

---

---

# Professor Angela P. Harris: A Life of Power at the Intersection: When the Equality Walk Matches the Equality Talk

Professor Emma Coleman Jordan\*<sup>1</sup>

HOW THE WORLD WAS INTRODUCED TO A VORACIOUS INTELLECT OF  
UNCOMMON DECENCY

Professor Angela P. Harris does the impossible. She is quiet, humble, brilliant and generous to other scholars. Her commitment to anti-subordination is both theoretical and personal. She lives every day with a central puzzle of modern legal theory: Whose voices count, whose experience represents the whole, and how do we use language to oppose and dismantle the ever-present structures of disrespect and violence against outside identities? Professor Harris first captured our attention with considerable elegance in her now iconic article, *Race and Essentialism in Feminist Legal Theory*,<sup>2</sup> by presenting a compelling

---

\* Copyright © 2014 Emma Coleman Jordan. Georgetown University Law Center. I thank Jahlionais Gaston for her exceptional research support and for her consistently imaginative work over the years as my former Economic Justice student and research assistant, J.D. '12, LL.M. Tax '13 Georgetown Law. Essay for the UC Davis Festschrift volume honoring the contributions of Professor Angela P. Harris.

<sup>1</sup> I register a mild, but decidedly allergic, reaction to the word “Festschrift.” As Michael Taggart found, the Festschrift convention, which he traces back to its origins in mid-19th century England, has become popular in legal scholarship in recent years. Michael Taggart, *Gardens or Graveyards of Scholarship? Festschriften in the Literature of the Common Law*, 22 OXFORD J. LEGAL STUD. 227, 227 (2002).

I was not surprised that women are underrepresented in this form of scholarly honor. Taggart’s review of the brief history of the common law Festschrift revealed that not one woman has been honored. In fact, according to Taggart, “The percentage of essays written by women for common law *Festschriften* (including co-authored contributions) amounts to a fraction over 10%.” *Id.* at 232. Of the 167 contributions by women, 13 were jointly authored with men. *Id.* at 232 n.25.

<sup>2</sup> Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 593 (1990) [hereinafter *Race and Essentialism*].

and detailed critique<sup>3</sup> of the intellectual failures of the scholarship of Professor Catharine MacKinnon, one of the most influential leaders of feminist legal theory.<sup>4</sup> Today, Harris continues to disarm the representational mute button, held down by those who construct the dominant story, which depends upon a socially constructed silencing of the voices of marginalized communities. Harris invariably surprises us with her direct and restless quest to unmask the hidden fissures that lie just beneath the surface of our often fragile identity — coalitions-of-convenience among members of race, gender, or academic status privilege groups.

Professor Harris cultivated an especially effective literary tool box for legal persuasion through her academic preparation as a writer, before ever pursuing a legal education.<sup>5</sup> She opens *Race and Essentialism*<sup>6</sup> with the Jorge Borges story of “Funes the Memorious.”<sup>7</sup>

---

<sup>3</sup> Harris combs MacKinnon’s texts for persuasive evidence that MacKinnon had regularly marginalized the voices of black women. Black women are consigned to footnotes, a demeaning scholarly choice “to exclude and to make invisible” the scholarship of black feminist scholars. See Harris, *Race and Essentialism*, *supra* note 2, at 593. Harris notes that:

At other times she deals with the challenge of black women by placing it in footnotes. For example, she places in a footnote without further comment the suggestive, if cryptic, observation that a definition of feminism “of coalesced interest and resistance” has tended both to exclude and to make invisible “the diverse ways that many women — notably Blacks and working-class women — have moved against their determinants.”

*Id.* at 592-93.

Harris is intellectually appalled that a leading feminist legal theorist is willing to postpone the demand of black women for equal treatment, by calling for black women to wait “until the arrival of a ‘general theory of social inequality’ . . . .” *Id.* at 593. She argues that MacKinnon “ignor[es] the voices of black female theoreticians of rape.” *Id.* at 598. Harris sees the complicity of white women, who were at once shielded and constrained by white men’s use of rape as a powerful weapon of criminal social control of the entire African American community. *Id.* at 600-01.

For a detailed discussion of white women’s participation the lynching ritual see, Emma Coleman Jordan, *Crossing the River of Blood Between Us: Lynching, Violence, Beauty, and the Paradox of Feminist History*, 3 J. GENDER RACE & JUST. 545 (2000) [hereinafter *Crossing the River*].

<sup>4</sup> Catherine MacKinnon is regarded as the center of radical feminist legal scholarship. See e.g., Ann Scales, *Disappearing Medusa: The Fate of Feminist Legal Theory?*, 20 HARV. WOMEN’S L.J. 34, 36 n.9 (1997).

<sup>5</sup> Professor Harris often tells her students and her audiences that she earned a Masters Degree in social science, with a specialization in culture, to prepare for a career as a writer.

<sup>6</sup> Harris, *Race and Essentialism*, *supra* note 2, at 581-82.

<sup>7</sup> JORGE LUIS BORGES, *LABYRINTHS: SELECTED STORIES AND OTHER WRITINGS* 59

This singularly elegant choice was a deft use of one of the most memorable opening stories in all of legal scholarship. She immediately captured our attention and admiration. Her choice to open with “Funes The Memorious,” combined with her first footnote<sup>8</sup> is powerful, because she chooses such a graphic and analytically compelling story to launch a direct challenge to feminist legal theory — a challenge to its neglect and exclusion of the voices of black women on their different experiences of inequality in America.<sup>9</sup> I reproduce it here to let you see for yourself, Professor Harris’s profound talent as a creative and effective writer.

After his transformation, Funes knew by heart the forms of the southern clouds at dawn on the 30th of April, 1882, and could compare them in his memory with the mottled streaks on a book in Spanish binding he had only seen once and with the outlines of the foam raised by an oar in the Río Negro the night before the Quebracho uprising. These memories were not simple ones; each visual image was linked to muscular sensations, thermal sensations, etc. He could reconstruct all his dreams, all his half-dreams. Two or three times he had reconstructed a whole day; he never hesitated, but each reconstruction had required a whole day.

Funes tells the narrator that after his transformation he invented his own numbering system. “In place of seven thousand thirteen, he would say (for example) Máximo Pérez; in place of seven thousand fourteen, The Railroad; other numbers were Luis Melián Lafinur, Olimar, sulphur, the reins, the whale, the gas, the caldron, Napoleon, Agustin de Vedia.” The narrator tries to explain to Funes “that this rhapsody of incoherent terms was precisely the opposite of a system of numbers. I told him that saying 365 meant saying three hundreds, six tens, five ones, an analysis which is not found in the ‘numbers’ The Negro Timoteo or meat blanket. Funes did not understand me or refused to understand me.”

In his conversation with Funes, the narrator realizes that Funes’s life of infinite unique experiences leaves Funes no ability to categorize: “With no effort, he had learned English, French, Portuguese and Latin. I suspect, however, that he was

---

(Donald A. Yates & James E. Irby eds., 1964).

<sup>8</sup> See Harris, *Race and Essentialism*, *supra* note 2, at 581 n.1.

