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**“Who is a LatCrit?”¹:
Jerome Culp and Angela Harris Provide Answers
and Ways of Being**

Margaret Montoya*

Buenas tardes, no tengo palabras para comunicarles el privilegio que este honor y esta oportunidad representan para mi. Muchísimas gracias por haberme extendido esta invitación. Thank you to the organizers: Sarudzayi Matambanadzo (Tulane), Marc Tizoc González (St. Thomas), Tayyab Mahmud (Seattle) and too many more to name. Thank you to those who prepared the food and those who will clean up. Thank you particularly to Angela Harris who shares the podium with me.

LatCrit was, and remains, my academic home; through years and years, it was my refuge, safe space, and a spa for my mind, heart, and spirit. LatCrit embraced me, opened a space for me and my voice, and accepted my contributions when my law school slighted me. I owe all of you a great debt. My talk is targeted particularly at those of you who are new to LatCrit, you who are new or aspiring faculty who may not know LatCrit history.

My task this evening is prodigious. For those of you who didn't know Jerome, I want to highlight why you should devote time to reading his articles; he is very relevant today. Jerome was prolific and broad in what he

¹ Jerome McCristal Culp, Jr., *Seventh Aspect of Self Hatred: Race, LatCrit, and Fighting the Status Quo*, 55 FL. L. REV. 425 (2003) [hereinafter Culp, *Seventh Aspect of Self Hatred*]. The essay's title is a direct quote from this article.

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wrote, using the tools and vocabulary of economics in race scholarship, analyzing cases from employment discrimination and torts, and rigorously thinking about what it means to be a law professor of color. So, my task is to remember Jerome while we also celebrate the equally prolific, eloquent, and elegant Angela. Jerome and Angela were close friends, and I seek to honor that friendship as well as the central role both occupied in creating and sustaining LatCrit and its CRT relative.

It has become banal and too commonplace to say that someone speaks Truth to Power; but it is demonstrable that Jerome repeatedly talked back forcefully, emphatically, and courageously to those who wield White Power—economists,² Judge Posner,³ Jerome’s colleagues at Duke,⁴ Justice Rehnquist,⁵ Justice Ginsburg,⁶ black people in white face,⁷ and Professor Anne Coughlin.⁸ These engagements weren’t paragraphs or letters to the editor; each was a lengthy article in a leading law review. With similar rigor, he challenged Latinx identity in LatCrit, asking, interrogating, and answering more than once, “Who *is* a LatCrit?”⁹

² Jerome M. Culp, *Causation, Economists, and the Dinosaur: A Response to Professor Dray*, 49 L. & CONTEMP. PROBS. 23 (1986); *Foreword: Economists on the Bench*, 50 L. & CONTEMP. PROBS. 1 (1987).

³ Jerome M. Culp, *Judex Economicus*, 50 L. & CONTEMP. PROBS. 95 (1987); Jerome M. Culp, Jr., *Comment: Posner on Duncan Kennedy and Racial Difference: White Authority in the Legal Academy*, 41 DUKE L. J. 1095 (1992).

⁴ Jerome McCristal Culp, Jr., *Diversity, Multiculturalism, and Affirmative Action: Duke, the NAS, and Apartheid*, 41 DEPAUL L. REV. 1141 (1992) [hereinafter Culp, *Diversity*].

⁵ Jerome McCristal Culp, Jr., *Understanding the Racial Discourse of Justice Rehnquist*, 25 RUTGERS L. J. 597 (1994).

⁶ Jerome McCristal Culp, Jr., *An Open Letter from One Black Scholar to Justice Ruth Bader Ginsburg: Or, How Not to Become Justice Sandra Day O’Connor*, 1 DUKE J. OF GENDER L. & POL’Y 21 (1994).

⁷ Jerome M. Culp, Jr., *Black People in White Face: Assimilation, Culture, and the Brown Case*, 36 WM. & MARY L. REV. 665 (1995).

⁸ Jerome McCristal Culp, Jr., *Responses: Telling a Black Legal Story: Privilege, Authenticity, “Blunders,” and Transformation in Outsider Narratives*, 82 VA. L. REV. 60 (1996) [hereinafter Culp, *Response to Professor Coughlin*].

⁹ Culp, *Seventh Aspect of Self Hatred*, *supra* note 1, at 425, 436–437; Jerome M. Culp, *Latinos, Blacks, Others, and the New Legal Narrative*, 2 HARV. LATINO L. REV. 479 (1997) [hereinafter Culp, *Latinos*].

My biography intersects with Jerome's at various times and places: we both graduated from Harvard Law in 1978; I didn't know him well, but we shared the experience of having been among the earliest cohorts of students of color to walk those halls. We were both chosen to receive the Clyde Ferguson Award in 1999,¹⁰ awarded by the Minority Section of the Association of American Law Schools. I treasure the award, knowing that the honor conveyed to me was magnified considerably by sharing it with Jerome.

Neither Jerome nor Angela have written full autobiographies, but both have used what Jerome called "autobiographical moments"¹¹ to illuminate their analysis and theorizing. I will braid together fragments of their stories and hope that I don't violate their longer stories. Jerome says,

I applied to colleges in the spring of 1968 . . . and was admitted to the Univ. of Chicago and every one of the other schools I applied to except Harvard College.¹² I have been teaching . . . since graduating

¹⁰ Email, AALS Minority Section, Melissa Murray, *Final Call for Nominations*, Nov. 12, 2017. The Clyde Ferguson Award, named in honor Professor C. Clyde Ferguson, Jr.—the second tenured African American on the Harvard Law School faculty—is granted to an outstanding law teacher, who in the course of his or her career has achieved excellence in the areas of public service, teaching and scholarship. The Award is particularly aimed at law teachers who have provided support, encouragement, and mentoring to colleagues, students, and aspiring legal educators. All current and former professional legal educators are eligible, including administrators, librarians, clinical faculty, legal writing teachers, and tenure-track and tenured faculty, as long as they have served more than seven years in legal academia at the time of the Award. The former winners are Michael Olivas (1992), Jim Jones (1993), Paulette Caldwell (1994), Richard Delgado (1995), Taunya Banks (1996), Neil Gotanda (1997), Jerome Culp and Margaret Montoya (1999), Joyce Hughes (2000), Ken Nunn (2001), Frank Valdes (2002), Robert Belton (2003), Kevin Johnson (2004), Emma Coleman Jordan (2005), Stacy Leeds (2006), John O. Calmore and Ralph Smith (2007), Angela Harris and Berta Hernández Truyol (2008), Adrien Wing and Bob Chang (2009), Angela Davis (2010), Henry McGee (2011), Keith Aoki and Twila L. Perry (2012), Henry Richardson (2013), Steven Bender (2014), Mario Barnes (2015), Angela Onwuachi-Willig (2015), Catharine Smith (2016), and Devon Carbado (2017).

