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Las Voces de América:
Reflecting on Mari Matsuda's Voice, Stories, and Analysis

Margaret E. Montoya*

Buenos Días. Es un honor participar en esta conferencia. Thank you, Cheryl Harris, for moderating. Thank you to the Journal students for gathering such an array of ground-movers. The tectonic plates of my identity shifted yesterday and again today.¹ I emerged from my studies at Harvard Law School exposed to grand theory. I studied Contracts with Professor Duncan Kennedy and Social Theory with Professor Roberto Unger. Professor Matsuda exhibits the competencies associated with such theorists, but she became a role model for me because her words sutured my mind and my brain to my heart and my soul. I am in your debt, Mari. I owe you. My family, my daughters, we owe you, *te debemos*.

Mari Matsuda published her *tour de force* article *Looking to the Bottom: Critical Legal Studies and Reparations* in 1987.² Let us remember the United States of twenty-six years ago. We did not have cell phones, or other handheld devices; cable TV did not occupy evenings; the nation was less racially diverse; gay marriage was still a faraway dream; the Middle East was not yet associated with Al Qaeda and other terrorist groups; Barack Obama was a community organizer and had not applied to law school, nor had he met Michelle.

My husband and I were living in Potsdam in upstate New York. Chuck, my stepson, newly graduated from Penn State, was living with us and we also had our daughter Diana who was five years old. I was working at Potsdam College, State University of New York as assistant to the president for affirmative action, and I continued consulting with North Country Legal Services. I would not think of legal academia for another five years, and by then I would have another daughter, and we would be in New Mexico.

In the past twenty-six years, Latinos and Asian Americans have rapidly grown in number and the national profile of people of color, including Native Americans, has increased our electoral clout. We all have pockets of greater

* Professor Emerita of Law, University of New Mexico School of Law and Visiting Professor, Family and Community Medicine, University of New Mexico Health Sciences Center. These remarks were presented on April 6, 2013 at the APALJ Symposium, "Only We Can Free Ourselves," celebrating the scholarship of Mari Matsuda. Professor Montoya spoke during "The Voices of America" panel, which focused on language, accent discrimination, and the power of narrative.

¹ On April 5, 2013, the Chicana/o - Latina/o Law Review organized a symposium entitled, "Un/Masking Power: The Past, Present, and Future of Marginal Identities in Legal Academia," honoring the twenty-year history of my article, *Máscaras, Trenzas, y Greñas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse*, 17 HARV. WOMEN'S L.J. 185 (1994) concurrently published in 15 CHICANO-LATINO L. REV. 1 (1994) [hereinafter Montoya, *Máscaras*]. The two symposia were scheduled back to back, and I spoke at Professor Matsuda's symposium and she spoke at mine.

² Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323 (1987) [hereinafter Matsuda, *Looking to the Bottom*].

visibility but our people—Blacks, Latinos, Native Americans, many Asian Americans—are also bearers of misery. There is greater inequality, more hunger, homelessness, crime, and flourishing injustice and incarceration, ineffective education, and terrible health and mental health outcomes. In the article *Looking to the Bottom*,³ then Assistant Professor Matsuda, who had in her first article already critiqued the philosophy of John Rawls,⁴ turned her considerable intellectual power to the then powerful Critical Legal Studies (“CLS”) movement. Specifically, she called for an alliance between people of color and CLS scholars, urging CLS to reform its movement by listening to the voices and heeding the stories of victims of subordination, particularly racial oppression.⁵

Professor Matsuda’s exhortation to listen to people of color was certainly heard and seized by people of color. It spoke to me personally and inspired me as I was writing my first article, *Máscaras, Trenzas y Greñas*.⁶ Once the multiracial group of scholars that took the name “LatCrit”⁷ organized ourselves, we deliberately and intentionally centered our annual conferences around listening to the voices at the bottom,⁸ including the local activists in the cities in which we met. We listened to such voices as both method and substance.

In *Looking to the Bottom*, Matsuda shows us how to incorporate stories from people of color. It is instructive to inventory the approach Matsuda takes in both her text and footnotes. These are some of her sources: Angela Davis,⁹ Audre Lorde,¹⁰ Frederick Douglass,¹¹ W.E.B. DuBois,¹² John Tateishi,¹³ Oliver Wendell

³ *Id.*

⁴ Mari J. Matsuda, *Liberal Jurisprudence and Abstracted Visions of Human Nature: A Feminist Critique of Rawls’ Theory of Justice*, 16 N.M. L. REV. 613 (1986).