<sup>9</sup> See *id.*

---

---

not very capable of thought. To think is to forget differences, generalize, make abstractions. In the teeming world of Funes, there were only details, almost immediate in their presence.” For Funes, language is only a unique and private system of classification, elegant and solipsistic. The notion that language, made abstract, can serve to create and reinforce a community is incomprehensible to him.<sup>10</sup>

The Funes opening does everything Stanley Fish tells us good sentences should do.<sup>11</sup> Fish says that a good sentence depends upon:

Content, the communication in a thrilling and effective way of ideas and passions, is finally what sentences are for. But just as you can't produce a sophisticated meal without a thorough knowledge of ingredients . . . so you can't produce powerful content in the shape of sentences that take your readers by storm without having a command of . . . content's vehicles and generators . . . The end, the goal, the aspiration is to say something, and the something you want to say will be the measure of whether you have written a sentence that is not only coherent but good.<sup>12</sup>

By the Fish measure, Professor Harris's opening sentence is deservedly legendary. We were bowled over by her mastery of the disturbing, fractious, legal history and contemporary debate about racial and gender equality in America. The opening is supported by Harris's strong mastery of white women's history,<sup>13</sup> African American women's history,<sup>14</sup> and the longstanding friction between black and

---

<sup>10</sup> *Id.* at 581-82.

<sup>11</sup> See STANLEY FISH, *HOW TO WRITE A SENTENCE: AND HOW TO READ ONE* 35-36 (2011).

<sup>12</sup> *Id.*

<sup>13</sup> See Harris, *Race and Essentialism*, *supra* note 2 at 605-06 & n.116 (citing Minnie Bruce Pratt, *Identity: Skin Blood Heart*, in ELLY BULKIN, MINNIE BRUCE PRATT & BARBARA SMITH, *YOURS IN STRUGGLE: THREE FEMINIST PERSPECTIVES ON ANTI-SEMITISM AND RACISM* 9, 30 (1984), for Pratt's description of her early involvement in the women's movement after having lost her children in a custody fight for being a lesbian, and her reluctance to look for or recognize struggle and difference within the movement itself).

<sup>14</sup> See Harris, *Race and Essentialism*, *supra* note 2, at 586 & n.19 (citing BLACK WOMEN IN NINETEENTH-CENTURY AMERICAN LIFE: THEIR WORDS, THEIR THOUGHTS, THEIR FEELINGS 234, 235 (Bert James Loewenberg & Ruth Bogin eds., 1976); *id.* at 599 & n.85 (citing Jacquelyn Dowd Hall, "The Mind that Burns in Each Body": Women, Rape, and Racial Violence, in POWERS OF DESIRE: THE POLITICS OF SEXUALITY 328, on the intertwining of gender and race oppression in the law of rape and its connection to lynching); see also Angela P. Harris, *Equality Trouble: Sameness and Difference in*

white women.<sup>15</sup> Harris quotes Ida B. Wells for the proposition that “white men used their ownership of the body of the white female as a terrain on which to lynch the black male.”<sup>16</sup>

For me, and the small number of black women legal scholars<sup>17</sup> active in 1990, *Race and Essentialism* was a bold signal of Harris’s commitment to participating in the critical race theory movement. She explains in her first footnote that she presented an early version of this paper during a Conference on Critical Race Theory and expresses her gratitude to all of the participants.<sup>18</sup> This reference explicitly integrates into text, the indispensable, yet often invisible communities of intellectual solidarity that proliferated during the early days of the development of critical race theory.<sup>19</sup> Thus, as a critical race theorist, she decidedly rejects the constraining doctrinal sources of the once-

---

*Twentieth-Century Race Law*, 88 CALIF. L. REV. 1923, 1925 & n.34, 1936 (2000) [hereinafter *Equality Trouble*] (citing GLENDA ELIZABETH GILMORE, *GENDER AND JIM CROW* 43 (1996) (arguing that black women, because of the overriding commitment to “uplift the race,” enjoyed more freedom than white women in the same period to combine marriage with public life)).

<sup>15</sup> See Harris, *Equality Trouble*, *supra* note 14, at 1939 & n.46 (citing Ariela J. Gross, *Litigating Whiteness: Trials of Racial Determination in the Nineteenth-Century South*, 108 YALE L.J. 109, 157 (1998) (examining nineteenth-century racial determination trials in the South and arguing that during the 1850s and 1860s “honor” was a key element of racial identity; white people had honor, and blacks did not. The way one demonstrated this honor was, in turn, partly a function of gender)); *id.* at 1966-67 & n.164 (citing RALPH GINZBURG, *100 YEARS OF LYNCHINGS* 63 (1969) (discussing the 1904 murder of Luther Holbert, a black sharecropper, and his wife by a mob of more than one thousand whites, which was reported in a Vicksburg, Mississippi newspaper); see also RANDALL KENNEDY, *RACE, CRIME, AND THE LAW* 41-49 (1997) (describing lynching as used to realize the goal of white supremacy, and the role of lynching in black politics); Harris, *Race and Essentialism*, *supra* note 2, at 599-600 (excavating the formidable writing of the anti-lynching crusader and journalist, Ida B. Wells, in *SOUTHERN HORRORS: LYNCH LAW IN ALL ITS PHASES*); Barbara Holden-Smith, *Lynching, Federalism, and the Intersection of Race and Gender in the Progressive Era*, 8 YALE J.L. & FEMINISM 31, 44 (1996) (describing the failure of Congress to enact anti-lynching legislation).

<sup>16</sup> See Harris, *Race and Essentialism*, *supra* note 2, at 600 & n.86 (citing Hazel V. Carby, “On the Threshold of Woman’s Era”: *Lynching, Empire, and Sexuality in Black Feminist Theory*, in “RACE,” *WRITING AND DIFFERENCE* 301, 309 (Henry Louis Gates, Jr. ed., 1986)).

<sup>17</sup> A collection of our personal experiences in law schools are collected in volume six of the *Berkeley Women’s Law Journal*, which emerged from the organization of the Northeast Corridor Collective of Black Women Law Professors in my living room, shortly after I left UC Davis to move to Georgetown in 1987.

<sup>18</sup> See, Harris, *Race and Essentialism*, *supra* note 2, at 581 n.a1.

<sup>19</sup> In *Building Theory, Building Community*, 8 SOC. & LEGAL STUD. 313 (1999), Harris explores the crucial role that such informal support communities play in providing an incubator for emerging alternative voices in the academy.

dominant Langdellian case analysis. I cheered when Harris chose to elevate the work of Ntzoze Shange's legendary "choreopoem" *For Colored Girls Who Have Considered Suicide/When the Rainbow Is Enuf* to the central position in her tenure article, with all the vibrant text that we knew and loved in our "other lives."<sup>20</sup> In *Race and Essentialism*, her first footnote, like her first story, showed, rather than told, us that she belonged to a rebellious community of black women thinkers who refused to swallow the pain of subordination in exchange for acceptance into the academic elite. It was simply thrilling to see that opening quote: "bein alive & bein a woman & bein colored is a metaphysical dilemma."<sup>21</sup>

The Funes limitation yields surprising dividends in Harris's powerful analysis. Harris works her way systematically from the majesty of the omission of slave voices from the "we the people of the Preamble to the Constitution and the Declaration of Independence." The story of marginalization of black women's voices begins with the representational birth defect of our nation: slavery. She shows us that:

In a sense, the "I" of Funes, who knows only particulars, and the "we" of "We the People," who know only generalities, are the same. Both voices are monologues; both depend on the silence of others. The difference is only that the first voice knows of no others, while the second has silenced them.<sup>22</sup>

Harris's analytic powers shine as she skillfully employs the Funes paradox throughout her argument. Her organizational decision, to return to the meaning of Funes's cognitive handicap over and over again, becomes an impressive skeleton onto which she meshes her argument and imagery into a powerful and cohesive whole. For example, in the following passage, Harris laments the tendency of literature to shirk social responsibility by hiding behind the mask of individual artistic imagination:

---

<sup>20</sup> See, Harris, *Race and Essentialism*, *supra* note 2, at 581.

