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Rhetoric of Silence: Some Reflections on Law, Literature, and Social Violence

James A. Epstein*

Martha Minow suggests the importance of looking outside of courtrooms and the law to find ways of speaking about social and family violence. Her article underscores the difficulties of breaking silence, and yet the power to impose silence is integral to violence itself. We are called upon, however, not only to speak, but to listen. Respectful listening indeed may be a prerequisite to attempting to frame words and actions of intervention and resistance. We are called upon to speak, but we are hard pressed to summon public language that does justice to private pain and anguish.

Robert Cover, in his article "Nomos and Narrative," argues that an inseparable relationship exists between law and the stories that we tell: both participate in the creation and maintenance of a world of normative meaning.¹ Courtrooms, however, are locations where legal talk is narrowed—killed, according to Cover²—by the imposition of singular interpretative meaning; boundaries are drawn, precedents established, and voices silenced or privileged through a strict hierarchy of speakers. Both Cover and Minow maintain, therefore, that the law itself constitutes an exercise of violence.³ Most disturbingly, in cases of "domestic" violence, voices may be reconstrained within a structure of silence and inaction. In contrast, outside the courtroom an uncontrolled cultural field remains; people continue to tell stories that are possessed of per-

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1. Cover, *The Supreme Court, 1982 Term—Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4, 4-5 (1983).

2. See *id.* at 40-44; see also Cover, *Violence and the Word*, 95 YALE L.J. 1601, 1610 & n.22 (1986).

3. See Cover, *supra* note 2, at 1601; Minow, *Interpreting Rights: An Essay for Robert Cover*, 96 YALE L.J. 1860, 1893-1911 (1987). While Cover may overstate the totalizing force of legal decisions, his insistence on the violent and "jurispathic" character of the law offers an important corrective to the work of writers like James Boyd White, who draw connections between the practice of interpreting literature and the law. See Cover, *supra* note 1, at 40. Cover maintains that there are fundamental (particularly institutional) differences between such interpretative practices. Cover, *supra* note 2, at 1601 n.2, 1606 n.15, 1610 n.24, 1628-29.

suasive normative vision and transformative promise constituting a domain of unsanctioned legal and ethical reasoning. The law functions within the context of a virtual anarchy of claims about rights, justice, and communal responsibility and expectations, which the law, in turn, attempts to contain.

Professor Minow relates her experiences in reading works of fiction with judges, raising the difficult question of whether literary texts might serve as moral exemplars or at least might move readers to more sympathetic or alternative understandings about the nature of family violence. She poses a series of provocative questions: Can words stem violence? How do we find words to describe violence that resist making it seem routine? What constitutes violence? With whom does responsibility for violence against children and women rest? Whose voices are heard and whose voices are silenced? How are legal meanings generated and maintained, and how might they be challenged? As a point of departure for reflecting on some of these themes, this Comment briefly considers how normative order is constituted in two passages from a classic literary text.⁴

In an early chapter of Charles Dickens's novel *Bleak House*,⁵ Esther Summerson, the novel's heroine, relates her visit to the home of a brickmaker's family. Esther accompanies Mrs. Pardiggle, a stern Christian missionary dedicated to bringing Christian knowledge into the homes of the benighted laboring poor. Mrs. Pardiggle is insensitive to the hostility that greets her intrusion into the "rough" interior of working-class domestic life. Esther describes how Mrs. Pardiggle pulls out "the good book, as if it were a constable's staff, and took the whole family into custody. I mean into religious custody, of course . . . as if she were an inexorable moral Policeman carrying them all off to a station-house."⁶ She might have gotten on better, Esther reflects, "if she had not had such a mechanical way of taking possession of people."⁷ Esther and her companion, Ada, are concerned, however, about the brickmaker's wife, whom they notice covering "her discoloured eye," and the baby that she holds in her lap.⁸ While they are visiting the home, the child dies in her mother's arms. Esther and Ada try to com-

4. There is a growing body of literature on the subject of the relationship between legal language and literature. I have found the work of James Boyd White suggestive, without always agreeing with specific lines of argument. See, e.g., J. WHITE, *HERACLES' BOW: ESSAYS ON THE RHETORIC AND POETICS OF THE LAW* 28-48, 77-106, 192-214 (1985); J. WHITE, *WHEN WORDS LOSE THEIR MEANING* (1984) [hereinafter J. WHITE, *WORDS*].

