored from a mainstream, privileged, power perspective. Other times, the project of masking amounts to the careful arrangement of the self for presentation to the forces and structures of power and opportunity—the braiding of one’s self to present an image or package acceptable to gatekeepers of law and society. Thus, máscaras, trenzas, and greñjas reflect the un/masking of the self while un/braiding Latina stories and legal discourse. These three constructs provide the essential discursive toolkit for Professor Montoya’s pathbreaking articulation of critical antisubordination perspective in this article.

Reflecting that upbringing and the socio-cultural circumstances of her generation in legal education, the text juxtaposes the worlds of personal origins with that of academic success to expose and learn from the dynamics of approval, inclusion, humiliation, or disregard that humans execute daily to shape destiny. It is an enduring case study in the engagement of the personal and the structural, of the systemized macro-aggression and of the personalized micro-aggression.15 The stories of class discussions, including the pregnancy and prosecution of Josephine Chavez—apparently the only Latina to be encountered in a legal casebook

14 Montoya, Máscaras, supra note 1, at 190.
15 During those groundbreaking years, critical outsider scholars examined the interplay of great social forces with the “small” acts of social discipline that jointly produce the webs of subordination based on race, sex, class, and other constructs reinforced and normalized in law. See, e.g., Peggy C. Davis, Law as Microaggression, 98 YALE L. J. 1559 (1989) (discussing the social dynamics of “microaggression”); Paulette M. Caldwell, A Hair Piece: Perspectives on the Intersection of Race and Gender, 1991 DUKE L.J. 365 (1991) (discussing the role of hair in everyday constructions of privilege and subordination).
at that time—are riveting. Whether in criminal law questioning criminality itself or in tax class trying to discuss the coupons of negotiable bonds, the key point again and again is the un/masking of law as power. And in centering narrative, Professor Montoya demonstrates powerfully that “telling stories” is very much a profoundly knowledge-producing method.

As Professor Montoya notes, storytelling is a core practice in law. Clients tell stories to their lawyers, witnesses tell stories to police, lawyers tell stories to jurors, and reporters sell all those stories to the public. Given its pervasiveness, storytelling should come as no big deal when encountered in legal scholarship. Yet, it is; perhaps, because narrative often helps to articulate critical stances toward the status quo with a force that imperial “analysis” often enough cannot.

When the rhetorics and methods of “law” did not permit critical insights to be effectively expressed in conventional or imperial terms, the turn to narrative created new possibilities for sharing insights and producing knowledge. As Máscaras underscores, these are not stories told for their own sake, but to illuminate obscured social realities and catalyze remedial action. Professor Montoya explains it this way, specifically about the Chavez case:

Embedded in Josephine Chavez’s unfortunate experience are various lessons about criminal law specifically and about the law and its effects more generally. The opinion’s characteristic avoidance of context and obfuscation of important class-and gender-based assumptions is equally important to the ideological socialization and doctrinal development of law students. Maintaining a silence about Chavez’s ethnic and socio-economic context lends credence to the prevailing perception that there is only one relevant reality.

As Professor Montoya has shown in this text and a thousand times since, she never has been one to remain silent—even though law school’s “training” made her feel that way for a while.

It bears emphasis that, in the 1980s and 1990s, a critical outsider stance was riskier than it is today. Those were days when most barriers remained intact, including those based on color and sex. Professor Montoya

16 Montoya, Máscaras, supra note 1, at 201–05.
17 Id. at 207.
18 Id. at 214.
19 Id. at 206.
herself was the first Latina admitted to Harvard Law School. That was 1972. As Professor Montoya observes in Máscaras, “in 1989, only 6.2% of Mexican-Americans over age 35 had completed four years of college, as compared with 20.6% of the non-Hispanic population.” Half a decade later, when Máscaras was published, 1.9% of U.S. law professors were women of color. Illustrating the demographics and dynamics of the moment, 15.2% of assistant professors in 1994–95 were women of color. Nearly a decade later, in 2002–03, the numbers were 4.3% and 13.6%, respectively. Pause a moment to reflect on the demographics and discourses of all those rooms and conferences for all those years. For two decades, the odds have been that Professor Montoya found herself a “society of one” in most professional contexts. In any given workplace situation, she was making and marking history.