⁵ Matsuda, *Looking to the Bottom*, *supra* note 2, at 325-26, 351-62.

⁶ Montoya, *Máscaras*, *supra* note 1.

⁷ For a general discussion of LatCrit Theory, see Francisco Valdes, *Foreword: Poised at the Cusp: LatCrit Theory, Outsider Jurisprudence and Latina/o Self-Empowerment*, 2 HARV. LATINO L. REV. 1 (1997) (discussing the most important theoretical and practical issues early in LatCrit Theory, Outsider Jurisprudence and Latina/o self-empowerment). For an analysis of LatCrit in its more mature stages, see Margaret E. Montoya & Francisco Valdes, *“Latinas/os” and Latina/o Legal Studies: A Critical and Self-Critical Review of LatCrit Theory and Legal Models of Knowledge Production*, 4 FIU L. REV. 187 (2008) and Margaret E. Montoya & Francisco Valdes, *“Latinas/os” and the Politics of Knowledge Production: LatCrit Scholarship and Academic Activism as Social Justice Action*, 83 IND. L.J. 1197 (2008).

⁸ Through antisubordination theorizing and activism, LatCrit eschewed any notion of a static hierarchy of oppression. It instead developed a process whereby different groups would be at the center of the analysis, storytelling, pedagogical strategizing, and partnering with local activists for each annual conference. See Elizabeth M. Iglesias & Francisco Valdes, *Expanding Directions, Exploding Parameters: Culture and Nation in LatCrit Coalitional Imagination*, 5 MICH. J. RACE & L. 787 (2000); 33 U. MICH. J. L. REFORM 203 (2000); Athena D. Mutua, *Shifting Bottoms and Rotating Centers: Reflections on LatCrit III and the Black/White Paradigm*, 53 U. MIAMI L. REV. 1177 (1999) (Mutua, accepting that LatCrit has implemented a process of devoting time during each conference to an issue of concern to a non-Latino group, proposes that using a racial analysis for the Latina/o experience will create linkages with Black scholars. She emphasizes that besides considering who is at the center, it is also necessary to embrace the idea that different groups are at the “bottom” at different times and different places.).

⁹ Matsuda, *Looking to the Bottom*, *supra* note 2, at 323 n.3.

¹⁰ *Id.* at 325 n.12, 336 n. 55, 342 n.87.

¹¹ *Id.* at 326 n.15, 328 n.22, 329 n.25, 347 n.106.

¹² *Id.* at 327 n.21, 345 n.96.

Holmes, Jr.,¹⁴ Cesar Chavez,¹⁵ Pauli Murray,¹⁶ John Coltrane,¹⁷ Henry Louis Gates,¹⁸ Erlene Stetson,¹⁹ Gwendolyn Brooks,²⁰ Archie Shepp,²¹ Thelonious Monk,²² Lester Bowie,²³ George Aki,²⁴ *Issei, Nisei, and Sansei* voices,²⁵ James Weldon Johnson,²⁶ Nathan Huggins,²⁷ Hayden Burgess,²⁸ slave narratives,²⁹ Derrick Bell,³⁰ Paula Gunn Allen,³¹ Phillis Wheatley,³² Cornel West,³³ Alice Walker,³⁴ Harriet Tubman,³⁵ Dr. Martin Luther King, Jr.,³⁶ and Paul Kochi³⁷—and these are only from the first fifteen pages of a seventy-seven page article.

If you do not know these names, then you/we/I should embark on a self-imposed affirmative action reading plan, as Matsuda suggests in footnote 92 of *Looking to the Bottom*,³⁸ which for her, resulted in new classroom materials, new theoretical perspectives, and different consumer patterns.

The first part of *Looking to the Bottom* is brilliant legal analysis. She takes the arcane, inaccessible verbiage from CLS and tames it. There she is with indeterminacy³⁹ and incoherence,⁴⁰ at ease among these and other legalisms, memes, and tropes that, without her tutelage, can slip away from us. Then she turns to the subject of reparations,⁴¹ and matches her analytical brilliance with her superb lawyering skills and experience as she walks us through the elements of the reparations and redress claims, the factual predicates, and the doctrinal foundations for such extraordinary relief.

¹³ *Id.* at 327 n.21.

¹⁴ *Id.* at 328 n.22.

¹⁵ *Id.* at 329 n.25.

¹⁶ *Id.* at 333 n.43.

¹⁷ *Id.* at 335 n.52, 337 n.62.

¹⁸ *Id.* at 335 n.52.

¹⁹ *Id.* at 333 n.43.

²⁰ *Id.* at 336 n.57.