5. C. DICKENS, *BLEAK HOUSE: AN AUTHORITATIVE AND ANNOTATED TEXT* ch. 8 (G. Ford & S. Monod eds. 1977).

6. *Id.* at 99.

7. *Id.*

8. *Id.* at 100.

fort her, whispering to her "what Our Saviour said of children."⁹ The mother remains silently weeping; the husband stands at the door smoking his pipe. At this point, a woman, described only as an "ugly woman" who "also had upon her face and arms the marks of ill-usage,"¹⁰ enters the house and moves to comfort the mother, uttering only the words, "Jenny! Jenny!" as the two women embrace.¹¹ Esther comments:

I thought it very touching to see these two women, coarse and shabby and beaten, so united; to see what they could be to one another; to see how they felt for one another; how the heart of each to each was softened by the hard trials of their lives. I think the best side of such people is almost hidden from us. What the poor are to the poor is little known, excepting to themselves and GOD.¹²

Whether such narratives possess the power to move contemporary readers, much less the power to alter legal understanding, remains an open question.¹³ It is problematic for reasons that Dickens understood and Minow suggests: What is understood depends not only on the language of the text, but on the experience that readers bring to the text. We undoubtedly could become "better readers" of Dickens; perhaps, as James Boyd White argues, a normative community between reader and author might be constituted.¹⁴ Dickens's point, though, turns on the misunderstandings between people in a context in which language no longer has the power to engender compassionate understanding, and in which community and the responsibilities of community have broken down. Merely repeating, "what Our Saviour said of children" has no force.¹⁵ The language of Christian compassion, the only normative vision that Dickens believes capable of mediating social understanding, has been transvalued; it is an operation of social policing. The shared bond between the two women in Dickens's text is one of silent, unspoken understanding—accessible only to themselves and God. Dickens's text, however, turns back upon itself; it attempts to bring to view what "is almost hidden from us,"¹⁶ thereby making what is inaccessible ac-

9. *Id.*; see also Mark 10:14 ("Suffer the little children to come unto me").

10. C. DICKENS, *supra* note 5, at 101.

11. *Id.*

12. *Id.*

13. But see Hentoff, *Profiles (Justice William Brennan)*, THE NEW YORKER, Mar. 12, 1990, at 45. Hentoff relates that Justice Brennan draws inspiration for "the age-old dream" that "no one anywhere will be denied his or her inherent dignity and rights" from a scene in Yeats's play *Cathleen Ni Hoolihan*. *Id.* It is interesting that Minow singles out Brennan as the Supreme Court Justice who, in the case of *DeShaney v. Winnebago County Dep't of Social Servs.*, 109 S. Ct. 998 (1989), is most inclined to write in dramatic and passionate tones about family violence. See Minow, *Words and the Door to the Land of Change: Law, Language, and Family Violence*, 43 VAND. L. REV. 1665, 1675-76 (1990).

14. J. WHITE, WORDS, *supra* note 4, at 3-23.

15. See *supra* note 9 and accompanying text.

16. See *supra* note 12 and accompanying text.

cessible. Thus, Dickens maintains a residual hope that narrative disclosure—the language of the novel—might touch an irreducible respect that we, as readers, retain for human dignity.

Toward the end of *Bleak House*, Charles Dickens stages the death of Jo, child of the street and victim of the callous disregard of urban civilization. Jo dies in his haunt of “Tom-all-Alone’s” in the arms of the compassionate Dr. Allan Woodcourt, who attempts to get Jo to repeat the Lord’s Prayer. The dialogue is as follows:

“Jo, can you say what I say?”

“I’ll say anythink as you say, sir, for I knows it’s good.”

“OUR FATHER.”

“Our Father!—yes, that’s wery good, sir.”

“WHICH ART IN HEAVEN.”

“Art in Heaven—is the light a comin, sir?”

“It is close at hand. HALLOWED BE THY NAME!”

“Hallowed be—thy—”

Jo is dead, but Dickens continues:

The light is come upon the dark benighted way. Dead!

