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## The Third Annual Jerome M. Culp Memorial Lecture: The Zombie Jamboree

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## The Third Annual Jerome M. Culp Memorial Lecture: The Zombie Jamboree<sup>©</sup>

Anthony Paul Farley\*

First, a prayer:

At round earth's imagin'd corners, Blow  
Your trumpets, Angels, and arise, Arise  
From Death, you numberless infinities  
Of souls, and to your scattered bodies go.<sup>1</sup>

It is an honor and a joy to give the Third Annual Jerome M. Culp Lecture at Critical Localities: LatCrit XII. This memorial lecture is an honor because LatCrit has been the major gathering of critical and postmodern theorists for many years. This is the twelfth gathering of our varied disciplines. This memorial lecture is a joy because memory requires working-through, and the material to be worked through, Jerome's body of work and the nature of our collective relationship to it, being both complicated and widely-scattered across our numberless concerns and methods and hopes, is so very much alive.

The text outlives the writer. The text, then, is a kind of spirit, a kindred spirit. The text is the better angel of our nature. The text is an angel

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\* James Campbell Matthews Distinguished Professor of Jurisprudence at Albany Law School and Haywood Burns Chair in Civil Rights at CUNY School of Law during 2006-2007. It was an honor and a joy to give the Third Annual Jerome M. Culp Memorial Lecture at LatCrit XII: Critical Localities at Florida International University School of Law. Jerome was dedicated to Critical Race Theory and to LatCrit. LatCrit has sustained critical race theories and critical race theorists for twelve years now. No one knows what will happen tomorrow, but our vitality, our ability to face tomorrow, as intellectual movements and as individual thinkers, must surely have something to do with the way we remember those whose past efforts made today possible. Although what follows is the text on which I based my lecture, please think of it as a line of flight and a point of departure. I departed from it quite freely in Miami. This essay, *Zombie Jamboree*, is a memorial meant for singing and for flight and for departures: *We have been naught, we shall be all*. Thanks to all my colleagues at Albany Law School. Thanks to all my colleagues at CUNY School of Law, 2006-2007. Thanks to Keith Aoki, Steve Bender, Christopher Carbot, Bob Chang, Angela Harris, Charles Pouncy, Frank Valdes, and everyone else involved in LatCrit XII. Love, as always, to Astrid and Maria Grahn-Farley.

<sup>1</sup> John Donne, *Divine Sonnet VII*.

and thus it is not to be interred with our bones. The text owes its angelic deathlessness to our reading. What of the angel's debt? The debt the angel owes for its deathlessness is the very thing we intellectuals owe the text, our lives. We write because writing is our life. The unexamined life, for us, is not worth living; that is our wager and our reward and our debt and why we write. That, at any rate, is why Jerome wrote. The writer's living body of work is the better angel of her nature. It is for the sake of one of Jerome's better angels, a particular text entitled "To the Bone: Race and White Privilege," that I will essay this work of mourning.

*White racism cuts to the bone.*<sup>2</sup> Jerome Culp wrote:

Toni Morrison once explained how deeply meaning can be buried in a text. She was asked where in the text of her novel, *Beloved*, Sethe killed the baby. She answered the questioner by replying confidently that it had happened in a particular chapter, but when she went to look for it there she—the author—could not find it. Meanings can be difficult even for the authors of a text. The same thing is true for the texts written by the multiple authors of a movement. What did we mean and where is a particular event or idea located? These are questions that are difficult for any one person, even someone who, like myself, has at least been a participant in the writing of the text. There may be meanings—unintended meanings—that we who participate are not aware of and it is important to ferret them out.

Ten years after its formal beginning, critical race theory is under assault by those inside and outside the legal academy for supposed ugly things contained within the texts that make up the body of its work.<sup>3</sup>

*White racism cuts to the bone.* The cut is the fatal injury that results in races and is experienced as racisms. The cut is the Middle Passage, the cut is Manifest Destiny, the cut is the Alliance for Progress, the cut is Operation Infinite Justice,<sup>4</sup> the cut is what killed us all—like *Beloved*—before we ever had a chance:

The discovery of gold and silver in America, the extirpation, enslavement and entombment in mines of the indigenous population of that continent, the beginnings of the conquest and plunder of India, and the conversion of Africa into a preserve for the commercial hunting of black skins, are all things which characterize the dawn of the era of

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<sup>2</sup> Jerome M. Culp, Jr., *To the Bone: Race and White Privilege*, 83 MINN. L. REV. 1637, 1638 (1998-1999).