²¹ *Id.* at 336 n.59.

²² *Id.* at 337 n.60.

²³ *Id.* at 337 n.59.

²⁴ *Id.* at 339 n.71.

²⁵ *Id.* at 339 n.71, n.73.

²⁶ *Id.* at 341 n. 81, 358 n.145.

²⁷ *Id.* at 344 n.94.

²⁸ *Id.* at 344 n.92.

²⁹ *Id.* at 345 n.97.

³⁰ *Id.* at 330 n.30, 345 n.95.

³¹ *Id.* at 346 n.102.

³² *Id.* at 346 n.103.

³³ *Id.* at 348 n.111.

³⁴ *Id.* at 349 n.112.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at 332 n.38.

⁴⁰ *Id.* at 332-342.

⁴¹ *Id.* at 362-397.

We know now that in 1988, Congress passed the Civil Liberties Act that provided \$20,000 for each of the 82,219 surviving Japanese-American victims of the internment camps, a letter of apology from President Reagan for wrongful internment, and the establishment of a \$5 million public education fund.⁴² In 1992, Congress passed and President George H.W. Bush signed a series of amendments to extend redress benefits to an additional 20,000 eligible recipients not included in the original program, amounting to \$400 million in additional payments.⁴³ While Japanese-Americans have arguably achieved significant gains from the internment redress movement, native Hawaiians have received a formal Apology Resolution for the overthrow of the Kingdom of Hawaii from the United States but have yet to win their claims for redress of any kind.⁴⁴ The Supreme Court also resisted the idea of race-based relief for native Hawaiians.⁴⁵

In *Looking to the Bottom*, Matsuda includes an explanation of proximate cause and a careful description of the *political* dimensions of whether the imposition of damages is fair⁴⁶: the consideration of the innocence of the victim, the culpability of the wrongdoer, the foreseeability and magnitude of the harm, and the weight of the broad social goals of fair compensation, deterrence, and retribution.⁴⁷ Finally, she provides these observations: (1) “[r]eparations, like the right to strike, is a concept of the have-nots”⁴⁸; (2) “[i]f critical theorists are to cling to legality, and in a scary world perhaps they must, the pertinent inquiry is the probability that a particular legal concept [—reparations—] will promote good rather than evil.”⁴⁹ Finally, reparations are usually cash grants and the highly visible nature of the remedy “sets political limits on the ability of the privileged to resort to reparations.”⁵⁰ With these observations, Matsuda anticipates objections to reparations by linking this remedy to distributive justice, refuses to reflexively reject legalisms if they will advance social justice, and opts for cash grants as a remedy that is more transparent and therefore more easily directed away from the undeserving and the privileged. In doing so, Matsuda, explicitly shows how critical theory advances the interests of those without power, those at the bottom.

I have greatly benefited from Professor Matsuda’s scholarship on legal consciousness, but her work on accents⁵¹ expanded my worldview and most

⁴² Natsu Taylor Saito, *Beyond Reparations: Accommodating Wrongs or Honoring Resistance?*, 1 HASTINGS RACE & POVERTY L.J. 27, 32 (2003).

⁴³ See Chris K. Iijima, *Reparations and the “Model Minority” Ideology of Acquiescence: The Necessity to Refuse to Return to Original Humiliation*, 40 B.C. L. REV. 385, 399 n.42 (1998).

⁴⁴ In 1993, President Bill Clinton signed an Apology Resolution for the U.S. government’s role in the overthrow of the Hawaiian monarchy. See S. J. Res. 19, 103d Cong., 107 Stat. 1510 (1993).

⁴⁵ See, e.g., *Rice v. Cayetano*, 528 U. S. 495 (2000) (holding that the state of Hawaii could not limit eligibility to vote for the Board of Trustees of the Office of Hawaiian Affairs to persons of Native Hawaiian descent because Native Hawaiians do not enjoy tribal status).

⁴⁶ Matsuda, *Looking to the Bottom*, *supra* note 2, at 382.

⁴⁷ *Id.* at 383.

