

11-1990

Afterword: Voices and Violence--A Dialogue

Ellen W. Clayton

Jay Clayton

Follow this and additional works at: <https://scholarship.law.vanderbilt.edu/vlr>



Part of the [Law and Society Commons](#)

Recommended Citation

Ellen W. Clayton and Jay Clayton, Afterword: Voices and Violence--A Dialogue, 43 *Vanderbilt Law Review* 1807 (1990)

Available at: <https://scholarship.law.vanderbilt.edu/vlr/vol43/iss6/9>

This Symposium is brought to you for free and open access by Scholarship@Vanderbilt Law. It has been accepted for inclusion in Vanderbilt Law Review by an authorized editor of Scholarship@Vanderbilt Law. For more information, please contact mark.j.williams@vanderbilt.edu.

Afterword: Voices and Violence— A Dialogue

*Ellen Wright Clayton**

*Jay Clayton***

WE: When organizing this Symposium on the topic of “Law, Literature, and Social Change,” we asked whether current trends in literature and in literary, social, and legal theory actually could play a role in bringing about social change. The authors gathered at this Symposium responded to this question in very different ways. As we read their articles and comments, however, and as we talked about their various approaches, some common themes began to emerge. Narrative seemed important. The way people split public life off from private experience came up frequently. But violence seemed to be on everyone’s mind.

IT: Why violence?

SHE: It’s in our world. Randy DeShaney, who figures prominently in Martha Minow’s contribution to this Symposium, beat his three-year-old son Joshua almost to death.¹

HE: It’s in our selves. Who we are depends on what we exclude.²

SHE: A father nearly killed his child and that sort of violence is anything but rare. Millions of women, children, and the elderly are beaten or neglected or sexually abused in this country every year. Violence characterizes the relations of one person with another in less overt ways, too. In the areas where I spend much of my time, it occurs when a physician uses the threat of law to coerce a patient’s “compliance” or when a doctor is condescending toward a patient or tries to convince her to act against her wishes. It occurs when a professor humiliates a student. It occurs when a student thinks that the poor are inherently more likely to cheat the government and are less entitled to the security of their homes.

* Assistant Professor of Law, Assistant Professor of Pediatrics, Vanderbilt University.

** Associate Professor of English, Vanderbilt University. The Authors would like to thank Mona Frederick for her help in organizing this Symposium.

1. See *DeShaney v. Winnebago County Dep’t of Social Servs.*, 109 S. Ct. 998 (1989).

2. For expressions of this widely shared view of the self from the perspectives of anthropology, African-American studies, literary criticism, and cultural studies respectively, see J. FABIAN, *TIME AND THE OTHER: HOW ANTHROPOLOGY MAKES ITS OBJECT* (1983); S. GREENBLATT, *RENAISSANCE SELF-FASHIONING: FROM MORE TO SHAKESPEARE* (1980); “RACE,” *WRITING, AND DIFFERENCE* (H. Gates ed. 1986); E. SAID, *ORIENTALISM* 1-3, 45 (1979).

The law itself is violent, as Robert Cover so often reminded us.³ The institutions of the law—legislatures, courts, police, prisons, and by extension, social agencies—exercise force, both actively and passively. Martha Minow points out that the Supreme Court, by failing to hear Joshua's cries, by characterizing the acts of his father as "private," by ignoring the fact that the State of Wisconsin created its social service system in a manner that eliminated any alternative recourse for Joshua, by declining to notice that abuse of our children affects society as a whole, is violent and is blind to the violence of other institutions.⁴

IT: Such an elastic conception of violence turns any effort to impose form into an exercise in force.

HE: Michael Ryan's article focuses on the violence of representation. The word is a pun in his usage, one with a rich history. In literary parlance "representation" means the use of words or images to stand for something else. In political discourse representation refers to a specific way of organizing a democracy. In both it names a procedure in which a part stands in for a whole. It used to be thought that this procedure was relatively benign, a substitution that was potentially fair, accurate, and efficient, one that always could be corrected by judicious criticism or by an adequate system of checks and balances. With the poststructuralist revolution to which Ryan refers at the beginning of his first section,⁵ this substitution began to look more like a violent displacement. From a poststructuralist perspective, both political and cultural forms of representation appear to exclude or silence as much as to enfranchise or communicate.