<sup>21</sup> See, *id.* (citing Ntozake Shange, *no more love poems #4*, in *FOR COLORED GIRLS WHO HAVE CONSIDERED SUICIDE/WHEN THE RAINBOW IS ENUF* 45 (1977) (the poem in part reads, "bein alive & bein a woman & bein colored is a metaphysical dilemma/ i haven't conquered yet/ do you see the point/ my spirit is too ancient to understand the separation of soul & gender/ my love is too delicate to have thrown back on my face"))).

I have seen this play so many times, and read it again and again. I can recite many parts of it by heart. It has near religious devotion among many black women who became adults in the late sixties and early seventies. *Id.* at 581.

<sup>22</sup> *Id.* at 583.

“The first voice, the voice of Funes, is the voice toward which literature sometimes seems driven. In an essay, Cynthia Ozick describes a comment she once overheard at a party: “For me, the Holocaust and a corn cob are the same.” Ozick understands this comment to mean that for a writer, all experience is equal. Literature has no moral content, for it exists purely in the domain of the imagination, a place where only aesthetics matter. Thus, a poet may freely replace the Holocaust with a corn cob, just as Funes replaces “7013” with *Máximo Pérez*.<sup>23</sup>

We see Harris’s revulsion at the latent amorality that is exposed by any speaker’s willingness to equate the Holocaust with a corn cob. Harris gives us an exciting triple comparison in which: this overheard cocktail blather, literature in general, and Funes, share the same cognitive disability of many savants; a hyper-focused, narrow excellence that often deforms the innately human capacity to engage in moral cognition.<sup>24</sup>

She argues in passing, that fiction writers tend to evade moral accountability, and accuses many fiction writers of hiding behind the freedom of the imaginary worlds they create, avoiding any effort to link their imagination to the reality of subordination and atrocity. She reduces the freedom of a fiction writer to a machine-like replication of a false alternative reality, which she equates with Funes’s cognitively limited “transformation.” This particular argument is overbroad, as she surely does not intend it to include all novelists, as evidenced by her later citation to Toni Morrison’s short novel, *The Bluest Eye*,<sup>25</sup> for its powerful representation of black women’s moral injury, derived from centuries of being excluded from the possibility of beauty.<sup>26</sup>

---

<sup>23</sup> *Id.*

<sup>24</sup> See generally JOHN MIKHAIL, ELEMENTS OF MORAL COGNITION: RAWLS’ LINGUISTIC ANALOGY AND THE COGNITIVE SCIENCE OF MORAL AND LEGAL JUDGMENT (2011) (providing a powerful analysis of John Rawls’s theories of legal justice and Noam Chomsky’s seminal work on linguistic grammar). Mikhail tests the hypothesis that humans are born with a biological capacity to consider this moral hierarchy using an innate “moral grammar.” See *id.* at 101. The Funes story does not conflict with Mikhail’s work, since Jorge Luis Borges’s story presents Funes as a human anomaly who has been “transformed” into a machine-like savant, who can describe in his own unique vocabulary an infinite numbering system, but who lacks the basic human process of thought that permits recognition of a system that orders the relationship among numbers. Funes lacks this basic capacity to think like a human.

<sup>25</sup> Harris, *Race and Essentialism*, *supra* note 2, at 596-97.

<sup>26</sup> See TONI MORRISON, *THE BLUEST EYE* (1970).

## THE POWER OF THE FUNES'S STORY

First, Funes depicts the descriptive problem of the tension between mechanistic recordation of infinite unique experiences, and the normative problem of devising a system of linguistic representation that accurately captures human thought, experience, and reasoning.

The descriptive problem only requires a photographic account of differences. Thus, for this project, it does not matter if the words have any relation to each other. One could imagine a supercomputer with the unlimited capacity to record gazillions of unique names to match an infinite array of differences. Funes, after his transformation, was like a computer, with the prodigious descriptive talent that we most often associate with machine-like precision. In this photographic world, ultimately it would not matter if the word chosen was a number, a corn cob, or an artistic symbol; as long as each thing in the set occupied its own unique slot.

The normative problem of how to organize the details is more challenging because it requires penetrating the "rhapsody of incoherent" impressions.<sup>27</sup> In contrast to the machine-like description of difference, Harris elevates classification to the realm of human thought. Second, Professor Harris telegraphs her more ambitious insight in the last sentence of the Funes story: "the notion that language, made abstract, can serve to create and reinforce a community is incomprehensible to him."

Today, the Funes paradox still teaches the fundamental lessons of representation and experience in subordination. The question it poses occupies the center of the fundamental intellectual challenge to the flaws in representations of difference in equality struggles. Moreover, some twenty-five years later, we can also see that for Angela herself, the Funes conundrum went deeper than we knew on first reading.

Today, we can look back to learn what we could not know then. I hazard the guess that she will undoubtedly end where she began: with a passionate commitment to the anti-subordination project with every fiber of her being. As we sing in the African American protestant and Baptist churches, "I am going to stay on the battlefield until I die."<sup>28</sup>

Professor Harris has devoted virtually her entire career to expanding the breadth of the descriptive list of differences that we see, and her scholarly imagination has been vast. A quick glance at her list of publications reveals her unusually perceptive identification project; marching hand in hand with her normative project; across the

---

<sup>27</sup> Harris, *Race and Essentialism*, *supra* note 2, at 582.

<sup>28</sup> Gospel hymn: I Will Trust in the Lord, Rev. James Moore (Malaco).



subordinating boundaries of gender, race, colorism, unconscious racism, class and economic inequality, animal rights, mindfulness and professional identity. Through the Funes paradox, the world was introduced to a voracious intellect of uncommon decency.

This Essay covers some of Angela's many valuable contributions to the legal academy. I begin with her personal characteristics, and as I explore in more detail later, I see her quiet, powerful introversion as the key to her legacy. Second, I talk about our collaboration on our Economic Justice casebook. Third, I talk about our time together constructing a new course and sharing a classroom at UC Davis, my beloved professional incubator. Angela's arrival was the magnet that drew me back to UC Davis from my second professional home at Georgetown Law Center. Fourth, I take a look at the slow demise of the once stable dominance of law and economics intellectual frameworks in America.

WALKING THE WALK: PROFESSOR HARRIS'S QUIET PERSONAL COURAGE  
AND PROLIFIC COMMUNITY BUILDING ACCOMPLISHMENTS BEAR  
COMPARISON TO THE CONTRIBUTIONS OF PROFESSOR DERRICK BELL

Professor Harris is an introvert<sup>29</sup> in a profession where extraversion is a professional norm. She does not engage in drama or self-promotion. My two friends, the late Professor Derrick Bell<sup>30</sup> and Professor Angela Harris, are among the storied leaders of critical legal theory, though they have dramatically different styles of resisting pervasive racism, an ambition to which they each devoted their scholarly imagination. Despite superficially different tactics and personalities, they were equally influential, and equally effective. Both

---

<sup>29</sup> Susan Cain defines introverts by a list of personality traits that include: reflective, cerebral, bookish, unassuming, sensitive, thoughtful, serious, contemplative, subtle, introspective, inner-directed, gentle, calm, modest, solitude-seeking, shy, risk-averse, and thin-skinned." SUSAN CAIN, *QUIET: THE POWER OF INTROVERTS IN A WORLD THAT CAN'T STOP TALKING* 269 (2012). Cain argues that:

[O]ur lives are shaped as profoundly by personality as by gender or race. And the single most important aspect of personality — the "north and south of temperament" . . . is where we fall on the introvert-extrovert spectrum. Our place on this continuum influences our choice of friends and mates, and how we make conversation, resolve difference and show love. It affects the careers we choose and whether we succeed in them.

*Id.* at 2.

<sup>30</sup> For my tribute to Professor Bell, see *Derrick Bell, The Official Site*, <http://professorderrickbell.com/videos/> (last visited Mar. 7, 2014).

---

Bell and Harris decried and confronted the unacceptable subordination and inequality of excluding black women's experience.