Pioneering is a rough and lonely business, attractive only retrospectively, if at all. This is how Professor Montoya phrased it:

Mine is the first generation of Latinas to be represented in colleges and universities in anything approaching significant numbers. We are now represented in virtually every college and university. But, for the most part, we find ourselves isolated. Rarely has another Latina gone before us. Rarely is there another Latina whom we can watch to try and figure out all the little questions about subtextual meaning, about how dress or speech or makeup are interpreted in this particular environment.

Professor Montoya and her generation had little choice but to become critical and outsider pioneers. That they have done so with much courage, creativity, and love is a testament to their resilience, character, and vision. That they never shirked danger is a gift to us all.

The stories preserved in Máscaras thereby also serve as stark reminders of the legal academy and culture constructed by this nation; an

---

20 Id. at 190 n.18.
21 Id. See also AM. ASS’N OF LAW SCH., STATISTICAL REPORT ON LAW SCHOOL FACULTY AND CANDIDATES FOR LAW FACULTY POSITIONS, 42 (2002-03) [hereinafter “AALS”].
22 AALS, supra note 21.
23 Id. at 46.
25 Montoya, Máscaras, supra note 1, at 190–91.
academy and culture designed specifically to filter out folks like Professor Montoya. For example:

In 1922 the Yale Board of Admissions was deeply concerned about the “Jewish problem.” In that same year, a Yale psychologist warned the state bar association that “this invasion of foreign stock” was undermining the “finer professional spirit and feeling which characterizes the professional training of the typical American lawyer.” Dean Swan of the Yale Law School suggested to the state bar in 1923 that students with foreign parents should be required to remain longer in college than native-born Americans before being admitted to law school. At a Yale faculty meeting in the same year, Swan argued against using grades as a basis for limiting enrollment to the law school, because such a development would admit students of “foreign” rather than “old American” parentage, and Yale would become a school with an “inferior student body ethically and socially.”

This exemplar shows the tightly interlinked operation of racism, nativism, and related supremacies in the design, construction, and consolidation of legal education and culture in the United States. This is the carefully drawn baseline of structural exclusion based on neocolonial identity politics that critical outsider scholars and activists have been struggling to overcome and reform—a baseline grudgingly modified at the margins in recent decades, but never unhinged ideologically from its exclusionary designs and effects.

Once again bringing together the personal/biographical with the intellectual/social, Professor Montoya concludes Máscaras with an illustrative note on the legal politics of language, identity and power. This section of the article tellingly is titled, “Pursuing Mestizaje (Transculturization) in the Legal Academy,” and begins with legal history and personal circumstance already entwined:

---

The Euro-American conquest of the Southwest and Puerto Rico resulted in informal and formal prohibitions against the use of Spanish for public purposes. So by inscribing myself in legal scholarship as *mestiza*, I seek to occupy common ground with Latinas/os in this hemisphere and others, wherever situated, who are challenging “Western bourgeois ideology and hegemonic racialism with the metaphor of transculturation” . . . incorporating Spanish words, sayings, literature and wisdom can have positive ramifications for those in the academy and in the profession, and for those to whom we render legal services.  

In the end, then, this is the legacy of legalized injustice that forms Margaret Montoya’s antisubordination agenda; this is the wreckage of history that her work and life now help to make and mark anew.

Two decades on, Professor Montoya and others of her generation are nearing retirement from the academy as new generations enter its ranks. The legacy of academic activism that critical outsider pioneering has accumulated in the twenty years since *Máscaras* was published is thus our collective inheritance literally—the unfinished mission of our intergenerational work as law professors committed to antisubordination change in multidimensional terms that span race, sex, class, orientation, disability, and other constructs of privilege and oppression. Pushing this “rebellious” agenda along is the challenge awaiting the new (and coming) generations of critical outsider scholars, lawyers, organizers, and activists. What comes next is the history that remains for us to write and produce, but we have strong and vibrant foundations from which to proceed. And for their living, breathtaking achievement, social justice legal studies in the U.S. and beyond will be always indebted to Margaret Montoya and her *compañeras de color*, who have unmasked law and pioneered critical outsider studies with grace and grit during the tumultuous decades since the late 1980s and 1990s.

*Bravo! Kudos! Mil gracias por todo!*

---

27 Montoya, *Máscaras*, supra note 1, at 216.
28 In fact, Professor Montoya herself is formally retiring from law school teaching this very year, but remains busy with many projects and her teaching and administrative role at the medical and law schools of the University of New Mexico, where she has spent her entire teaching career.