Dead, your Majesty. Dead, my lords and gentlemen. Dead, Right Reverends and Wrong Reverends of every order. Dead, men and women, born with Heavenly compassion in your hearts. And dying thus around us every day.¹⁷

Dickens in effect closes this scene, and the chapter, not once but twice. Narrative convention must be upset, disrupted in order for Dickens to establish his moral point. It is not that words have lost their meaning, but rather that Dickens has difficulty summoning language that possesses the expressive force needed to shake the indifference of the Victorian middle and upper classes.¹⁸

Separated by nearly five hundred pages, these two passages are interconnected by more than the Victorian melodrama of death.¹⁹ Both scenes move along the twin coordinates of vulnerability and silence. Jo’s futile attempt to recite the Lord’s Prayer reiterates the silent response of the brickmaker’s wife to words of Christian comfort. Ritual gestures have been reduced to rhetorical performance; they are no longer possessed of binding social meaning. Furthermore, they are textual moments structured around awkwardly contrived engagements between the urban poor and members of the upper middle class. Dickens attempts to negotiate the separations of social class—spatially, culturally, and normatively constituted—through an appeal to absent moral

17. C. DICKENS, *supra* note 5, at 571-72.

18. Cf. S. MARCUS, *ENGELS, MANCHESTER, AND THE WORKING CLASS 182* (1974) (commenting that in his classic *The Condition of the Working Class in England in 1844*, Friedrich Engels runs out of language in his attempt to describe the full horrors of Manchester’s urban environment).

19. There is in fact a chance encounter between the brickmaker’s wife and Woodcourt in the preceding chapter. See C. DICKENS, *supra* note 5, at 554-55.

sensibilities.

Bleak House is not a novel about family violence or child neglect. It is, however, a story about the law. The interminable litigation surrounding the cause of Jarndyce and Jarndyce²⁰ connects the narrative world of the novel and creates discord among all those that it touches. The case is tangled within the mysterious protocols of the law of equity and the court of chancery. Indeed, the very practice of law kills the case by moving it outside the understanding and control of the concerned parties. As Ada naively reflects: "It seems very strange, as there must be right somewhere, that an honest judge in real earnest has not been able to find out through all these years where it is."²¹ A judgment never is reached in the case; the matter consumes itself through the exhaustion of funds. The law quite literally is "jurispathic," to borrow Cover's term. Dickens persuasively exposes the law's pretensions to arbitrate fairly between competing claims through a process of discovery and appeal to neutral principles of justice.²² Ada is correct in stating, "there must be right somewhere";²³ it is her expectation that right can be found within the process of the law that proves mistaken.

Dickens draws no direct connection between the law and social violence; he makes no appeal for providing abused children or women with legal shelter, although there is an emerging mid-Victorian discourse on this subject.²⁴ The relationship between these themes operates at a more removed and general level. What resources are present within Dickens's world for dispelling prevailing forces of social and legal indifference? What promise, if any, does the narrative world possess for summoning a shared realm of moral possibilities?

My point is not that *Bleak House*, published in 1853, is a novel for our time, nor that we might extract from it some universal values that transcend the contexts of mid-Victorian England and Dickens's own ideological perspective. Rather, the question of what words are available within specific cultural contexts to create meaningful moral and political communities is *our* question; it is, as it always has been, the key question. This is the question that I think Martha Minow has brought eloquently into focus. What stories can we tell and what songs can we

20. Dickens's case concerns the settlement of an estate.

21. C. DICKENS, *supra* note 5, at 56.

22. There is a parallel here with Dickens's critique of the presumed "scientific" neutrality of social statistics that he develops in his next novel, *Hard Times* (1854).

23. See *supra* note 21 and accompanying text.

24. See, e.g., G. BEHLMER, *CHILD ABUSE AND MORAL REFORM IN ENGLAND, 1870-1908* (1982); L. GORDON, *HEROES OF THEIR OWN LIVES: THE POLITICS AND HISTORY OF FAMILY VIOLENCE, 1880-1960* (1988); E. PLECK, *DOMESTIC TYRANNY: THE MAKING OF SOCIAL POLICY AGAINST FAMILY VIOLENCE FROM COLONIAL TIMES TO THE PRESENT* (1987).

ing to reconstitute communities of resistance that will offer shared visions of social change powerful enough to stem violence?