The stories we tell about our Nation's commitment to political freedom, Ryan argues, sustain an economic order in which the overwhelming majority of those who labor are not free, an order that licenses the powerful to violate the interests of the weak. Such dominant representations, moreover, occlude other visions of the world. Thus, the dominant story of freedom in America enshrines a world in which people are viewed as independent actors, each looking out for his own good without regard for the other. This representation makes it hard to envision alternative versions of freedom, more communal conceptions of a society in which people care for and depend upon one another. Free-

3. See Cover, *Violence and the Word*, 95 YALE L.J. 1601 (1986) [hereinafter Cover, *Violence*]; Cover, *The Supreme Court, 1982 Term—Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4 (1983) [hereinafter Cover, *The Supreme Court*]. For a discussion of this aspect of Cover's work, see Epstein, *Rhetoric of Silence: Some Reflections on Law, Literature, and Social Violence*, 43 VAND. L. REV. 1701, 1701 (1990); Minow, *Interpreting Rights: An Essay for Robert M. Cover*, 96 YALE L.J. 1860 (1987).

4. See Minow, *Words and the Door to the Land of Change: Law, Language, and Family Violence*, 43 VAND. L. REV. 1665, 1666-76 (1990).

5. Ryan, *Social Violence and Political Representation*, 43 VAND. L. REV. 1771, 1772 (1990).

dom, in short, is one of our sustaining fictions, and like all fictions, is partial rather than universal, constructed rather than natural. One name for such sustaining fictions is "ideology."

OTHER VOICES: "[T]he American commitment to the ideology of freedom has contributed to social progress and the limitation of repression . . ." (Mari Matsuda).⁶

SHE: All violence is not so abstract. Like Minow, Ryan writes of domestic violence, of battered children, abused women, angry men. He tells us about the victims of violence, about how representations play a decisive role in their suffering, causing them to see their oppression as natural, often as something they have brought on themselves. In his most recent book, he discusses his own experience as a battered child.⁷

IT: G. Edward White's contribution to the Symposium does not mention violence at all.

SHE: We know from White's other work on Justice Oliver Wendell Holmes⁸ that one of the organizing principles of Holmes's jurisprudence was the general legitimacy of majority rule and the illegitimacy of judicial intervention to protect those injured by the actions of the majority. Scholars argue about the source of Holmes's position, some alleging that he was elitist or antihumanitarian⁹ and others claiming that his deference to the will of the majority sprang either from his awareness of the indeterminacy of values and beliefs¹⁰ or from his positivist acceptance of the realities of power.¹¹ But wherever it came from, Holmes's reluctance to challenge established values led him to be insensitive to the social violence inflicted by the majority on the weak, the poor, the disenfranchised, and the mentally retarded.

OTHER VOICES: "[C]ontinuity with the past is only a necessity and not a duty" (Oliver Wendell Holmes).¹²

HE: When one reads White's account of how isolated and compartmentalized Holmes's life was, it is hardly surprising that he did not respond

6. Matsuda, *Public Response to Racist Speech: Considering the Victim's Story*, 87 MICH. L. REV. 2320, 2353 (1989).

7. M. RYAN, *POLITICS AND CULTURE: WORKING HYPOTHESES FOR A POST-REVOLUTIONARY SOCIETY* 200-34 (1989).

8. See G.E. WHITE, *THE AMERICAN JUDICIAL TRADITION* 150-77 (rev. ed. 1988); White, *Looking at Holmes in the Mirror*, 4 LAW & HIST. REV. 439, 462 (1986) [hereinafter *Holmes in the Mirror*]; White, *The Rise and Fall of Justice Holmes*, 39 U. CHI. L. REV. 51 (1971).

9. See, e.g., Rogat, *The Judge as Spectator*, 31 U. CHI. L. REV. 213 (1964).

10. See, e.g., F. KELLOGG, *THE FORMATIVE ESSAYS OF JUSTICE HOLMES* (1984); *Holmes in the Mirror*, *supra* note 8, at 464.

11. See, e.g., G. GILMORE, *THE AGES OF AMERICAN LAW* 49 (1977); Grey, *Holmes and Legal Pragmatism*, 41 STAN. L. REV. 787, 793-94 (1989); *Holmes in the Mirror*, *supra* note 8, at 452.