¹¹ Culp, *Response to Professor Coughlin*, *supra* note 8, at 75, n. 23.

¹² Culp, *Diversity*, *supra* note 4, at 1153.

from law school and I taught for a number of years before that as a graduate student.¹³

In 1991, Jerome wrote about “finding the me in the legal academy,”¹⁴ examining the use of personal stories in legal scholarship, teaching, and faculty relations. Jerome wrote, “‘I am,’ I say slowly, ‘the son of a poor coal miner.’”¹⁵ “Typically, on the first day of class, some student raises a question that includes, ‘Where did you go to school?’ I understand that question to be, ‘What gives you the right to teach this course to me?’”¹⁶ Jerome explained that describing where he went to school satisfies most students, but saying he’s the son of a poor coal miner “has a transformational potential greater than my CV. Who we are matters as much as what we are and what we think, and it’s important to teach students about the ‘me’ in the law . . .”¹⁷ In another article, he muses, “A number of people have told me they interpreted [this] article on autobiography . . . consistent with what has been called the Afro-American Jeremiad . . .”¹⁸ The word “Jeremiad” has a double meaning: one of overcoming disadvantage, of thriving, and another, more pejorative meaning when used as a list of woes or a mournful lamentation. This second meaning is not what I hear in Jerome’s stories. But, I wonder when is the right time for mournful Jeremiads, his, yours, and mine?

In 1991, Jerome wrote,

I teach tort law, and early in that process I use a hypothetical from my past. As an undergraduate at the Univ of Chicago, I asked my girlfriend to accompany me to Evanston, Ill. . . . Near the train

¹³ *Id.* at 1169.

¹⁴ Jerome McCristal Culp, Jr., *Autobiography and Legal Scholarship and Teaching: Finding the Me in the Legal Academy* 77 VA. L. REV. 539 (1991) [hereinafter Culp, *Autobiography*].

¹⁵ *Id.*

¹⁶ *Id.* at 543.

¹⁷ *Id.*

¹⁸ Jerome McCristal Culp, Jr., *You Can Take Them to Water but You Can’t Make Them Drink: Black Legal Scholarship and White Legal Scholars*, 1992 U. ILL. L. REV. 1021, 1024 (1992).

station we saw an old white woman. As my girlfriend and I approached the woman, she began to shake . . . I remember . . . the old white woman turning her back and assuming a pseudo-fetal posture as we approached her. I could read that situation as clearly as any other: . . . she knew we were Black Panthers who had come to Evanston to do her harm.¹⁹ [Then] I ask my class whether it would have been an assault for me to lean over and to whisper "boo" to that old woman. I then add that I thought about doing so and pause, for only a second, before saying that I didn't say anything.²⁰

Why does Jerome tell students this story about himself, what are his pedagogical purposes, does the story challenge institutional, theoretical, or doctrinal frameworks?

In the 1997 LatCrit symposium, Jerome wrote,

narrative . . . is not just a story . . . [it's] what we believe and what I hope LatCrit will . . . adhere to . . . that we do not accept the status quo . . . [we reject] the white supremacy that is buried in traditional legal analysis.²¹

Jerome tells us he's sharing a story he's never told before.²²

[This story] involves my name, Jerome McCristal Culp, Jr . . . [M]y father demanded that his first son be named Jerome McCristal Culp, Jr. He got the name because my grandmother won a lottery. The supervisor at my grandfather's mine was named Jerome McCristal and he did not have any children and the first woman who had a child in 1926 was to name her child after him and be given a number of prizes for the act of naming . . . So my father became Jerome McCristal Culp . . .²³

Jerome said, "There is a lesson for LatCrit in this story. We have to have a name, and in order to be understandable it has to have a history . . . if we

¹⁹ Culp, *Autobiography*, *supra* note 14, at 552.

²⁰ *Id.* at 553.

²¹ Culp, *Latinos*, *supra* note 9, at 480–481.

²² *Id.* at 482.

²³ *Id.*

are to be great, we have to be more than our histories, but at the same time we have to learn from them.”²⁴ Earlier during this conference, we heard Frank Valdes say to be identity-blind is to be reality-blind. Identities map realities. Jerome was cautioning us that the present becomes history so we must learn from that history to be more than our histories.

In 1996, Jerome wrote an impassioned and full-throated response²⁵ to Professor Anne Coughlin, whose article, “Regulating the Self: Autobiographical Performances in Outsider Scholarship,”²⁶ was one of several high-profile screeds against the use of personal stories mostly by scholars of color in legal writing.²⁷ (Coughlin also includes my *Mascaras* article²⁸ among her first footnotes as one of several examples of these sorts of performative outsider autobiographies.²⁹) Jerome said, “[*m*]y life, [*Coughlin*] tells me, instead of being revolutionary should (and will) be seen as a kind of “*Horatio Alger*” story, normal and standard American fare . . . and Coughlin further claims that Jerome’s stories [lack] a clear institutional and theoretical framework for change.³⁰ He countered that her “*account of my life fails in part because she does not listen to the stories I have been telling. She . . . engag[es] in a tortured interpretation of my history and narratives.*”³¹ Jerome demolished Coughlin’s contentions, as he modeled how to talk back to Whiteness with precision and clarity of purpose. He exposed her careerist motivations for attacking outsider scholarship as well

²⁴ *Id.*

²⁵ Culp, *Response to Professor Coughlin*, *supra* note 8.