Professor Bell mastered the art of direct confrontation of racial injustice.<sup>31</sup> His protest against the Harvard faculty's unwillingness to hire any tenured black women ended with his resignation from a tenured faculty position. Bell spent the next period of more than twenty years as a beloved visiting Professor at NYU Law School.<sup>32</sup> This personal sacrifice was emblematic of his resolute and very powerful personal commitment to challenging the structures of exclusion in even the most elite circles.<sup>33</sup>

Professor Bell published a detailed chronicle of the treacherous faculty politics leading to his decision to resign. He candidly reported his frustration with the refusal of the Harvard Law Faculty to offer a tenured position to a black woman, undeterred by the internal pressures that he applied as a tenured faculty member, combined with outside pressures by a coalition of student advocates. In one especially poignant account, Bell reported an instance in which Professor Regina Austin, a visiting professor at Harvard, challenged Professor Charles Fried's analysis of a recent Supreme Court decision on affirmative action during his faculty workshop presentation. Fried had recently returned from serving as Solicitor General in the Reagan administration. Austin's challenge to Fried's analysis goes to the heart of Professor Harris's analysis of the problem of silencing the voices of black women in intellectual discourse on a variety of topics, but especially on questions directly arising from racial competition for scarce social resources. When Fried presented his conclusion, that "we [are] now witnessing the interesting paradox that women charging gender discrimination would have an easier time proving their cases than would blacks," Professor Austin interrupted him asking, "[Y]ou are really only talking about white women, aren't you?" Austin's insight was that black women's claims would be measured by the

---

<sup>31</sup> Derrick adopted the following W.E.B. DuBois admonition as his personal motto: "We must complain. Yes, plain blunt complaint, ceaseless agitation, unflinching exposure of dishonesty and wrong — this is the ancient unerring way to liberty and we must follow it." DERRICK BELL, *CONFRONTING AUTHORITY: REFLECTIONS OF AN ARDENT PROTESTOR* (1994).

<sup>32</sup> Professor Bell died on October 5, 2011. Each year on the occasion of Professor Bell's birthday, his widow Janet Dewart Bell, with the support of NYU Law School, now organizes the Annual Derrick Bell Lecture on Race in American Society. The Bell Lecture is a truly exciting, well-attended convocation of many lawyers in the civil rights community. This tradition reached its eighteenth year in November 2013.

<sup>33</sup> I always admired Derrick's courage and commitment to directly confronting unfairness. See BELL, *supra* note 31.

higher standard of the race cases, even if their claims were based on both sex and race.<sup>34</sup>

Bell described a moment of “embarrassed silence.” It was obvious that Fried had simply not considered black women in speaking of “women” as a category in race discrimination law.” This was a live example of the problem of race and gender essentialism, at work in the mind of the nation’s highest advocate before the Supreme Court. Bell reported that Fried, “continued with his presentation, for once stripped of the air of intellectual invincibility that both his voice and manner seemed to convey.”<sup>35</sup> Bell saw this as a triumphant moment for Professor Austin, because it demonstrated her unique capacity as a black woman: to provide missing insights about black women’s experience. He concluded sadly, that the majority of the faculty present in that early exchange did not recognize the value of Austin’s added intellectual voice in exploring issues of subordination.<sup>36</sup>

Derrick Bell and Angela Harris share a passion that leaps beyond the often ineffective tools of argument and persuasion to embrace action. They share a lionhearted empathy for marginalized others and have both refused to limit their powerful imagination to their own DNA. For Derrick, a full generation older than Angela, his personal protest on behalf of black women at Harvard was an act of loving empathy.<sup>37</sup>

Angela’s introverted leadership style has been as invaluable as Derrick’s direct confrontation. We surely have needed both sets of personality characteristics to change the academy.

#### ANGELA’S POWERFUL PERSONAL CHARACTER

I am reminded of a conversation I had with Angela last year when I was visiting at Davis. I do not think she would mind me sharing this important private moment. My book club, in Washington, D.C., was reading Susan Cain’s bestseller, *Quiet; The Power of Introverts in a*

---

<sup>34</sup> *See id.*

<sup>35</sup> *Id.* at 51.

<sup>36</sup> *Id.* at 52.

<sup>37</sup> I don’t want to get carried away here. Derrick could, and did, offend people in other identity groups. For example, there were some black women legal scholars who objected to his Harvard protest. They thought that he was appropriating their gender difference as a tool in a long-running battle with the white men who ran Harvard Law School when he was there. For example, in *CONFRONTING AUTHORITY: REFLECTIONS OF AN ARDENT LAW PROFESSOR* (1994), Bell reveals that Regina Austin did not believe that the protest was “good” for her. In fact, her friendship with Bell suffered temporarily as a result of her perception of his protest as a selfish act that would ultimately hurt her chances of becoming a tenured law professor at Harvard Law School. *Id.* at 114.

---

*World That Can't Stop Talking*. I carried the book around for a while, reading it whenever I had a moment, and when she noticed it on the counter at my house, we started discussing its premise. Cain argues that “one third of the people we know are introverts. They are the ones who prefer listening to speaking, who innovate and create, but dislike self-promotion.” She makes a convincing case that “it is to introverts that we owe many of the great contributions to society.”<sup>38</sup> As Angela and I talked about what I had read up to that point, she remembered taking the Myers-Briggs inventory as a part of a Society of American Law Teachers Retreat (“SALT”). She smiled gently and chuckled before saying, “I was way at the end of the introversion spectrum. My husband and I are a good match because he really understands that when I don’t say anything, it’s not withdrawal from contact, but just my way of listening and processing information.”

Cain’s chapter on *The Myth of Charismatic Leadership*,<sup>39</sup> asks what introverted leaders do differently from — and sometimes better than — extraverts.<sup>40</sup> Cain provides a useful framework for thinking about why Professor Harris is such a beloved teacher, critical theory network builder, and collaborator with such a wide spectrum of scholars from schools throughout the hierarchy of the *U.S. News and World Report* rankings. One obvious first answer, which provides a start to understanding Professor Harris’s remarkable influence, is that she walks the anti-subordination walk in everything she does. She is authentic. Although she has been on the inside of virtually every elite circle in the legal academy, she does not embrace elitism for herself, and she is not a superstar diva. Angela lives equal treatment as a central tenet of her daily life. Yet, her deep commitment to anti-subordination, while true as far as it goes, does not fully explain her remarkable influence and success as a leader.

Cain relies on the research of Adam Grant, a Wharton School of Business professor of management and a consultant to Fortune 500 executives and military leaders.<sup>41</sup> Grant tells the story of a wing commander, just one rank below general, in the U.S. Air Force, who was responsible for leading thousands of people in the mission of protecting a high-security missile base. She describes him as someone who:

spoke quietly without too much variation in his vocal inflections or facial expression. He was more interested in

---

<sup>38</sup> CAIN, *supra* note 29.

<sup>39</sup> CAIN, *supra* note 29, at 34.

<sup>40</sup> *Id.* at 55.

<sup>41</sup> CAIN, *supra* note 29, at 55.

listening and gathering information than in asserting his opinion or dominating a conversation. He was widely admired, when he spoke, everyone listened . . . people respected not just his formal authority, but also the way he led.<sup>42</sup>

This commander reminded me of Professor Harris. First, he supported his employees' efforts to take the initiative; Second, he implemented the ideas that made sense, while making clear that he had the final authority; Third, he was not concerned with getting credit or even with being in charge; Fourth, he assigned work to those who could perform it best; Fifth, he was willing to delegate some of the most interesting, meaningful, and important tasks — work that other leaders would have kept for themselves.<sup>43</sup>

Harris has consistently been a scholar who “walks the equality walk” as fiercely as she “talks the equality talk,” and her scholarship is critical in the most exalted sense of the word. She is willing to step outside of each and every hierarchy to question her own privilege as well as that of others.