⁴⁸ *Id.* at 393.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ See Mari J. Matsuda, *Voices of America: Accent, Antidiscrimination Law, and a Jurisprudence for the last*

importantly sweetened the considerable love and respect I already had for my father. I emphasize that race work belongs in the academy, but it also belongs in the home with our families.⁵² I was moved by Professor Charles Lawrence's remarks at this symposium and the intimacy and love braided throughout his analysis and theorizing.⁵³ My college-educated father spoke English with a very mild Spanish accent, which my high school educated mother would occasionally correct. When I read *Voices of America*, I read it with my mother's voice in my head and my father's voice in my heart. The rough edges of my English have been smoothed by the sand-paper effects of Catholic nuns, higher education, the mass media, and my mother's persistent attention to our grammar and pronunciation; yet, my father's English still had the echoes of his predominantly Mexican-American childhood. To quote Matsuda:

The way we talk, whether it is a life choice or an immutable characteristic, is akin to other attributes of the self that the law protects [W]e say the state cannot intrude upon the core of you, cannot take away your sacred places of the self. A citizen's accent, I would argue, resides in one of those places.⁵⁴

Because Spanish is a racialized⁵⁵ and therefore a devalued language, accents are defining characteristics for us Latinos. Comedians and xenophobes routinely add random a's and o's as word endings, use sing-song-y cadences, or make up ludicrous words to ridicule and stereotype us. It is easy for us to be critical of one another for our accents, and our inability to perfectly master academic English. Professor Matsuda's work allowed me to free myself of these strictures and tendencies and to listen with new ears and new appreciation to my father's voice and those of countless others.

Professor Matsuda has also ignited our imaginations with her poetic calls for storytelling⁵⁶ and her passionate expositions on voice as metaphor and as human instrument.⁵⁷ Allow me to retell a story I have told elsewhere.⁵⁸ Because of the large western states in the southwest United States, the law school located in

Reconstruction, 100 YALE L.J. 1329 (1991) [hereinafter Matsuda, *Voices of America*].

⁵² Margaret E. Montoya, *Máscaras y Trenzas: Reflexiones*, 36 HARV. J.L. & GENDER 469 (2013), concurrently published in 32 CHICANA/O-LATINA/O L. REV. (forthcoming).

⁵³ Charles R. Lawrence III, "Acting Our Color": *Racial Re-Construction and Identity as Acts of Resistance*, 18 ASIAN PAC. AM. L.J. 21 (2013).

⁵⁴ Matsuda, *Voices of America*, *supra* note 51, at 1391-92.

⁵⁵ As race is socially and legally constructed, different characteristics or markers are used at different times and in different places to identify those who are subordinated within the current racial hierarchy. See, e.g., IAN HANEY LÓPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* xiii-xiv, 10 (2006); MICHAEL OMI & HOWARD WINANT, *RACIAL FORMATION IN THE UNITED STATES FROM THE 1960S TO THE 1990S* 3, 54-56 (2d ed. 1994).

⁵⁶ See Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 14 WOMEN'S RTS. L. REV. 297 (1992) [hereinafter Matsuda, *When the First Quail Calls*].

⁵⁷ Matsuda, *Voices of America*, *supra* note 51, at 1333.

⁵⁸ See Margaret E. Montoya, *Antígona: A Voice Rebuking Power*, 75 UMKC L. REV. 1171 (2007) [hereinafter Montoya, *Antígona*].

Ciudad Juárez, Mexico is the closest law school to the University of New Mexico School of Law in Albuquerque.⁵⁹ Several times I have taken student groups to meet and collaborate with the students of Professor Gustavo de la Rosa Hickerson, who was, for a long time, also the Human Rights Commissioner for Ciudad Juárez.⁶⁰ As he explains, because the students at Universidad Autónoma de Ciudad Juárez (“UACJ”) (Autonomous University of Ciudad Juárez) come from low-income and low-prestige families, he must teach them to be comfortable in the sounds of their voices and to speak confidently on behalf of their clients and themselves. He must, in his words, train their voices to be instruments of justice.⁶¹ To do so, he uses the Greek classics and has his students do dramatic readings of Homer, Aeschylus, and, when we visited, of Sophocles’s *Antigone*.⁶² On this particular occasion, the UACJ students were dressed in black with a few red articles—neckerchiefs and belts—to identify the various characters.⁶³ The performance was riveting. Their voices rang out; phrases, words clearly enunciated; emotions of anger, grief, and repentance were unambiguous.⁶⁴ I imagine Matsuda there with me, exhilarated by these students raising their voices, practicing the sounds of justice, mastering their voices as instruments of power.

Professor de la Rosa and I translated for the U.S. students and he explained that *Antigone* entails the centuries-old debate about legality versus morality, and he concluded by using Sophocles to analyze George Bush’s detentions of so-called enemy combatants in the Middle East.⁶⁵ Legal? Perhaps. Moral? Decidedly no, in my opinion.

What Professor de la Rosa did with his students is what I hear Matsuda inveigling us to do. We, people of color, must learn to elevate our voices on behalf of those with little social or economic power, and we, in the academy, must create the spaces for our students to feel empowered to do so.