²⁶ See Anne M. Coughlin, *Regulating the Self: Autobiographical Performances in Outsider Scholarship*, 81 VA. L. REV. 1229 (1995).

²⁷ See Culp, *Response to Professor Coughlin*, *supra* note 8, at nn. 72-75.

²⁸ See 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*], concurrently published in 15 CHICANO-LATINO L. REV. 1 (1994).

²⁹ Coughlin, *supra* note 26, at 1230, n. 2.

³⁰ Culp, *Response to Professor Coughlin*, *supra* note 8, at 74.

³¹ *Id.*

as her ignorance of both the provenance of Horatio Alger stories³² and the meaning of the Frederick Douglass quotes she invoked.³³

Stories have been crucial to LatCrit. Jerome's stories teach us how and why to put the "me" in scholarship and teaching. His autobiographical moments in LatCrit spaces enact the intersectionality that has become emblematic of LatCrit. He helped coalesce us into a multidimensional community of scholars. He taught us to defend our stories, to listen closely to one another, and to resist and reject those who would belittle our experiences, challenge our methods, or deny our truths.

Before I turn back to Angela's autobiographical moments, let me introduce the concept of "fractal fragments"³⁴ to expand this idea of why race scholars have drawn on their own lives when engaged in academic work. As some of you know, my husband is a mathematician, a geometer, and through him, I am drawn to scientific imagery. Fractals are mathematical structures or objects that exhibit similarities across different scales of focus.³⁵ For example, if you study a fern, you will see that the branching structure is repeated at each level of magnification. Lesley Kuhn, an Australian professor at the University of Western Sydney School of Business,³⁶ uses the term "fractal fragments" to describe stories or narratives that illustrate theoretical materials.³⁷

When Jerome says he is the son of a poor cool miner,³⁸ and when I write that I remember my mother braiding my hair,³⁹ we instantiate the concept of

³² *Id.* at 80.

³³ *Id.* at 81; see text accompanying nn. 38-59 *infra*.

³⁴ LESLEY KUHN, ADVENTURES IN COMPLEXITY: FOR ORGANIZATIONS NEAR THE EDGE OF CHAOS 71 (2009).

³⁵ *Id.* at 66.

³⁶ Univ. of W. Sydney, *Staff Profiles*, Doctor Lesley Kuhn, available at https://www.westernsydney.edu.au/staff_profiles/uws_profiles/doctor_lesley_kuhn (last visited on Feb. 17, 2018).

³⁷ *Id.*

³⁸ Culp, *Autobiography*, *supra* note 14.

³⁹ Montoya, *Máscaras*, *supra* note 28, at 186.

fractality. The stories function as shorthand for the many details across many units that are encompassed in the tort theories he is teaching and in the racially inflected educational experiences I am describing. Fractal fragments can be thought of as a particularly effective technique for communicating multilayered information, such as the lived experiences of subordinated people within tort doctrine or the conditions of girls of color. The context and subtext of our individual stories, our fractal fragments, our piece of the fern, link to other stories, to the larger fern frond.

Listen now to Angela's words:

I grew up with the children of farmers in a small Ohio town, but the farmers' kids were all white. The black kids' parents mostly worked for the local Air Force base, like my dad. No black kid I knew had agrarian dreams. From my father and father's father, I sometimes heard stories about farm life in Virginia, where that side of the family had roots. But the funny stories about close encounters with chickens were overshadowed by a darker story about the time my grandfather, still a child, saw a dead black man, noose around his neck, hanging from a tree. My father's side of the family, like so many other black people, left the country. They reinvented themselves in the city, working in Philadelphia as domestics and janitors to begin the long, multigenerational climb into the new middle class.⁴⁰

Let me go back to fractal fragments. When I read that Jerome was the son of a poor coal miner,⁴¹ I'm reminded that my father's father was a poor copper miner. My father was in college, followed by graduate school, until I was in 10th grade; we also reinvented ourselves and began the long, multigenerational climb into the new middle class.⁴² The details of our stories—Jerome's, Angela's and, mine—are not identical; they lack self-similarity in the sense of ferns. What I mean when I say our stories are fractal-

⁴⁰ Angela P. Harris, *[Re]Integrating Spaces: The Color of Farming*, 2 SAVANNAH L. REV. 157, 193–194 (2015) [hereinafter Harris, *Color of Farming*].

⁴¹ See text accompanying n. 15 *supra*.

⁴² See text accompanying n. 43 *infra*.

like is that when we use these fragments, they're units of analysis, units of meaning. Our race work clarifies and unpacks our stories in many ways, exploring the fractality of our stories' context and subtext under the lenses of

Whiteness and LatCrit-inflected anti-subordination theory and practice. Angela wrote,

I vividly remember my Welfare Law class when I was a law student. I loved the material and adored the teacher. . . . Miserably, every morning before class, I would go in the bathroom and throw up, anticipating that I would be called on. Partly it was performance anxiety; I was painfully shy and the class was large . . . Only once did I really want to be called on, and it was the day we had to read and discuss George Gilder's ideas about welfare encouraging the pathology of itinerant black men and promiscuous, castrating black women. I wanted to speak from my own sense of anger and outrage. I wanted to talk about my own experience of living on food stamps and I wanted to talk about the media demonization of "welfare queens" as an example of racism. But, strangely enough, that was one of the three times in the whole semester that I wasn't called on. In fact, none of the black students was called on, despite our hands in the air.⁴³

Angela, now a professor, said,

I found myself in front of law students quite by accident. When I was growing up, I was an intensely shy, intensely unworldly, and bookish kid whose internal life was governed by a series of tensions and contradictions about identity, on many, many levels. The village in which I grew up, Yellow Springs, Ohio, was itself a place with many subsurface tensions . . . I was a black kid in a series of predominantly white environments, a black kid who liked science fiction and sensitive singer-songwriters, a black kid intensely uncomfortable with performing blackness for either black or white audiences. And I was a girl uninterested in performing girlness,

⁴³ Angela P. Harris (with Marjorie Shultz), "*A(nother) Critique of Pure Reason*": *Toward Civic Virtue in Legal Education*, 45 STAN. L. REV. 1773, 1779 (1993).

drawn instead to fabulous, ironic, and self-critical artistic and cultural works and personal displays that, I would later discover, all fell under the description “gay.” . . . Law school found me—a vaguely leftish, vaguely queer, black feminist—at one of the most ideologically right-wing institutions in the nation, the University of Chicago Law School, without really understanding how I’d gotten there . . . I knew how to write beautiful, free-form, evocative essays on the high and popular cultures of modernity. I had no idea how to write a brief.⁴⁴

. . .

