

Latinos, Blacks, Others, and the New Legal Narrative

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I want to address my comments to the conversation we have begun on the nature of a Latino/Latina identity and the law. I hope that I am able to provide some useful insights on at least part of the questions we have raised here. I have entitled my comments "Latinos, Blacks, Others, and the New Legal Narrative."

I want to begin with the issue that is central to our discussion. There is a notion that we have to ask and answer the question whether we are going to look at race, nationality or ethnicity, but I want to say that the social construction that exists in our society is mainly about the "other". The notion of the other is what the enterprise of critical race theory, LatCrit theory, feminism and queer theory are fighting. At the same time, it seems there is a second question involved in our struggle which is: how are we going to define ourselves? These two questions are not the same thing. The question about how we are going to define ourselves as an organizing force for change is not necessarily the same question as how other people see us. We are always going to be "others" to people who do not want us to be involved in various aspects of life in America. We have to build a theory that recognizes our differences and builds coalitions for change. At the same time, this new theory has to avoid falling prey to the temptation to become complicit in the description of the other. We will not build a theory for change if we replicate the structures of the other created by society.

Now we find ourselves at a difficult crossroads. The growing concentration of law professors of color are producing scholars and

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scholarship that alter and change traditional legal scholarship. This has produced a response among traditional scholars. I call this response the scholarship of dismissal. They have called us everything from anti-semitic¹ to incompetent scholars.² But there is an additional sort of discussion that goes on that is deeply imbedded in the structure that is not written, that you hear in the hallways, and that is part of the scholarship of dismissal. The unwritten but, I believe, widely held view is that we are all just good story tellers, excellent writers, and passionate people, but that there is no substance to our stories and, therefore, traditional scholars do not have to pay attention to it. It is all just narrative. This sort of non-story that is being told in the hallways of your law schools, if you have not heard it, is being told behind our back, and has a certain truth to it. But it is a truth that people who are telling the story do not understand. There is a narrative we are all telling, but the narrative is not just a story; it is a narrative that holds very different assumptions about the law and the possibility and necessity of change. This narrative is what we believe, and what I hope LatCrit will in some ways adhere to, not as emblematic concerns nor as necessarily foundational notions, but as encapsulating ideas about what LatCrit ought to mean -- that we do not accept the status quo. In particular, we do not accept the racial or identity status quo as a starting point for discussion. Our scholarship challenges the assumption buried in legal analysis and legal scholarship that change in this existing status quo has the burden of proof. We do not believe that change has the burden of proof. We understand profoundly that our society has many things that are racially wrong.

1 See Daniel A. Farber & Suzanna Sherry, *Is the Radical Critique of Merit Antisemitic?*, 83 CAL L. REV. 853 (1995).

2 See Daniel A. Farber & Suzanna Sherry, *Telling Stories Out of School: An Essay on Legal Narratives*, 45 STAN. L. REV. 807 (1993); Anne M. Coughlin, *Regulating the Self: Autobiographical Performances in Outsider Scholarship*, 81 VA. L. REV. 1229 (1995). But see Jerome McCristal Culp, Jr., *Telling A Black Legal Story: Privilege, Authenticity, "Blunders," and Transformation in Outsider Narratives*, 82 VA. L. REV. 69 (1996).

And we are not simply going to take on the burden of proving that in every place. We are going to assume something different. That assumption is not non-scholarly, but is very much a different narrative. Our scholarship is not directed simply at the nine mainly white people on the U.S. Supreme Court. It involves writing to communities composed of more than simply the people in power, some of whom are aware of the existence of racial and identity oppression.

We are talking about both group and individual history. The discussion about history in this conference says that history is important, and that one cannot understand where one is without understanding history. The discussion says that legal analysis that is basically ahistorical and leaves out the history of people of color cannot possibly deal effectively with our circumstance and importance in creating change. The discussion says that we reject the dichotomy between individuals and groups that is fundamental to trying to create a structure that ignores the concerns dealt with by LatCrit and Critical Race Theory, and Feminism and Queer Theory.

All of these sorts of differences are about ultimately rejecting the white supremacy that is buried in traditional legal analysis. By accepting the alternative to these assumptions, we allow white supremacy to be buried in our discussion without being involved. It is the unseen hand which moves our discussion. We can see that in the discussion about affirmative action. We can see that in the discussion about who ought to be represented in Congress, in school councils and other areas with respect to racial redistricting. One of the things that one has to do when one is not Latino or Latina is to hear and to be involved. It is important that I hear what is going on and be involved.

One last concern that has to be addressed is: how do we deal with each other? How do we as African-Americans, we as White-Americans, we as Asian-Americans, we as Latino/Latina Americans participate together in struggles that involve people who are not ourselves? Fundamentally, we have to figure out how to hear what other people are saying, how to participate in the struggle of those

others who are involved with us in the larger struggle to reduce racial and gender oppression and how to understand what this project as a racial, ethnic, or nationality concern ought to entail and ought to make for us.

I have to end with a story I have never told before. It involves my name, Jerome McCristal Culp which people always find an interesting one. I got this name, Jerome McCristal Culp, Jr., because my father demanded that his first son be named Jerome McCristal Culp, Jr. He got the name because my grandmother won a contest. 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. My grandmother was that woman, and my father was that baby. So, my father became Jerome McCristal Culp.³ After finding out this history to my name I have often thought, is Jerome McCristal turning in some grave someplace as I carry his name around? In particular, would Jerome McCristal feel that we who have carried on his name and here are joining people to fight the legal oppression of Latinos and Latinas are bringing honor to that name? There is a lesson for LatCrit theory in this story. We have to have a name, and in order to be understandable it has to have a history. LatCrit has a personal history of how it came to be and a larger historical connection to the forces that push this part of the historical project in legal scholarship. In thinking about the notion of what LatCrit is to become we have to hear that history and the historical antecedents to its production, but we have to decide and define ourselves in ways that produce change. Those who want to engage in this project to change the law ought to go out and become the Jerome McCristal or LatCrit theorist of their choice. If we are to be great, we have to be more than our histories, but at the same time we have to learn from them.

3 I have wondered but I do not know the answer to the question, what would have happened -- or did happen -- to the first girl born after this contest?