Matsuda has also done something else for us with her powerful analysis. She allows us, as progressives, to take pride in claiming the Constitution as ours, to recognize its weak embrace of us as outsiders, and to have faith in the project of forging a more perfect union.⁶⁶ She exhorts us not to lose faith in one another in the quest. Listen to her words:

I can claim as my own the Constitution my father fought for at

⁵⁹ UNIVERSIDAD AUTÓNOMA DE CIUDAD JUÁREZ, <http://www.uacj.mx/Paginas/UACJ.aspx> (last visited May 3, 2004).

⁶⁰ See Monica Ortiz Uribe, *Human Rights Worker Flees Mexico*, N.P.R., (Oct. 17, 2009, 8:59 AM), <http://www.npr.org/templates/story/story.php?storyId=113899756> (reporting de la Rosa’s prominence as a human rights attorney and employee of the Chihuahua State Human Rights Commission).

⁶¹ Montoya, *Antigona*, *supra* note 58, at 1173.

⁶² *Id.*

⁶³ *Id.* at 1172.

⁶⁴ *Id.*

⁶⁵ *Id.* at 1174-75.

⁶⁶ Here I am echoing the words of President Obama when he delivered his celebrated speech on race in Philadelphia on March 18, 2008. Senator Barack Obama, *A More Perfect Union* Speech at the National Constitution Center (Mar. 18, 2008).

Anzio, the Constitution I swore to uphold and defend when I was admitted to the bar. It was not written for me, but I can make it my own, using my chosen consciousness as a woman and person of color to give substance to those tantalizing words “equality” and “liberty.”⁶⁷

Listen again to these words:

I believe there is a collective national soul salvageable from the laws and amendments passed since the civil war in heroic effort to repair the tears in the fabric of our family. It is a good soul, joyous at life’s wonders, fearing, yet needing, the voices difference. I know it is there because I live in a country that produced Frederick Douglass, Mark Twain, Walt Whitman, Langston Hughes, Alice Walker—an unbroken string of writers who celebrate this national soul and write to save it. I keep faith with those writers and look within the law and culture of the United States for a way to the last Reconstruction.⁶⁸

Voice, accents, storytelling—these have legal dimensions, but they are also deeply personal and identity-transforming. I am in Mari Matsuda’s debt for giving me new meanings and a deeper analysis, which I have in turn transmitted to my students, and my daughters. Allow me to conclude with one more story.

One of the most admirable students that I had the good fortune to teach was Lynn Carrillo Cruz. She was a brilliant, top of the class student, an impassioned advocate, and a caring and dedicated mother of four. Sadly, she became ill from cancer and in 2009 passed away. A year later her son Joel reached his eighteenth birthday and his father asked several of Lynn’s friends to write letters of advice to him. Mindful of what I had learned from Matsuda, this is what I wrote:

Think about how to become everything you can be. Intentionality—being mindful of ourselves in the context of our ancestry, history and our immediate and long-range goals—is an important aspect of leading a life with meaning.

Be intentional about stories: ask people around to tell you their stories. Listen to the details; learn to recognize how stories are organized around place and space or events or people or sounds. Latinos (and Latinas) tell many types of stories—*cuENTOS*, *chistes*, *chismes*—all these iterations have much to offer. Ask different people to narrate the same event, compare their stories, appreciate the difference that perspective and selective memory make. Keep a journal or make recordings ... stories are treasures; stories are gifts. Who we are, how we name our reality and claim our identities develop out of the stories others tell about us and the stories we tell

⁶⁷ Matsuda, *When the First Quail Calls*, *supra* note 56, at 300.

⁶⁸ Matsuda, *Voices of America*, *supra* note 51, at 1404.

about ourselves. My advice is this: honor the Story. There is much knowledge to be found in the written word; books can illuminate, confound, and amuse us. However, spoken words organized into stories carry profound wisdom. Stories require work from us, we need story skills; learning how to listen and in turn training our voice to tell our version of the Truth. Telling stories is what links our individuality to the universe; stories weave the I into many we's—the we of Love, the we of Family, the we of Community, the we of Democracy, the we of Mother Earth.

Again, *mil gracias*, Professor Matsuda. *¡Que viva, Mari!*⁶⁹ *¡Que viva, la profesora Matsuda!*

⁶⁹ *¡Que viva!* (*May s/he live long*) is a Mexican/Chicano exclamation associated with the Chicano/a Movement that expresses solidarity with the comments and activism of the person (sometimes the place) who/that is named. It is particularly apt here.