A few years later at the ripe old age of twenty-six, I was suddenly an Acting Professor of Law (and the title was so *a propos*—I was acting) at the Univ of Calif-Berkeley . . . I had to find a way to bring myself into the classroom, yet nothing of me felt the tiniest bit suitable. . . . I didn’t look anything like a law professor. I was the first black woman to hold my position at Boalt. . . . And I was way too young—the same age or younger than most of my students . . . —an Acting Professor, without a doubt.⁴⁵

At a faculty cocktail party, someone mentions that I sing, and a colleague happily rambles on about all the “colored girls” he has known throughout his life who are musical, asking whether I know each one.⁴⁶

Angela called this a fictional account but it alludes to the micro-aggressions of academic life, experienced even by superstar professors.

Angela has not written much in an autobiographical vein. I asked her to suggest some articles that she considered representative of her scholarship. She suggested three: “Race and Essentialism in Feminist Legal Theory”⁴⁷

⁴⁴ Angela P. Harris, *Teaching the Tensions*, 54 ST. LOUIS U. L. J. 739, 740 (2010).

⁴⁵ *Id.* at 740–741.

⁴⁶ Angela P. Harris, *On Doing the Right Thing: Education Work in the Academy*, 15 VT. L. REV. 125, 128 (1991).

⁴⁷ Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990) (hereinafter Harris, *Race and Essentialism*).

from 1990; "From Stonewall to the Suburbs"⁴⁸ from 2006; and "[Re]Integrating Spaces: The Color of Farming"⁴⁹ from 2015. I cannot do justice to the scope or sophistication of Angela's analysis, but perhaps you recall Jerome's call for us to remember our history in order to understand LatCrit.⁵⁰ The worth of LatCrit as an intellectual movement and ideological intervention is evidenced by counting Angela Harris in our number, and these articles that she proffers to us are compelling evidence of that worth.

Look at her topics, look at her boldness, look at her sources: in the first paper, she critiques white feminist legal theory;⁵¹ in the second, she critiques the meaning and implementation of *Brown v. Board*;⁵² and in the third, she racializes rural spaces and agrarian history.⁵³ Without flinching, she takes on iconic intellectuals,⁵⁴ the most famous U.S. Supreme Court decision of all time,⁵⁵ and the family farm, the pivotal image of American democracy.⁵⁶ Her sources are encyclopedic; her footnotes invoke a library that we can wander in and browse through; her knowledge extends from cases and doctrine through legal history as told by white people as well as the elided histories of black people and other racial groups; and she is adept at drawing on other disciplines and using literary examples. Frankly, I am envious of Angela's erudition.

⁴⁸ Angela P. Harris, *From Stonewall to the Suburbs? Toward a Political Economy of Sexuality*, 14 WM & MARY BILL RTS. J. 1539 (2006) [hereinafter Harris, *Stonewall to Suburbs?*].

⁴⁹ Harris, *Color of Farming*, *supra* note 40, at 157.

⁵⁰ See text accompanying note 24 *infra*.

⁵¹ See Harris, *Race and Essentialism*, *supra* note 47.

⁵² See Harris, *Stonewall to Suburbs?*, *supra* note 48.

⁵³ See Harris, *Color of Farming*, *supra* note 40.

⁵⁴ See Harris, *Race and Essentialism*, *supra* note 47 (Professor Harris is critiquing the feminist theory of Professors Catharine MacKinnon and Robin West).

⁵⁵ See Harris, *Stonewall to Suburbs?*, *supra* note 48 (Professor Harris analyzes how *Brown v. Board of Education*, 347 U.S. 483 (1954), when examined under the lens of political economy, failed to bring about full racial integration because of the racial and class segregation generated by suburbanization).

⁵⁶ See Harris, *Color of Farming*, *supra* note 40.

The publication and widespread embrace and celebration of Angela's "Race and Essentialism"⁵⁷ article sparked the debate between Angela and the internationally renowned white feminist Catharine MacKinnon concerning what Angela called "gender essentialism."⁵⁸ In other words, Angela wrote that the feminist legal theoretical work of Catharine MacKinnon and Robin West "*relies on what I call gender essentialism—the notion that a unitary, 'essential' women's experience can be isolated and described independently of race, class, sexual orientation, and other realities of experience.*"⁵⁹ MacKinnon's response was delivered at the 1997 Yale CRT conference.⁶⁰

Several who are here tonight were there. I was there. Allow me to reminisce about the 1997 Yale conference. Not yet tenured and feeling under continuous negative scrutiny at my own law school, I had yet to find some balance as a Latina law professor and looked for hints about how to behave—how to be—particularly in these White spaces of law professors. MacKinnon's tone and presence felt, to me, like she owned the place; I heard MacKinnon's response as a critique of being critiqued and, in this venue—a CRT gathering—a critique of being critiqued by a woman of color. I did not hear her creating an opening to being critiqued as a white woman with necessarily limited experiences, as all of us are. I did not hear Catharine MacKinnon express what I felt then and today experience when I re-read both articles—namely, that it was an honor, a privilege to be read closely and critiqued by someone with Angela's multiplicitous mental tools. I ask you, is it not the ultimate expression of respect for legal scholarship to be read with exacting care, to acknowledge what is correct, to challenge assumptions and

⁵⁷ See Harris, *Race and Essentialism*, *supra* note 47.

⁵⁸ *Id.* at 588.

⁵⁹ *Id.* at 585.