<sup>3</sup> *Id.* at 1637.

<sup>4</sup> See TONY MORRISON, *BELLOVED* (New York Penguin Books 1991).

capitalist production. These idyllic proceedings are the chief moments of primitive accumulation.<sup>5</sup>

We are the dead. We are still walking. Like zombies. In the Kingdom of Loathing, and ours is a Republic of Loathing, when you kill a zombie you get cranberries. When the Irish musicians known as the Cranberries sing about zombies, they sing about the problem that concerns all of us who are the walking dead of the New World:

Another head hangs lowly,  
Child is slowly taken.  
And the violence caused such silence,  
Who are we mistaken?<sup>6</sup>

“Who are we mistaken?” That is the question:

It’s the same old theme since nineteen-sixteen.  
In your head, in your head they’re still fighting,  
With their tanks and their bombs,  
And their bombs and their guns.  
In your head, in your head, they are dying...

In your head, in your head,  
Zombie, zombie, zombie,  
Hey, hey, hey. What’s in your head,  
In your head,  
Zombie, zombie, zombie?<sup>7</sup>

The Cranberries’ *Zombie* is a song of the 1916 Easter Rising and its aftermath. For us, the walking dead of this white New World Order, it’s been the “same old theme since 1619.”<sup>8</sup> That date, 1619, is the documentary beginning of our ever-repeated primal scene of accumulation.<sup>9</sup>

Easter, within Christendom, is a time for the rising of the dead who are, after all, not dead, but only sleeping. Whatever and wherever Chris-

<sup>5</sup> KARL MARX, *CAPITAL: VOLUME 1: A CRITIQUE OF POLITICAL ECONOMY*, Chapter 26 (1867).

<sup>6</sup> CRANBERRIES, *ZOMBIE* (Island Records 1994).

<sup>7</sup> *Id.*

<sup>8</sup> A letter from John Rolfe to Sir Edwin Sandys, dated January 1619, appears in the Records of the Virginia Company of London. The letter notes that a Dutch Man of War exchanged some twenty Africans for food at Jamestown, Virginia. The letter is the first documentary record of slavery in what would later become the United States of America. 3 The Records of the Virginia Company of London 243 (Susan Myra Kingsbury ed., 1906).

<sup>9</sup> Anthony Paul Farley, *The Apogee of the Commodity*, 53 DEPAUL L. REV. 1229, 1229 (2003-2004).

tendom may be is not my topic tonight, suffice it to say that I have an abiding faith that it is somewhere within the One Big Union and sometime after the General Strike. Tonight I speak of the Republic of Loathing<sup>10</sup> and its zombies, which we, in all our diversities, *are*.

It's the same old theme since 1619:

Another head hangs lowly,

Child is slowly taken.

And the violence caused such silence,

Who are we mistaken?<sup>11</sup>

1619, like slavery according to former Presidential Candidate and Senator Bob Dole, who, strangely enough, like a practitioner of the dark arts, placed slavery among the dead things that walk, arguing, in the face of slavery's presence, that slavery was dead and gone because it, like Dole's own childhood, was "a long time ago." Our childhood, *our* childhood, the zero hour of whiteness and its initial capital, was a long time ago. Who are we mistaken?:

Our movement has been almost exclusively a written and spoken community. We have met to facilitate those words, and the product of those meetings and that collaboration is strewn among law reviews and books that have become central to aspects of the legal academy.<sup>12</sup>

We are the dead. *We have been naught, we shall be all.*

As philosophers, we struggle to know the death that we have already died; and not just to know but to change this undiscovered country. What I propose is a party, a Party, a Zombie Jamboree, ecstatically revolutionary and therefore a fitting end to the First, Second, Third, and Fourth Internationals; a Final International of all comrades with open eyes. A long march down freedom road.