#### THE HARRIS PRINCIPLE OF ACADEMIC ANTI-SUBORDINATION

For Angela, scholarship includes organizing and community building. Angela's publications list reveals an exemplary, but unusual pattern. She frames the overview of many collections, showcasing one of her strongest intellectual gifts; she can look at a disparate pattern of phenomena and extract the perfect unifying construct. She is, as I say later in this Essay, a natural conceptualist. A corollary of the Harris anti-subordination praxis is that she encourages younger, talented, but sometimes less well-known scholars to co-author or collaborate with her in organizing conferences and producing edited essay collections. An example of her approach to building the infrastructure for sustained scholarly engagement with, and resistance to, ideas that subordinate is *Presumed Incompetent: The Intersections of Race and Class for Women in Academia*.<sup>44</sup> *Presumed Incompetent* presents a collection of personal narratives, primarily by women of color in

---

<sup>42</sup> *Id.* at 55.

<sup>43</sup> *Id.* at 56.

<sup>44</sup> See PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA (Gabriella Gutiérrez y Muhs, Yolanda Flores Niemann, Carmen G. González & Angela P. Harris eds., 2012). See generally Angela P. Harris, *From Color Line to Color Chart?: Racism and Colorism in the New Century*, 10 BERKELEY J. AFR.-AM. L. & POL'Y 52 (2008) (discussing discrimination based upon color or the performance of race).

---

---

various disciplines, chronicling their struggles to move forward in the academy, against the burden of the fallacious presumption that women of color are incompetent.

Two recent examples of Angela's fidelity to the Harris principle of academic anti-subordination praxis include the two *Festschrift* volumes in her honor. First, it was her decision, that younger scholars should be invited to contribute to the UC Berkeley volume, while the rest of us tenured AARP members should contribute to the UC Davis volume. The second example is her departure, without fanfare, first from UC Berkeley to visit at SUNY Buffalo, and then to keep her residence in the city of Berkeley while she accepted a tenured position at UC Davis School of Law.

I, for one, am grateful for Angela's writing, and for the powerful example of her unique combination of intellectual courage and boldness — effective complements to her quiet manner that avoids self-promotion. As I prepared my remarks for that lovely fall *Festschrift* symposium in her honor at Boalt Hall, organized by her former colleague and friend Professor Melissa Murray, I realized that her prolific scholarship captures only a small fraction of her true legacy and that we are indebted to her for her brave personal choices.

Angela is a mother,<sup>45</sup> and she is a friend in times of trouble.<sup>46</sup> For Angela, scholarship includes organizing and community building. Angela's long list of publications reveals a relentless, but quiet, intellectual leader, and an organizer of legal intellectual conferences and symposia.<sup>47</sup> One way to see this talent at work is to count her introductions to collected essays, as well as her co-authored, and co-edited works,<sup>48</sup> and a pattern of unselfish collaboration emerges,

---

<sup>45</sup> I have loved seeing Angela's daughter Rachel grow into a curious, intellectually confident mid-teen who will soon be ready for college.

<sup>46</sup> For example, Angela gave emotional support to Professor Jerome Culp as he fought his terminal illness.

<sup>47</sup> See e.g., *ClassCrits Workshop IV: Criminalizing Economic Inequality*, Conference at American University Washington College of Law (Sept. 2011); *The Mindful Lawyer: Practices & Prospects for Law School, Bench, and Bar*, Conference at University of California, Berkeley School of Law, (Oct. 2010); *ClassCrits Workshop III: Rethinking Economics and Law After the Great Recession*, Baldy Center for Law and Social Policy, Conference at University at Buffalo (May 2010); *ReProducing Justice*, Conference at Henderson Center for Social Justice, University of California at Berkeley (Nov. 2009); *Transformative Justice in Communities of Color: A Convening*, Conference at Henderson Center for Social Justice, University of California at Berkeley (Sept. 2008); *Law and Community Economic Justice in the 21st Century: Creating a Vision of Transformative Justice*, Henderson Center for Social Justice, Conference at University of California at Berkeley (Apr. 2007).

<sup>48</sup> Some of Angela's recent work includes: *RACE AND EQUALITY LAW* (forthcoming

revealing a mighty determination to change the structures around her, and to implement the vision she hints at in the last sentence of the Funes opening story. Angela's work has boldly challenged subordination across a rugged terrain of race, gender, class and other ideas, and she embodies justice, both in theory and in her life. Angela has managed to write brilliantly, with passion and panache, even while quietly attending to the unglamorous task of making her way through academic preserves, often saturated both latently and explicitly with race and gender and intergenerational hostility that has had nothing to do with identity factors. Professor Harris deserves praise and acclaim for her pioneering scholarship, through which she challenges conventional notions of gender equality. She has dared to tread where others have hesitated.

I want to note that Professor Harris enjoys a unique combination of rigorous, challenging scholarship and personal modesty. Her modesty and sustained quiet leadership are important components of the interwoven formula that has ensured her success over the last twenty-five years. She has helped to build a robust critical community that sustains scholarly resistance to subordination across the nation.

---

2013); CRIMINAL LAW: CASES AND MATERIALS (forthcoming 2013) (with Cynthia Lee); PRESUMED INCOMPETENT: THE INTERSECTION OF RACE AND CLASS FOR WOMEN IN ACADEMIA, *supra* note 44; ECONOMIC JUSTICE: RACE, GENDER, IDENTITY, AND ECONOMICS (2005) (2d ed. 2011) (with Emma Coleman Jordan); RACE AND RACES: CASES AND RESOURCES FOR A MULTIRACIAL AMERICA (1999) (2d ed. 2007) (with Richard Delgado, Juan Perea & Stephanie Wildman); A WOMAN'S PLACE IS IN THE MARKETPLACE: GENDER AND ECONOMICS (2005) (with Emma Coleman Jordan); CULTURAL ECONOMICS: MARKETS AND Culture (2005) (with Emma Coleman Jordan); WHEN MARKETS FAIL: RACE AND ECONOMICS (2005) (with Emma Coleman Jordan); *Power and Resistance in Contemporary Legal Education*, in DUNCAN KENNEDY, LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY: A POLEMIC AGAINST THE SYSTEM (2004) (critical edition with commentary) (with Donna Maeda); CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY (2002) (with Francisco Valdes & Jerome McCristal Culp); *Foreword to GYPSY LAW: ROMANI LEGAL TRADITIONS AND CULTURE* (Walter O. Weyrauch, ed., 2001); *Critical Race Theory*, in THE INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL & BEHAVIORAL SCIENCES (2001), available at <http://www.iesbs.com>; *Women of Color and the Law*, in FEMINIST JURISPRUDENCE, WOMEN, AND THE LAW: CRITICAL ESSAYS, RESEARCH AGENDA, AND BIBLIOGRAPHY (Betty Taylor, Sharon Rush, & Robert J. Munro eds., 1999); *Forcible Rape, Date Rape, and Communicative Sexuality: A Legal Perspective*, in DATE RAPE: FEMINISM, PHILOSOPHY, AND THE LAW (Leslie Francis, 1996).