⁶⁰ See Catharine A. MacKinnon, *Keeping It Real: On Anti-"Essentialism,"* in *CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY* (Francisco Valdes, Jerome McCristal Culp, and Angela P. Harris, eds., 2002) [hereinafter MacKinnon, *Keeping It Real*]. (The talk Professor MacKinnon gave at the 1997 Yale Conference is published as this essay, *see n. 1* at p. 76.)

overbroad generalizations, and to offer different evidence for conclusions? That is our painstaking search for truth and understanding.

MacKinnon's retrospective response, a version of what she said at the Yale conference, "Keeping It Real: On Anti-'Essentialism,'" was published in the 2002 CRT anthology edited by Frank Valdes, Jerome, and Angela.⁶¹ In footnote 8, MacKinnon tells us Angela's article was the most cited in 1990 and by 1998 had been referenced, by MacKinnon's count, in 191 articles.⁶² In footnote 13, MacKinnon calls the essentialism charge, as used in more than 100 law review articles, "false," and further identifies some fourteen articles which claim that her work is essentialist, citing Angela's article as "a flood of defamation."⁶³

Let me push this a little. For the last few years, in health sciences we have been using the work of Scott Page, who developed and popularized the concept of "cognitive diversity," which offers mathematical explanations for the proposition that diversity trumps ability.⁶⁴ In his recent book, Page identified what he calls "acquired" and "inherent" cognitive diversity; by acquired he means experiences, learned behaviors and traits and by inherent he means "immutable" traits such as race and gender.⁶⁵ (We have learned that race and gender are more fluid than was formerly known when immutability was the conventional wisdom.) When engaged in complex tasks, Page posited that a cognitively diverse group will come up with better and more durable results,⁶⁶ or, in his own words,

The formal models reveal how cognitive diversity can contribute on a variety of tasks. They show how groups and teams whose

⁶¹ *Id.*

⁶² *Id.* at 76, n. 8.

⁶³ *Id.* at 76–77, n. 13.

⁶⁴ SCOTT E. PAGE, *THE DIFFERENCE: HOW THE POWER OF DIVERSITY CREATES BETTER GROUPS, FIRMS, SCHOOLS, AND SOCIETIES* xiv et seq. (2007).

⁶⁵ SCOTT E. PAGE, *THE DIVERSITY [BONUS]: HOW GREAT TEAMS PAY OFF IN THE KNOWLEDGE ECONOMY* 54 (2017).

⁶⁶ *Id.*

members possess diverse representations, models, knowledge, and heuristics make more accurate forecasts, find better solutions to problems, come up with more creative ideas, provide broader and deeper evaluations of policies and strategies, and better discern what is true.⁶⁷

What we have explored in our work at the University of New Mexico Health Sciences Center is that cognitively diverse groups do not necessarily work well together without skills, such as being experienced in cross-cultural communication; cross-racial relations; dissent and conflict; and, most emphatically, cultural humility and intellectual modesty.⁶⁸ Thus, in my opinion, what could have resulted at the Yale conference was a move toward cognitive diversity—an inclusive legal feminism that encompassed multi-dimensional views—combining MacKinnon’s dominance theory⁶⁹ with Angela’s nuance theory. This would instantiate the embracing of contradictory voices⁷⁰ with the multiple consciousness that Angela (and Mari Matsuda) theorize.⁷¹

Let us go back to the Yale conference. Towards the end of footnote 22 of MacKinnon’s published response, MacKinnon remembers that after she spoke, Angela thanked her and said that her critique of Angela’s work was “fair and right,” and Angela expressed “her appreciation for the attention to what she [Angela] had said back then because [MacKinnon’s] work had been important to her,” which MacKinnon (as well as Professor Kim Crenshaw who, MacKinnon remembers, was sitting next to her) admired as “courageous and forthright.”⁷² What I understood when Angela thanked

⁶⁷ *Id.* at 221.

⁶⁸ See generally, Margaret Montoya, lead author, *A Status Report on the AIME Mentorship for Faculty of Color Pilot Project*, Sep. 30, 2016, and the *Final Report with Evaluation Information on the AIME Mentorship Pilot Project* (Dec. 2018) (on file with author).

⁶⁹ See Harris, *Race and Essentialism*, *supra* note 47, at 590 et seq.

⁷⁰ *Id.* at 595 et seq.

⁷¹ *Id.* at 615 (citing Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 WOMEN’S RTS. L. REP. 7 (1989)).

⁷² MacKinnon, *Keeping It Real*, *supra* note 60, at 80, n. 22.

MacKinnon was that she had learned from MacKinnon. However, to my ear, MacKinnon didn't reciprocate, wouldn't hear that her account was partial and incomplete, and couldn't acknowledge that she stood to learn from Angela. I mentioned that MacKinnon used the word "defamation" to characterize the articles that cited Angela's essentialism charge.⁷³ According to Google Scholar, Angela's article has now been cited more than 2,850 times.⁷⁴ Assuming that many who cite the article agree with the idea of gender essentialism, that's a lot of "defamation."

LatCrit is now a mature intellectual academic community, having survived internal conflicts and accomplished, against great odds, its primary goal of changing the face of the legal professoriate through its recruitment, cultivation, mentoring, and leadership development of dozens of faculty of color.⁷⁵ In doing so, LatCrit has engendered a new multidimensional discourse about race, identity, and anti-subordination that has reverberated throughout the legal academy and provided new models and platforms for outsiders. Angela has been a founding member of LatCrit, a long-term board member, and a leading voice among us. "LatCritters" are now university leaders, deans, endowed chair-holders, prolific authors, public intellectuals, and thought leaders;⁷⁶ the LatCrit conference has attracted young and old for

⁷³ See text accompanying n. 63 *supra*.

⁷⁴ Google Scholar, *Angela P. Harris*, https://scholar.google.com/scholar?hl=en&as_sdt=0%2C32&q=angela+p+harris&btnG= (this webpage now shows 2,888 citations for the *Race and Essentialism* article) (last visited on Nov. 21, 2017).