What happened? What is this primal scene of accumulation that we are continually reenacting? Slavery is a shock:

If the shocks increase in number during the development of the child, the number and the various kinds of splits in the personality increase too, and soon it becomes extremely difficult to maintain contact without confusion with all the fragments, each of which behaves as a separate personality yet does not know of even the existence of the others.

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<sup>10</sup> [http://en.wikipedia.org/wiki/Kingdom\\_of\\_loathing](http://en.wikipedia.org/wiki/Kingdom_of_loathing) (last visited Apr. 4, 2009).

<sup>11</sup> CRANBERRIES, *ZOMBIE* (Island Records 1994).

<sup>12</sup> Culp, *supra* note 2, at 1637.

Eventually it may arrive at a state which—continuing the picture of fragmentation—one would be justified in calling atomization.<sup>13</sup>

Slavery is perfectly consistent with post-Emancipation life. Indeed, slavery is only perfectible within post-emancipation societies. What's in our heads? We know something is wrong, completely wrong, something sharp and fast and merciless cut us to the bone.

*White racism cuts to the bone.*

Bob Chang is disoriented.<sup>14</sup> Angela Harris has a multiple consciousness.<sup>15</sup> Adrienne Davis is playing in the light.<sup>16</sup> Peter Kwan is co-synthetic.<sup>17</sup> Frank Valdes has a rotating center.<sup>18</sup> Lisa Iglesias does too.<sup>19</sup> Lots of people seen in and around LatCrits of the past dozen years are lots of things.<sup>20</sup> And Jerome Culp found out that *white racism cuts to the bone*.

The childhood of a system, the childhood of a people, the childhood of a faction, the childhood of a theory, and the childhood of an individual fragment all have a strange sameness. What happens to the oppressed happens more and more viciously to the children within oppressed groups. Childhood is itself a political prisoner here in death's dream kingdom. We are all Sethe's babies. And that makes us sisters and brothers. Kindred.

You know about the Jena 6. But do you know of Gary Tyler? In 1975, he became the youngest child on death row. Gil Scott Heron and UB40 have written songs about him. Gary Tyler was sentenced to the electric chair for a crime he did not commit.

October 7, 1974, 33 years ago this week—the age, 33, for Christians, of their Christ at Gethsemane, and at Golgotha—a white mob, some 200 soulless cruelties, parents and nonstudents, attacked a small group of black school children in Destrehan, Louisiana. The whites hurled rocks, bottles, and racial epithets. *Brown v. Board of Education* plus two decades and, in the words of Terry Tyler, Gary's brother, "They were on the attack, man. It was panic." Terry Tyler warns, "[d]on't forget about Gary Tyler because

<sup>13</sup> Sándor Ferenczi, *The Confusion of Tongues Between Adults and Children: The Language of Tenderness and of Passion*, INT'L J. OF PSYCHO-ANALYSIS 30: Whole No. 4, 1949, (1933).

<sup>14</sup> ROBERT S. CHANG, *DISORIENTED: ASIAN-AMERICANS, LAW, AND THE NATION-STATE* (NYU Press: 2000).

<sup>15</sup> Angela P. Harris, *Foreword: The Jurisprudence of Reconstruction*, 82 CAL. L. REV. 741 (1994).

<sup>16</sup> Adrienne D. Davis, *Identity Notes Part One: Playing in the Light*, 45 AM. U. L. REV. 695 (1996).

<sup>17</sup> Peter Kwan, *Jeffrey Dahmer and the Cosynthesis of Categories*, 48 HASTINGS L.J. 1257 (1997).

<sup>18</sup> Elizabeth Iglesias & Francisco Valdes, *Introduction: Expanding Directions, Exploding Parameters: Culture and Nation in LatCrit Coalitional Imagination*, 33 U. MICH. J.L. REFORM 203 (2000).

<sup>19</sup> *Id.*

<sup>20</sup> Anthony Paul Farley, *All Flesh Shall See It Together*, 19 CHICANO-LATINO L. REV. 163 (1998).

there are thousands more like him.” Destrehan is just 25 miles, less than a marathon, upriver from New Orleans.