## PROFESSOR HARRIS: THE AWARD WINNING ANTI-KINGSFIELD IN THE CLASSROOM

Professor Harris is an award winning teacher at UC Berkeley School of Law.<sup>49</sup> In the spring semester of 2013 we planned and co-taught Contemporary Problems in Economic Justice, a new course at Martin Luther King, Jr. Hall, UC Davis Law School. This was the first time that we taught together from the second edition of our *Economic Justice: Race, Gender, Identity and Economics* casebook.<sup>50</sup> It was the most stimulating intellectual fun I have experienced in a long time. Angela is a natural conceptualist; she thinks and guides students through a well-ordered, ambitious set of concepts, and empowers them to think with her, and to entertain her rigorously analytical questions. She is an authoritative and creative presence in the classroom. Her talent does not depend upon a performance of brutal student-teacher hierarchies. I learned from her whenever she was at the podium, because she gently invited everyone in the room to follow her on a journey in which she empowered us to embark on a guided tour of her voracious background reading on a vast array of topics. In short, she was the anti-thesis of the fictional authoritarian, relentlessly Socratic Professor Kingsfield of *The Paper Chase*.

It is worth remembering that Angela represents the rise of a new model of teaching in which students are empowered to participate in the intellectual project without reliance on artificially enforced hierarchies of raw power. The once dominant, and still influential, Socratic teaching model leads many students to valorize the charismatic personalities of the most dominating teachers.<sup>51</sup> John Jay Osborn, the author of *The Paper Chase*, the iconic novel about the terror of the first year law school experience, reportedly told a crowd attending a Harvard Law School commemoration of the fortieth anniversary of his novel, that Kingsfield was a composite of several of

---

<sup>49</sup> She is a winner of the U.C. Berkeley Law school Rutter Award, the law school's highest award for outstanding teaching.

<sup>50</sup> EMMA JORDAN COLEMAN & ANGELA P. HARRIS, *ECONOMIC JUSTICE: RACE, GENDER, IDENTITY AND ECONOMICS: CASES AND MATERIALS* (2005).

<sup>51</sup> For example, in his classic and once highly influential novel, *The Paper Chase*, John Jay Osborn, a Harvard Law School graduate, introduced the fictional Harvard Law professor Charles W. Kingsfield, Jr. Kingsfield embodies the valorization of the teacher whose sarcasm, relentless use of an extreme extraverted version of the Socratic method to intimidate students who react with both fear and devotion. See JOHN JAY OSBORN, *The Paper Chase* (1970).



his “favorite” first year teachers. He explained that “it wasn’t as though it was hard to find role models.”<sup>52</sup>

The Kingsfield character came to life when the movie and television series of the same name, starring John Houseman, portrayed an arrogant, insensitive extravert, who took pleasure in castigating students. Anyone who has watched the film remembers the riveting scene in which Kingsfield calls on Hart, the first year student narrator, to recite the facts of a contracts case. Hart announces that he would prefer to “pass” because he has “nothing relevant to say.” Kingsfield dramatically pauses, asking Hart to repeat his refusal to participate. Kingsfield, who is by this point well established in the narrative as a charismatic extravert, calls Hart to the raised lectern at the front of the amphitheater-style classroom, takes a dime from his pocket, hands it to Hart, and tells him to use the coin to, “call your mother because there is serious doubt about your becoming a lawyer.” Hart turns and starts toward his seat when he has second thoughts about accepting his public humiliation without retort. Hart pivots to face Kingsfield and then shouts, “You are a son-of-a-bitch Kingsfield!” The class sits in stunned silence as Kingsfield coolly replies, “That is the most intelligent thing you’ve said today. Now take your seat.” The students’ relieved, nervous laughter fills the room, and Hart returns triumphant, to his seat.<sup>53</sup>

*The Paper Chase* provides the perfect opportunity for me to conclude by summarizing three consistent attributes of Angela’s introverted style of leadership described above: First, Professor Harris has a unique, quiet style of critical theory network building, illustrated by her valuable work in collecting and promoting a broad array of publications that constitute her contribution to expanding and sustaining the intellectual infrastructure of critical race theory. The latest addition to this category is a conference of ClassCrits.<sup>54</sup> Second, Professor Harris exercised generous, but intellectually forceful leadership in the classroom at King Hall,<sup>55</sup> and third, Professor Harris made the bold decision to leave Boalt Hall to become a tenured

---

<sup>52</sup> Colleen Walsh, ‘*The Paper Chase*’ at 40, HARV. GAZETTE, Oct. 2, 2012, available at <http://news.harvard.edu/gazette/story/2012/10/the-paper-chase-at-40/>.

<sup>53</sup> THE PAPER CHASE (20th Century Fox Films, 1973).

<sup>54</sup> “Classcrits is organized by SUNY Buffalo Law professors Athena Mutua, Martha T. McCluskey, and Angela Harris, who is also on the faculty of the University of California at Berkeley, Boalt Hall School of Law.” See *Classcrits: Toward a Critical Legal Analysis of Economic Inequality*, <http://classcrits.wordpress.com/about/> (last visited Mar. 7, 2014).

<sup>55</sup> PRESUMED INCOMPETENT: THE INTERSECTION OF RACE AND CLASS FOR WOMEN IN ACADEMIA, *supra* note 44, at 542.

member of the UC Davis faculty, after more than twenty-five years at UC Berkeley.

ECONOMIC JUSTICE CASEBOOK COLLABORATION: TACKLING LAW AND ECONOMICS

In 1992, when I first considered framing economic inequality as a direct counterpoint to law and economics, law and economic reasoning was an ascendant, even dominant legal theory.<sup>56</sup> The most drastic departure from the Keynesian view of law and economics was by Milton Friedman, who joined the University of Chicago in 1949. Friedman championed the notion of a free market economic system with minimal government intervention. He argued that the government's intervention in the economy risked crowding out private actors, and that the Keynesian perception of consumption was flawed — that consumption choices were based on anticipated long-term income, not solely current income.

Milton Friedman entered forcefully into political questions with his book, *Capitalism and Freedom* in which he advocated the end of the Breton-Woods system of fixed exchange rates and supported the use of fiat money rather than backing the dollar with bullion. On the advice of neoclassical economists, Nixon ended the convertibility of the dollar to gold in 1971 and within five years, most major currencies had floating exchange rates.

If one person can be credited with (or blamed for) first bringing the Chicago school of economics to the legal system, it is the Honorable Richard Posner. In 1969, Richard Posner, a young anti-trust scholar, decamped from Stanford to the University of Chicago to engage the intellectually dominant neo-classical economists. Posner's departure from Stanford<sup>57</sup> marked an important moment in legal theory. It sparked a meaningful period of introspection at Stanford, and then the

---

<sup>56</sup> According to Richard Posner, the modern school of law and economics began in 1961 with two groundbreaking articles independently published by Ronald Coase and Guido Calabresi. See RICHARD POSNER, *THE ECONOMICS OF JUSTICE* (1981) (citing Ronald Coase, *The Problem of Social Cost*, 3 J.L. & ECON. 1 (1960) and Guido Calabresi, *Some Thoughts on Risk Distribution and the Law of Torts*, 70 YALE L.J. 499 (1961)).

<sup>57</sup> I was a Teaching Fellow at Stanford Law School, 1973-74. For one year I heard this debate and learned a lot about the dynamics of institutional and curricular change in an elite law school. Thomas Ehrlich was dean, and the entire faculty was fully engaged in the debate. As I recall, many of the conversations centered around abstract curricular aims and specific hiring decisions. Gerald Gunther was the prime advocate for hiring as many of the very best constitutional law scholars as they could find, without regard to curricular needs.

rest of the academy, about the proper place of the Langdellian common law study of judicial decisions as the primary source of legal rules. Posner's defection represented an implicit rebuke to conventional doctrinal scholarship and an embrace of neoclassical economic arguments about markets and justice.