⁷⁵ For the range of ongoing programs and completed projects, see *Index*, LAT CRIT: LATINA & LATINO CRITICAL LEGAL THEORY, INC., [http://latcrit.org/index/\[https://perma.cc/5U92-UYKE\]](http://latcrit.org/index/[https://perma.cc/5U92-UYKE]) (listing specific programs that improved the employment opportunities for faculty of color, such as the Junior Faculty Development Workshop and the Student Scholar Program).

⁷⁶ The following is a partial list of faculty who have been active in LatCrit events, helped develop the LatCrit community, and now hold positions of leadership and influence: Law School Deans: Leonard Baynes (Univ. of Houston Law Center), Camille Nelson (American University School of Law), Roberto (Beto) Juarez (former Dean, University of Denver, Sturm School of Law), and Carla Pratt (Washburn Univ. School of Law). Endowed Chair-holders: Berta Hernandez (Levin Mabie & Levin Professor of Law (Univ.

over two decades. Law schools, however, face many challenges, both internally with a changing profession⁷⁷ and falling enrollments,⁷⁸ as well as externally because of volatile social justice issues⁷⁹ and threats to democracy,⁸⁰ and these implicate and complicate LatCrit's future. Can the law schools of today create spaces for students to develop their full potential as Professor Gerald Torres (Univ. of Texas) hopes, or teach students the skills of solidarity as Professor Athena Mutua (Univ. at Buffalo) hopes? Is it not, really, up to LatCrit?

We are now post-Obama and in the midst of the Trumpian revolution. The title of this conference asks, What next? The 2016 election results created a new urgency for anti-subordination theory, community, and praxis. Angela's older work on neoliberalism and suburbanization's reversal of civil rights progress in such cases as *Brown v. Board*, *Goodridge v. DPH*, and *Lawrence*

of Florida Levin College of Law), Angela Harris (Distinguished Professor of Law, Boochever and Bird Endowed Chair for the Study and Teaching of Freedom of Equality, UC-Davis School of Law), Roberto Corrada, Mulligan Burleson Chair in Modern Learning (Univ. of Denver Sturm School of Law), and Gerald Torres, Jane M.G. Foster Professor of Law (Cornell Law School). Prolific authors: Richard Delgado (Univ. of Alabama School of Law) and Steve Bender (Seattle Univ. School of Law). Public intellectuals: Michael Olivas (William B. Bates Distinguished Chair of Law, Univ. of Houston Law Center), Sumi Cho (DePaul Univ. College of Law), and Thought leaders: Frank Valdes (Univ. of Miami School of Law), Laura Gomez (UCLA School of Law), and Tayyab Mahmud (Seattle Univ. School of Law).

⁷⁷ Joel Stashenko, *No Easy Answers for Challenges Facing Law Schools*, N.Y. L. J. (Jan. 30, 2014), <https://www.law.com/newyorklawjournal/almID/1202640643057/> (last visited Feb. 17, 2018).

⁷⁸ *Id.*

⁷⁹ Universities and law schools have been disrupted because of events such as police violence. See Assoc. Press, *Minorities at Harvard, other law schools seek delays in finals because they've been busy protesting*, MASSLIVE (Dec. 10, 2014), http://www.masslive.com/news/index.ssf/2014/12/minorities_at_harvard_other_la.html [<https://perma.cc/C66P-79H9>].

⁸⁰ Jared Diamond, *Four Threats to U.S. Democracy*, UCLA NEWSROOM (Feb. 18, 2014), <http://newsroom.ucla.edu/stories/four-threats-to-american-democracy-250120> [<https://perma.cc/3APS-3ESH>] (identifying the following four threats: deterioration in political compromise, restrictions on the right to vote, the gap between rich and poor, and decline in government investment in public purposes).

v. *Tex.* continues to have tremendous import for us.⁸¹ Neoliberalism (encompassing deregulation, privatization, inequalities, free markets, culture wars) is a term that is in everyday usage in Mexican newspapers to refer to the U.S. and other hegemons, yet how often do you find it in the *New York Times*? In 2009, Stanley Fish wrote in the *Times*,

I've been asking colleagues in several departments and disciplines whether they've ever come across the term "neoliberalism" and whether they know what it means. A small number acknowledged having heard the word; a very much smaller number ventured a tentative definition.⁸²

Well, Fish should have read Angela then, and if you don't know her "Stonewall to Suburbs?" article,⁸³ read it; it is brilliant. Her recent work on the "Color of Farming" takes Angela back to Yellow Springs and the agrarian roots of her family.⁸⁴ She suggests Race Crits collaborate with environmentalists to produce a more inclusive agrarian theory and praxis.⁸⁵ Angela's scholarship contains a rebuttal to those, e.g., Mark Lilla and others⁸⁶ who are currently arguing that a winning electoral position must forego "identity politics" and that climate change policies will ineluctably favor the rich. Additionally, Angela's ongoing work with Carmen Gonzalez, *Presumed*

⁸¹ See Harris, *Stonewall to Suburbs?*, *supra* note 48.

⁸² Stanley Fish, *Neoliberalism and Higher Education*, N.Y. TIMES OPINIONATOR BLOG (Mar. 9, 2009), <https://opinionator.blogs.nytimes.com/2009/03/08/neoliberalism-and-higher-education/> [<https://perma.cc/YCT2-NDRV>].

⁸³ See Harris, *Stonewall to Suburbs?*, *supra* note 48.

⁸⁴ See Harris, *Color of Farming*, *supra* note 40.

⁸⁵ *Id.*

⁸⁶ See, e.g., Mark Lilla, *The End of Identity Liberalism*, N.Y. TIMES (Nov. 18, 2016), https://www.nytimes.com/2016/11/20/opinion/sunday/the-end-of-identity-liberalism.html?_r=0 [<https://perma.cc/D5FQ-D4Q2>].

Incompetent,⁸⁷ is a damning rejection of the politics of “leaning in,”⁸⁸ as if that’s ever been a viable option for women of color. I regret that I don’t have more time to examine these articles in greater depth.