Gary Tyler, age sixteen, born black and after *Brown*, was on the bus. A shot rang out and a child of thirteen, white, fell dead outside of the bus. Before the shot, one student on the bus looked out of the window and screamed, “look at that white boy with that gun.” The black students hit the floor of the bus before Timothy Weber, the white thirteen-year old, was found by a bullet.

The bus was ordered to drive to a nearby tree and all of the black children were searched. The driver, a Korean War veteran named Earnest Cojoe, maintained from the beginning that the shot came from outside the bus and testified that “there was no way” a gun had been fired from the bus.

Only the black children on the bus were searched. In the words of one child, the police went on a “rampage.” They “started treating us like animals.” No one from the white mob was searched. All the black students were searched. Three deputies searched the bus several times, removing all of the seat cushions, and, again, no gun was found.

Police asked Tyler’s cousin why he was wearing a .22 caliber shell on a chain. Gary said there wasn’t anything wrong with that, and was promptly arrested for disturbing the peace. Later, at trial, the Deputy, Nelson Coleman, was asked whose peace had been disturbed by Gary’s comments. “Mine,” he replied.

Despite the fact that no gun was found on any of the students and that no gun was found on the bus after hours of searching, the black children were all forced back on the bus and taken to the sheriff’s substation.

Now it begins.

“Nigger, you’re going to tell me something!” shouted Detective St. Pierre, cousin of the dead white child, “Who killed Weber?” “I don’t know!” Gary was heard to cry out again and again. Gary’s mother, Juanita Tyler, recalls:

One of the detectives had a strap and they whipped him with that. It was terrible. They beat Gary so bad. My poor child...I saw who went in there. They were . . . older men. They didn’t care that I was there. They didn’t care who was there. They beat Gary something awful, and I could hear him hollering and moaning. All I could say was ‘Oh Jesus, have mercy.’

Finally, when they let me go in there, Gary was just trembling. He was frightened to death. He was trembling and rocking back and forth. They had kicked him all in his privates. He said, ‘Mama, they kicked me. One kicked me in the front and one kicked me in the

back.’ He said that over and over. I couldn’t believe what they had done to my baby.

Tyler recalls, “So he orders me to take off my pants; said he wanted to see what a black ass looked like.” David Duke, then 24-years old and moving up in the Ku Klux Klan, came to town with “security teams” to protect the white population from what he called “savage blacks and murderers.”

I will now talk about the gun, the bullet, the witnesses, the gloves, the bicentennial, and the specter:

The story of the gun begins with failure. Hours of searching failed to produce a gun. Even if a gun had been fired from the bus, the driver said in a deposition that it could not have been a .45, “If it was fired within the school bus, somebody’s eardrums would have been busted in a closed bus,” “I didn’t hear any shooting off my bus.”

What gun? Evidence began to appear from nowhere. The gun investigators produced as the murder weapon was a government issued Colt .45, a large and heavy weapon, not one that could be concealed within the tight 1970’s clothes that Gary was wearing that day. No fingerprints were on the gun, which turned out to have been stolen from a firing range used by the police. And, shortly after it magically appeared, the gun disappeared again. It is still missing.

The story of the bullet begins around Christmas. A December 1974 Crime Lab Report, which was never shown to the defense at Tyler’s 1975 trial, revealed that the bullet that supposedly killed Weber had no blood on it. This is very unusual with head wounds.

The story of the gloves begins with a knotty question. What tied Tyler to the “gun?” Gloves. He wore gloves that day and they were confiscated by the police after his arrest and taken to the Southeastern Louisiana Regional Criminalistics Laboratory for testing. The gloves were apparently misplaced for several weeks before the head of the lab, Herman Parrish, finally claimed that he tested them and found gunpowder residue on them. No independent testing was done because the entirety of the alleged residue was consumed by Parrish’s testing. In 1976, Parrish resigned from his position at the crime lab after he was accused of lying about test results in another case.

The chemicals used by Parrish to determine the presence of gunpowder on the gloves were the “wrong ones” and are never used by professionals in such tests, according to an affidavit by Ronald Singer, Parrish’s successor.