In 1973, Posner published his seminal book, *The Economic Analysis of Law*. The Chicago School argued that antitrust policy was actually having harmful effects on consumers (i.e., by raising prices) and the field spread from there. Posner's book, however, was the turning point. Although Chicago School economists had been pressing for lawyers to accept their views, none of them were lawyers themselves. Posner was, and a very good one at that. He wrote his book for a legal audience and argued forcefully that the common law was ultimately unified by the search for economically efficient laws. The solution was obvious: use neoclassical economics to figure out just what were efficient rules.

Although challenged by many, the framework took off. Posner was appointed as a judge on the Seventh Circuit in 1981, and Frank Easterbrook joined him four years later.<sup>58</sup> Both have since emerged among the most cited judges in the history of the country, a sign of just how far the influence of this theory has spread.

Even before the Reagan administration, belief in the unfettered free-market took hold. The Depository Institutions Deregulation and Monetary Control Act broadened the ability of banks to extend credit and allowed interest rates to float freely.

The movement was both political and conceptual, and the timing was right. Law and economics gained in influence in the 1980s because this school of thought mirrored President Reagan's own normative beliefs. Reagan, advised by Milton Friedman and Martin Feldstein among others, pushed forward with his free market reforms after he began his term firing the air traffic controllers, who belonged to a public employees' union when they went on strike.<sup>59</sup> Reagan

---

<sup>58</sup> The confirmation of University of Chicago law Professors Richard Posner and Professor Frank Easterbrook to the Seventh Circuit Court of Appeals occurred in 1981 and 1985, respectively. President Reagan's nomination of two leading advocates of the law and economics school of thought gave a major boost to the credibility and judicial influence of the law and economics approach to legal reasoning. For an extended analysis of the cases that reflect this approach see JORDAN & HARRIS, *supra* note 50, at 226-290. The discussion of "Law and Economics in Judicial Reasoning" analyzes the development of rational choice and efficiency norms and a role for judges in deciding economic common law cases. *See id.*

<sup>59</sup> In 1981, I was a White House Fellow, serving as a special assistant to Transportation Secretary Drew Lewis. I participated in the discussions led by Secretary

---

---

slashed taxes, removed many protective regulations, and reduced the government's rate of expansion. How these measures caused interest rates to skyrocket and the economy to grind to a halt is beyond the purview of this Article; what is important is that the law and economics "free market" framework permeated the legislative and political landscape.

What does Posner have to do with Angela Harris? Our casebook, *Economic Justice: Race Gender, Identity and Economics*, was designed as a direct counterpoint to Posner's seminal casebook, *Economic Analysis of Law*.<sup>60</sup> We set out to provide the first systematic critique of the law and economics approach that was introduced in the first edition of Posner's casebook. We engaged an argument about the first principles of equality and justice in America.<sup>61</sup> Now that economic inequality has been elevated to the center of the national political agenda by the first black President,<sup>62</sup> it is easy to forget how dominant Chicago School economics has been in legal theory for the past 20 years. In 2001, we agreed that the casebook would allow us to initiate a long overdue direct conversation with Posner and his band of influential law and economics scholars. We elevated the critique of the culturally vacant norms of rational choice, wealth maximization, efficiency, and neutrality. Instead, we argued that the "master principles" found in anti-subordination norms of the Constitution and our fraught racial history must be central to any effort to address the long-cumulative timeline of economic appropriation, exclusion, and structurally-embedded economic disadvantages.

I bristled at the ahistoricism of the law and economics theory. Like the source discipline of neoclassical economics, law and economics eschewed any serious engagement with the lingering distributional effects and the economic impact of the physical violence of lynching and white race riots that affected 4,743 African Americans over a 100-

---

Lewis during this pivotal test confrontation between public sector unions and the new Reagan union-breaking approach to implementing free market ideology.

<sup>60</sup> RICHARD POSNER, *ECONOMIC ANALYSIS OF LAW* (4th ed., 1992).

<sup>61</sup> We state our goal of systematic engagement with law and economic theory in the introduction to the second edition: "In the last few decades critical legal scholarship has developed an even more openly moral discourse of justice, focused on the pursuit of equality. Traditional and critical scholars, however, have seldom ventured into the territory of efficiency or the systematic analysis of transactions, just as law and economics scholarship have seldom ventured into the territory of fairness and equality. JORDAN & HARRIS, *supra* note 50, at v.

<sup>62</sup> *State of the Union 2014: Excerpts from Obama's Speech*, WASH. POST (Jan. 28, 2014), [http://www.washingtonpost.com/politics/state-of-the-union-2014-excerpts-from-obamas-speech/2014/01/28/dc8017a0-886e-11e3-a5bd-844629433ba3\\_story.html](http://www.washingtonpost.com/politics/state-of-the-union-2014-excerpts-from-obamas-speech/2014/01/28/dc8017a0-886e-11e3-a5bd-844629433ba3_story.html).

year period.<sup>63</sup> There were 113 recorded lynchings in 1882 alone.<sup>64</sup> Attention to the cumulative effect of America's history of systematic, often violent economic exclusion of African Americans from owning property and accumulating wealth was completely missing from law and economics literature.<sup>65</sup>

My economic justice casebook project began in 1993, when I chose Nancy Ota, a recent Stanford Law School graduate with a background in banking, to work with me as a fellow in our future law professor program. She had been involved, as a law student, in a "Beyond the Casebook" project.

The back-story of our collaboration requires its own space in any homage to Angela. It was my good fortune that our offices at Georgetown were on the same floor and adjacent during her visit in 2001. I knew that the framework-shifting casebook in my early drafts would need the benefit of collaboration with at least one other voracious reader who understood the relationship between economic reasoning and subordination. This was a tall order.

Today, more than five years after the financial crisis, economics, and its dependent legal theory, law and economics, stand in wide disrepute.<sup>66</sup> Our economic justice work criticizes the myopia of law and economics.<sup>67</sup> We note that the internal critiques of law and economics by scholars working within the field present three intellectual challenges to classic market theory.<sup>68</sup> The three challenges we explored were directed at price theory, rational choice, and the impoverished view of human well-being reflected in standard macroeconomic measures.

Touching briefly on each of these three critiques in turn: First, we criticized price theory, a central tenet of neoclassical economics, by

---

<sup>63</sup> See e.g., Harris, *supra* note 2, at 558 (citing ORLANDO PATTERSON, *RITUALS OF BLOOD: CONSEQUENCES OF SLAVERY IN TWO AMERICAN CENTURIES* 179 (1998)).

<sup>64</sup> See STEWART E. TOLNAY & E.M. BECK, *A FESTIVAL OF VIOLENCE: AN ANALYSIS OF SOUTHERN LYNCHINGS, 1882-1930* (1995).

<sup>65</sup> Both Professor Harris and I cite this history in our work on equality. See e.g., Emma Coleman Jordan, *A History Lesson: Reparations for What?*, 58 N.Y.U. ANN. SURV. AM. L. 557 (2003); Jordan, *Crossing the River*, *supra* note 2, at 545; Emma Coleman Jordan, *The Non Monetary Benefits of Reparations Rhetoric: Compensating for Intergenerational Harm*, 6 BERKELEY J. AFR.-AM. L. & POL'Y REP. 21-25 (2004).

<sup>66</sup> The Financial Crisis of 2008 prompted even Posner to retreat from his earlier unqualified embrace of unbridled market competition, rational choice, wealth maximization and efficient markets. See RICHARD POSNER, *A FAILURE OF CAPITALISM: THE CRISIS OF '08 AND THE DESCENT INTO DEPRESSION* (2009).

<sup>67</sup> JORDAN & HARRIS, *supra* note 50, at 77 ("The Subprime Crisis of 2008: A Case Study in Market Failure and Economic Injustice").

<sup>68</sup> *Id.* at 291.