In closing, let me segue back to Jerome. In 2003, in an article that he entitled, “Seventh Aspect of Self Hatred: Race, LatCrit, and Fighting the Status Quo,”⁸⁹ Jerome wrote, “my friend Roberto Corrada asked at the fifth LatCrit conference, ‘are *you* a LatCrit?’”⁹⁰ Jerome goes on:

This . . . requires me to acknowledge my own demons of self-hatred . . . important for those of us who see ourselves as feminists or queer.⁹¹ A number of years ago, in my first year of teaching at Duke Law School, I was hospitalized for two days in intensive care . . . with undiagnosed diabetes.⁹² . . . Shortly after I returned to teach my first yr law students, a 3rd yr student came to my office . . . a very muscular Black man in his mid 20s . . . He had come . . . to welcome me to the community of diabetics.⁹³ . . . My mother, then still alive, was a diabetic, but the shame—the internalized shame—of admitting that I was in that company was too much for me. I hated what was part of me . . . and it drove me to reject this identity. 18 months ago [my family doctor told me] my kidney function was at 10 percent and I would have to go on kidney dialysis. 6 months and

⁸⁷ PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA (G. Gutiérrez y Muhs, Y.F. Niemann, C.G. González, A.P. Harris, eds. 2012) (telling the stories of the steep challenges faced by women of color in academia) and PRESUMED INCOMPETENT II: THE INTERSECTIONS OF RACE, CLASS, POWER, AND RESISTANCE OF WOMEN IN ACADEMIA (Y.V. Niemann, G. Gutiérrez y Muhs, C.G. González, eds. 2020)(naming the obstacles and biases faced by women in higher education careers).

⁸⁸ SHERYL SANDBERG, *LEAN IN: WOMEN, WORK, AND THE WILL TO LEAD* (2013) (Sandberg, the Chief Operating Officer of Facebook, argues that women unintentionally hold themselves back in their careers; I contend that her advice is more applicable to white women than women of color, who face high barriers of both conscious and unconscious discrimination).

⁸⁹ Culp, *Seventh Aspect of Self-Hatred*, *supra* note 1.

⁹⁰ *Id.* at 425.

⁹¹ *Id.* at 427.

⁹² *Id.* at 428.

⁹³ *Id.*

3 operations later, I began dialysis. Three times a week . . . I spend four and a half hours having the blood . . . cleaned. . . .⁹⁴

What kidney dialysis taught me is that identity is not permanent, either in a time sense or even from moment to moment.⁹⁵

And that is a lesson that I too have learned from my work in health sciences and from my own aging; our identity as able-bodied is fragile and vanishes over time.

Jerome went on,

[s]everal years ago I was traveling in the first class section of an airplane . . . I overheard a conversation between two sets of passengers who . . . met on the plane . . . One middle-aged male, apparently traveling with his wife, asked an obviously retirement-age White heterosexual couple whether they were from Illinois.⁹⁶ The older couple responded no, they had spent most of their lives in California and retired to Illinois. The middle aged White couple said . . . most people did the opposite . . . retiring to places like California or Arizona. The couple said they left California because, "No one spoke English" . . . the middle-aged White couple⁹⁷ nodded knowingly and agreed, but said that is only true of "Southern" Calif. "Northern" California is not like that⁹⁸ . . . The older White couple agreed adding, "But everyone is Asian there."

Jerome wrote, "I remained silent throughout that discussion."⁹⁹

I am a LatCrit because of that story. I remained silent and by doing so, I engaged in a form of the seventh aspect of self-hatred . . . When those White travelers attacked others, they attacked me. By not claiming my Asianness and Latina/o-ness, I became part of the oppression of others and myself. This is the reason I am a LatCrit. To not claim the otherness that my White colleagues sometimes

⁹⁴ *Id.* at 429.

⁹⁵ *Id.* at 430.

⁹⁶ *Id.* at 435.

⁹⁷ *Id.*

⁹⁸ *Id.* at 436.

⁹⁹ *Id.*

reject, I became what I fear—a disembodied identity, unconnected to others who share my many oppressions. I am a LatCrit precisely because to fail to be is to engage in that self-hatred that I am trying to avoid.¹⁰⁰

In 2003, Jerome again wrote about his dialysis:¹⁰¹ “The medical literature describes my condition as End Stage Renal Disease. If I had lived in the first half of the last century instead of the first half of this one, I would now be dead.”¹⁰² In February 2004, Jerome passed.¹⁰³

In closing, I have taken the liberty of using fragments of Jorge Luis Borges’ poem called *Learning*,¹⁰⁴ because it reminds me of why we honor Jerome and Angela. I will use a translation rather than reading the original Spanish. But much is lost in the melody, the ear quality of Borges’ word choice.

After some time, you learn...you learn that you can actually bear
hardship,
that you are actually strong,
and you are actually worthy,
and you learn and learn...and so every day.

Over time you learn to build your roads on today,
because the path of tomorrow doesn’t exist.

¹⁰⁰ *Id.*

¹⁰¹ Jerome M. Culp, Jr., Angela P. Harris, & Francisco Valdes, *Subject Unrest*, 55 STAN. L. REV. 2435 (2003).

¹⁰² *Id.* at 2439.

¹⁰³ *Duke Law Professor Jerome Culp Dies at Age 53*, DUKE TODAY (Feb. 6, 2004), https://today.duke.edu/2004/02/culp_0204.html [<https://perma.cc/M3ZM-RHJD>].

¹⁰⁴ *Jorge Luis Borges: Aprendiendo*, EL PRINCIPITO (Oct. 11, 2005), <https://elprincipito.blogia.com/2005/101102-jorge-luis-borges-aprendiendo.php> [<https://perma.cc/DZS6-D5MD>] (last visited Nov. 21, 2017). The Spanish version is attached as an appendix, followed by an English translation called *Learning* (trans. Blanca Zarsan). Initially, Professor Montoya and SJSJ believed this poem to be written by Jorge Luis Borges. However, it has not been identified as belonging to any collection or compendium of Borges, which is unusual considering his renown. While authorship remains unconfirmed, we have published this reprint based on the author’s wishes.

Over time you realize that in fact the best was not the future,
but the moment you were living just that instant.