The story of the witness unfolds in black and white. At least five black students said that they saw Tyler holding a gun. One testified that Tyler fired a gun into the crowd. Every witness against Gary Tyler has recanted. Every witness told of having been coerced by the police into lying about Tyler.



Larry Dabney, in a sworn affidavit, said it was “the scariest thing he had ever experienced.” “They didn’t even ask me what I saw.” “They told me flat out that I was going to be their key witness...they told me I was going to testify that I saw Gary with a gun right after I heard the shot and that a few minutes later I had seen him hide it in a slit in the seat. That was not true. I didn’t see Gary or anybody else in that bus with a gun.”

Natalie Blanks, age fourteen, was Gary Tyler’s former girlfriend. She had been undergoing treatment at a local mental health clinic since 1968, for more than half of her young life. Detective St. Pierre was aware that she had previously made three false crime reports, including a claim that she had been kidnapped, a claim Detective St. Pierre had himself investigated. A year after the trial, she recanted. Judge Marino was unimpressed, “the Norco Mental Health Unit has treated almost maybe ninety-nine percent of the population over here. . . .”

The story of the Judge unfolds in black and white. Judge Marino was identified in some press accounts as having been a member of the White Citizens Council of Louisiana. In a region that is thirty-two percent black, Judge Mariano impaneled an all-white jury. Blacks are seventy-two percent of Louisiana’s prisoners.

The story of the advocate is short and not sweet. Jack Williams’ total pre-trial preparation consisted of meeting Tyler twice and reading grand jury transcripts. Williams, a white, was a solo practitioner who had never handled a murder case, much less a death penalty case. He reportedly complained about the money he was paid.

The story of the Bicentennial is as old as slavery. Gary’s parents were fired from their jobs in 1976. White nightriders shot and killed Richard Dunn, a young black man returning from a fundraising dance for Gary Tyler at Southern University in New Orleans. The gunman, a white man, Richard Mart, was arrested and convicted and sent to prison for life. Mart was pardoned and freed after serving about ten years. Gary Tyler is still in prison.

Specters of Marx told the tale around the campfire that Gary Tyler almost became. Gary Tyler’s execution date was set for May 1<sup>st</sup>, 1976. May Day! At age seventeen, he was the youngest child on death row.

When Tyler was twelve years old, he left Louisiana to live with his sister Ella in the Watts section of Los Angeles, now better known as South-Central. “There,” according to journalist Amy Singer, “he was exposed to people and ideas that hadn’t made their way to [Destrachan]: the black panthers, Angela Davis; the antiwar movement. Tyler attended rallies and began to develop a political awareness.” Tyler returned to Louisiana two years later, in 1972, and was not happy. “Coming back to the South was like taking me out of the light and putting me into darkness.” He became a “smart nigger.”

Red Tide, a racially mixed socialist organization of high school children in Detroit, took up Tyler's cause, perhaps seeing themselves in his situation. So did Rosa Parks, Hurricane Carter, UB40, Tommie Smith and John Carlos. *Black Power*. 1968.

In 1990, the Louisiana Attorney General argued *against* a pardon for Tyler, because "he has demanded that he be allowed to correspond with socialist and communist publications like the *Socialist Worker*."

Tyler is incarcerated at the Louisiana State Penitentiary at Angola, the largest maximum security prison in the nation. Seventy-five percent of Angola's prisoners are black and eighty-five percent of them will die within its walls.

Angola was a slave plantation before the Civil War. It was called Angola because that's where its enslaved black workers had been captured. After Emancipation, Angola became a prison. Tyler spent many of his years in solitary confinement because he refused to pick cotton for three cents an hour.

Juanita Tyler, "I just wish for the day he could be home. It has been so long." Gary Tyler is still in prison:

Another head hangs lowly,  
Child is slowly taken.  
And the vi'lence caused such silence,  
Who are we mistaken?