---

---

featuring the work of economists that challenged the governing assumption of perfectly competitive markets.<sup>69</sup> In our view, the idea that markets are perfectly competitive was fatally disconnected from the real world of functioning markets. We devoted much of our argument and structure to showing that many key markets have been characterized by market failures,<sup>70</sup> persistent racial discrimination,<sup>71</sup> and predatory exploitation of vulnerable populations. Second, as a banking scholar, after the financial crisis, I noted in the second edition that:

Cracks in the edifice of classic market theory had been visible for quite some time. In 2008 however, American financial markets suffered a sudden and catastrophic meltdown, precipitated by a collapse in the market for mortgage-backed securities . . . . [I]n the recession that followed, some economists pointed fingers at classic market theory itself.<sup>72</sup>

Among opinion writers, this recent commentary from Robert J. Samuelson captures the intensity of current criticism of the presumed reliability of economics:

These are hard times for economists. Their reputations are tarnished; their favorite doctrines are damaged. Among their most prominent thinkers, there is no consensus as to how — or whether — governments in advanced countries can improve lackluster recoveries. All in all, the situation recalls a cruel joke:

---

<sup>69</sup> *Id.* at 298-334 (citing several compelling publications by economists that challenge the governing assumption of perfectly competitive markets, including; Paul Krugman, *How Did Economists Get It So Wrong?*, N.Y. TIMES (Sept. 2, 2009), <http://www.nytimes.com/2009/09/06/magazine/06Economic-t.html> and Robert Barbera, *If It Were a Fight They Would Have Stopped It in December 2008*, The Berkeley Electronic Press, THE ECONOMISTS' VOICE, Apr. 2010, available at [www.bepress.com/ev](http://www.bepress.com/ev).

<sup>70</sup> JORDAN & HARRIS, *supra* note 50, at 305 (“In the legal literature, market failures are popularly pointed to as a reason for antitrust law, consumer protection law, and environmental law. Antitrust law responds to the market failures represented by oligopoly and monopoly power; consumer protection law responds to the market failures traceable to asymmetrical information between consumers and firms; and environmental law responds to the market failures cause by the negative externalities of pollution and the positive externalities of clean air and water.”).

<sup>71</sup> The seminal empirical research of Ian Ayres provided the indispensable data documenting the persistence of racial discrimination in key economic transactions such as new car buying. See IAN AYRES, *PERVASIVE PREJUDICE? UNCONVENTIONAL EVIDENCE OF RACE AND GENDER DISCRIMINATION* (2001); Ian Ayres, *Fair Driving: Gender and Race Discrimination in Retail Car Negotiations*, 104 HARV. L. REV. 817 (1991).

<sup>72</sup> *Id.*

*How many economists does it take to change a light bulb? None. When the one they used in graduate school goes out, they sit in the dark. . . .*

The faith in economics was, in many ways, the underlying cause of both the financial crisis and Great Recession — it made people overconfident and careless during the boom — and the basic explanation for the weak recovery, as stubborn caution displaced stubborn complacency. To regain relevancy, economists are searching for a new light bulb — or better use of the old one. Meanwhile, most are still sitting in the dark.<sup>73</sup>

When I invited Angela to join my mature Economic Justice project, she hesitated briefly to take on another commitment. However, her interest in class-based hierarchies ultimately sealed the deal. At that juncture, I envisioned us as two outsiders, Jordan and Harris, collaborating to extend the critical race project into another equality terrain: economic subordination. I expanded my exploration of law and economics on its own terms in response to rigorous challenges during a faculty research workshop<sup>74</sup> from my colleague, Mike Seidman, a critical legal scholar and constitutional theorist. Throughout the workshop, Mike maintained that for the project to be worth it, we had to fully engage the position of law and economics — I added three new chapters.

I won the casebook lottery when Angela moved into the office near mine. She had been reading the law and economics literature as closely as I had, so she did not need to catch up, and she was already

---

<sup>73</sup> Robert J. Samuelson, *Economics in the Dark*, WASH. POST (Feb. 16, 2014), [http://www.washingtonpost.com/opinions/robert-samuelson-economists-face-hard-times/2014/02/16/70991824-9599-11e3-afce-3e7c922ef31e\\_story.html](http://www.washingtonpost.com/opinions/robert-samuelson-economists-face-hard-times/2014/02/16/70991824-9599-11e3-afce-3e7c922ef31e_story.html) (emphasis added). Robert J. Samuelson is an opinion writer on economics. He is not related to noted economist Paul Samuelson.

<sup>74</sup> This actual example of serious challenge and engagement among Georgetown faculty stands in direct contrast to the legitimate, but purely hypothetical, concerns of my colleague, Nick Rosenkrantz, a self-described conservative. Rosenkrantz argues, without evidence, that the dominance of liberals at Georgetown Law Center leads to “a certain lack of rigor. To be blunt, a kind of intellectual laziness can set in when everyone agrees. Faculty workshops fail to challenge basic premises. Scholarship becomes unreflective and imprecise. Worse yet, this intellectual homogeneity impairs analysis of law in progress.” Nicholas Rosenkrantz, *Intellectual Diversity in the Legal Academy*, 37 HARV. J.L. & PUB. POL’Y 137 (2014). I am in debt to Seidman’s aggressive challenge. He made me work harder and dig deeper. One reward for this engagement is an email I received from Professor Sasha Volokh, who told me that he had adopted JORDAN & HARRIS, *BEYOND RATIONAL CHOICE: ALTERNATIVE PERSPECTIVES ON ECONOMICS* (2006).

established as a critical race scholar. Angela's critical race feminist perspective informed her ready command of a vast literature across many disciplines. With the help of my brilliant team, we published a casebook that drew praise from the editorial board at Foundation Press.<sup>75</sup> The comments that we received characterized our materials as groundbreaking and intellectually stimulating, our style as "much more captivating than many casebooks in print,"<sup>76</sup> and our chapters as "engrossing and important."<sup>77</sup>

#### CONCLUSION

These two University of California Law Review symposia are a proper fête of Angela's accomplishments in the legal academy. I will never forget her moving acknowledgement of a full day's worth of personal stories and accolades. She walked quietly to the front of the mid-sized, modern classroom at Boalt Hall, sat at the front desk for a moment, with her hands clasped together in front of her and her head bowed, as if in prayer. She closed her eyes and began to recite the names of her close friends and scholarly companions who were no longer alive. The list was long, and she struggled to keep her composure as she recited the names from memory, thus invoking these powerful spirits who shaped the struggle in which many of us continue to work. As Angela progressed through the list it became more difficult for her to maintain her composure. Her voice wavered and with tears streaming down her face, she ended simply, by saying the last name. There was not a dry eye in the room. This volume celebrates an enviable publication record, produced by a remarkable scholar who continues to walk the walk and talk the talk of human dignity and equality.

---

<sup>75</sup> Foundation Press is a distinguished casebook publisher for many reasons. The primary reason is that casebook contracts are voted upon by the editorial board members, who read and evaluate a proposal consisting of at least one completed chapter and a full detailed outline of the book. The Editorial Board prepares individual comments for each submission. The comments are provided to the author without identifying the source. So, I will never know who wrote which of these comments. However, the Foundation Press Editorial Board in place in 2004, when the first edition proposal was submitted, included the following: Directing Editor, Robert C. Clark (former Dean Harvard Law School); Daniel Farber (UC Berkeley); Owen Fiss (Yale Univ.); Herma Hill Kay (UC Berkeley); Harold Hongju Koh, (Dean Yale Law School); Saul Levmore (Univ. of Chicago); Thomas Merrill, (Columbia Law School); Carol Rose (Yale Univ.); David Shapiro (Harvard); Kathleen M. Sullivan (Former Dean Stanford Law School).

<sup>76</sup> See, *Editorial Board Comment* (on file with UC Davis Law Review).

<sup>77</sup> *Id.*