Over time you will learn to forgive or ask for forgiveness,
say you love, say you miss, say you need,
say you want to be friends, since before
a grave, it will no longer make sense.

But unfortunately, only over time..."

This is LatCrit XXI; if we are asked, "Are you a LatCrit?,"¹⁰⁵ we can answer yes because we aspire to be like, and are inspired by, Angela and Jerome. Mil gracias, a thousand thank you's.

APPENDIX

Jorge Luis Borges: *Aprendiendo*

Después de un tiempo, uno aprende la sutil diferencia entre sostener
una mano y encadenar un alma.

Y uno aprende que el amor no significa acostarse.

Y que una compañía no significa seguridad, y uno empieza a
aprender ...

Que los besos no son contratos y los regalos no son promesas, y uno
empieza a aceptar sus derrotas con la cabeza alta y los ojos abiertos,
y uno aprende a construir todos sus caminos en el hoy, porque el
terreno del mañana es demasiado inseguro para planes ... y los
futuros tienen su forma de caerse por la mitad.

Y después de un tiempo uno aprende que, si es demasiado, hasta el
calor del Sol puede quemar.

¹⁰⁵ See text accompanying n. 90 *supra*.

Así que uno planta su propio jardín y decora su propia alma, en lugar de esperar a que alguien le traiga flores.

Y uno aprende que realmente puede aguantar, que uno es realmente fuerte, que uno realmente vale, y uno aprende y aprende ... y así cada día.

Con el tiempo aprendes que estar con alguien, porque te ofrece un buen futuro, significa que tarde o temprano querrás volver a tu pasado.

Con el tiempo comprendes que sólo quien es capaz de amarte con tus defectos sin pretender cambiarte, puede brindarte toda la felicidad.

Con el tiempo te das cuenta de que si estás con una persona sólo por acompañar tu soledad, irremediabilmente acabarás no deseando volver a verla.

Con el tiempo aprendes que los verdaderos amigos son contados y que quien no lucha por ellos tarde o temprano se verá rodeado sólo de falsas amistades.

Con el tiempo aprendes que las palabras dichas en momentos de ira siguen hiriendo durante toda la vida.

Con el tiempo aprendes que disculpar cualquiera lo hace, pero perdonar es atributo sólo de almas grandes.

Con el tiempo comprendes que si has herido a un amigo duramente, es muy probable que la amistad jamás sea igual.

Con el tiempo te das cuenta que aun siendo feliz con tus amigos, lloras por aquellos que dejaste ir.

Con el tiempo te das cuenta de que cada experiencia vivida con cada persona es irrepetible.

Con el tiempo te das cuenta de que el que humilla o desprecia a un ser humano, tarde o temprano sufrirá multiplicadas las mismas humillaciones o desprecios.

Con el tiempo aprendes a construir todos tus caminos en el hoy,
porque el sendero del mañana no existe.

Con el tiempo comprendes que apresurar las cosas y forzarlas a que
pasen, ocasiona que al final no sean como esperabas.

Con el tiempo te das cuenta de que en realidad lo mejor no era el
futuro, sino el momento que estabas viviendo justo en ese instante.

Con el tiempo verás que aunque seas feliz con los que están a tu
lado, añorarás a los que se marcharon.

Con el tiempo aprenderás a perdonar o pedir perdón, decir que amas,
decir que extrañas, decir que necesitas, decir que quieres ser amigo,
pues ante una tumba ya no tiene sentido.

Pero desafortunadamente, sólo con el tiempo...

*Learning by Jorge Luis Borges*¹⁰⁶

After some time, you learn the subtle difference between
holding a hand
and imprisoning a soul;
You learn that love does not equal sex,
and that company does not equal security,
and you start to learn....
That kisses are not contracts and gifts are not promises,
and you start to accept defeat with the head up high
and open eyes,
and you learn to build all roads on today,
because the terrain of tomorrow is too insecure for plans...
and the future has its own way of falling apart in half.

And you learn that if it's too much
even the warmth of the sun can burn.

¹⁰⁶ *Learning by Jorge Luis Borges*, "LOST IN TRANSLATION: LANGUAGE KNOWS NO BOUNDARIES," TUMBLR (Jan. 1, 2014), <http://translationwanderer.tumblr.com/post/71905486399/learning-by-jorge-luis-borges> [<https://perma.cc/397B-FZWU>] (last visited Nov. 21, 2017).

So you plant your own garden and embellish your own soul,
instead of waiting for someone to bring flowers to you.

And you learn that you can actually bear hardship,
that you are actually strong,
and you are actually worthy,
and you learn and learn...and so every day.

Over time you learn that being with someone
because they offer you a good future,
means that sooner or later you'll want to return to your past.

Over time you comprehend that only who is capable
of loving you with your flaws, with no intention of changing you
can bring you all happiness.

Over time you learn that if you are with a person
only to accompany your own solitude,
irremediably you'll end up wishing not to see them again.

Over time you learn that real friends are few
and whoever doesn't fight for them, sooner or later,
will find himself surrounded only with false friendships.

Over time you learn that words spoken in moments of anger
continue hurting throughout a lifetime.

Over time you learn that everyone can apologize,
but forgiveness is an attribute solely of great souls.

Over time you comprehend that if you have hurt a friend harshly
it is very likely that your friendship will never be the same.

Over time you realize that despite being happy with your friends
you cry for those you let go.

Over time you realize that every experience lived,
with each person, is unrepeatable.

Over time you realize that whoever humiliates
or scorns another human being, sooner or later
will suffer the same humiliations or scorn in tenfold.

Over time you learn to build your roads on today,
because the path of tomorrow doesn't exist.

Over time you comprehend that rushing things or forcing them to
happen
causes the finale to be different from expected.

Over time you realize that in fact the best was not the future,
but the moment you were living just that instant.

Over time you will see that even when you are happy with those
around you,
you'll yearn for those who walked away.

Over time you will learn to forgive or ask for forgiveness,
say you love, say you miss, say you need,
say you want to be friends, since before
a grave, it will no longer make sense.

But unfortunately, only over time...

Translation by Blanca Zarsan.