Gary Tyler, "Knowing what happened to me is something that systematically occurs to blacks around the United States, and particularly the South. It makes a statement itself." A statement into the silence. *White racism cuts to the bone*. We are not mistaken:

At round earth's imagin'd corners, Blow  
Your trumpets, Angels, and arise, arise  
From Death, you numberless infinities  
Of souls, and to your scattered bodies go.  
All whom the flood did, and fire shall o'erthrow,  
All whom war, dearth, age, agues, tyrannies,  
Despair, law, chance, hath slain, and you whose eyes,  
Shall behold God, and never taste death's woe.<sup>21</sup>

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<sup>21</sup> John Donne, *Divine Sonnet VII*.

Jerome Culp wrote that *white racism cuts to the bone*. Whiteness is a fatal injury and it happened a long time ago, it's the same old theme since 1619. What's in your head, what's in all our heads, as the Zombie Jamboree, as the Final International that critical race theory could be, is the knowledge that whiteness is a system. Knowing that whiteness is a system, we also know that everything must go.

We exist within the event-horizon of the Middle Passage. Every experience we take as a new experience is, in fact, only a return to the Middle Passage. Law is the means by which we return with unseeing eyes to the Middle Passage. Law is the way we return to the traumatic event that eluded our understanding then and continues to elude our understanding now. Numberless infinities of souls were scattered into bodies, fragments, to be marked and marketed. There are moments in which those who *have not* somehow manage to see some aspect of their lost unity in others who *have not*. When they, *we*, gather under the sign of their, *our*, dispossession, under the bodily mark according to which their, *our*, devaluation is determined, they, *we*, attempt to resist, to go back, to roll back the time and tide of their, *our*, dispossession. Resistance is futile. We paint pictures of tomorrow in happy legislative, executive, and juridical colors. On bended knee, we offer our happy songs of tomorrow's togetherness to our masters. Our masters hate us with a fury that surpasses all understanding, theirs and ours both. They hate us with all the fervor of the original accumulation, with the entire force of the circumstances that have elevated them above us. They are, in their bodies and souls, the wealth of the original accumulation. When it seems our prayers for legal relief have been answered, when it seems as if we have won something, a legislative victory, an executive order, a judicial decision, they are the ones who interpret the picture and shape the tomorrow they imagine it to depict. Their tomorrow is always our yesterday. They interpret it in the light of everything they are and everything around them and, because everything they are and everything around them is made up of our doom, we are, in the end, doomed, as we were from the start. That is the system. And that is why we can rejoice in its ending. Its ending is our escape from the undiscovered country, from the death that they force us to live, and to the life into which we have yet to be born. As slaves, we recognize, and critical race theory is the beginning of recognition, that we have in our empty hands the ability to bring the entire system of property and law to an end. We, in our refusal to wake from this death, this endless repetition of the original accumulation, have only extended the horizon of our suffering. In the wide-awake world there are no guarantees, nothing is certain, and all the world's powers and principalities are against us. The powers and principalities that are the system depend entirely and completely on the sovereignty of death, the sovereignty of the

original accumulation, a sovereignty that disappears with the awakening of consciousness that is critical race theory and whatever comes next.

*Whiteness is a system* and that means everything must go and that means we must refuse to judge, refuse to separate, refuse to distinguish, refuse to discriminate, refuse to differentiate. Why? There will always be a reason to incarcerate. Always. Children are, and childhood itself is, imprisoned by white power. We are fallen and marked by race as having fallen from Grace. The primal scene of accumulation, repeated endlessly, is our own refusal to understand or remember that white racism, whiteness, cuts to the bone.

Jerome wrote *white racism cuts to the bone* in an article defending a then ten year old child, critical race theory, from a savage attack:

Ten years after its formal beginning, critical race theory is under assault by those inside and outside the legal academy for supposed ugly things contained in the texts that make up the body of its work.<sup>22</sup>

The publication of Jerome M. Culp's article, *To the Bone*, was a parental act. I hope that we, the Zombie International, remember Jerome's work by repeating such parental acts until we have raised a black banner over every capitol, until we have raised a black banner over *Das Kapital*, until law becomes a myth and property a fable, until Gary Tyler and all prisoners everywhere are free, until the General Strike and ever after.<sup>23</sup>

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<sup>22</sup> Culp, *supra* note 2, at 1637.

<sup>23</sup> Free Gary Tyler, <http://freegarytyler.com>.