12. O.W. HOLMES, *Law in Science and Science in Law*, in *COLLECTED LEGAL PAPERS* 210, 226 (1920); see also Grey, *supra* note 11, at 807-10. For comments on Holmes's conception of the importance of duty, see Elshtain, *Private Lives, Public Selves*, 43 VAND. L. REV. 1763 (1990).

to oppression. Holmes apparently viewed judging, even on the collegial courts on which he sat, as a solitary job consisting of wrestling with a case to find the "same old donkey of a question of law"¹³ and then writing an elegant resolution. He viewed this labor not only as solitary but also as narrowly intellectual, seeking to exclude the influence of emotion and empathy at all cost.¹⁴ He devoted much effort to his work, perhaps because of his desire to achieve lasting eminence as a jurist, but when his job was done, he left it behind.¹⁵ At home he lived almost as a recluse, engaging in little social activity in Boston or in Washington. According to White, Holmes really seemed to come alive only in his extraordinary correspondence. In these letters he rarely talked about his work as a judge. He wrote primarily about literature and history, which he read voluminously. Even these letters had an air of detachment about them because he set the limits of the discussion. Sometimes, in fact, Holmes seemed to be engaged in conversation with himself. From White's perspective, Holmes's life can be seen as a series of violent separations—self from others, emotion from intellect, work from play, intellectual life outside the Court from his work within. The maintenance of such artificial divisions must have been costly both for him personally and for his jurisprudence.

It is costly for others as well. Minow shows the same dichotomy between public and private experience¹⁶ at work in Chief Justice William Rehnquist's majority opinion in *DeShaney v. Winnebago County Department of Social Services*.¹⁷ By criticizing the habit of mind that sees violence as private, she enables us to see the violence exercised by a public agency when it fails to act. In the process, she calls into question the distinction between governmental action and inaction that the majority used to justify their decision. Further, she poses Justice William Brennan's dissenting opinion as a similar deconstruction of the assumptions that governed the majority's reasoning.¹⁸ The literary critic Shoshana Felman has shown that readers' debates about how to interpret a text tend to mirror the conflicts staged in the text; hence, readers are often caught up in a transferential relation with the text, even when they believe themselves to be standing back dispassionately and interpreting the issues objectively.¹⁹ In much the same fashion, Justice Bren-

13. See White, *Holmes As Correspondent*, 43 VAND. L. REV. 1707, 1750 (1990).

14. See *id.* at 1754-55.

15. For a more sympathetic view of Holmes's detachment from his role as judge, see Grey, *supra* note 11, at 845-47.

16. See Minow, *supra* note 4, at 1667-68.

17. 109 S. Ct. 998 (1989).

18. See Minow, *supra* note 4, at 1670.

19. See Felman, *Turning the Screw of Interpretation*, 55/56 YALE FRENCH STUD. 94 (1977).

nan argues that the Court is caught up in the very conflict it is attempting to resolve. The Court's choice not to act mirrored the social agency's refusal to respond to Joshua DeShaney's plight.

OTHER VOICES: "Every idea is an incitement. It offers itself for belief and if believed it is acted on . . ." (Oliver Wendell Holmes).²⁰

SHE: Cornel West, in his contribution to the Symposium, refuses to lose sight of social misery. His article keeps returning to the "ill-fed, ill-clad, and ill-housed."²¹ For them violence may be a form of "civil terrorism," the "last resort of desperate people."²² West sees the self-defeating, self-destructive aspect of this violence, but he also recognizes it as form of rebellion, of anarchic expression. People so marginalized, so oppressed that their chief forms of expression lie in a violence turned largely on themselves and in an illicit market in drugs, alcohol, and bodies can be described only as tragic. Yet West holds out some hope for radical change—if the time ever comes when oppressed people can transform their capacity to produce social chaos into genuine political action.

OTHER VOICES: "In order to perpetuate itself, every oppression must corrupt or distort those various sources of power within the culture of the oppressed that can provide energy for change" (Audre Lorde).²³

HE: Until that time, however, West looks for social change not through electoral politics or the courts but through movements that are "extra-parliamentary"²⁴ in character. This emphasis on social rather than political movements is in keeping with a major trend in postmodernism, which West's other work has done much to further,²⁵ the tendency to celebrate unofficial sociocultural movements,²⁶ local struggles,²⁷ the counter-disciplinary procedures of practice,²⁸ and the tactics of everyday life.²⁹ This thread of postmodernism respects the power of what the novelist Toni Morrison has called "discredited" forms of knowledge,³⁰

20. *Gitlow v. New York*, 268 U.S. 652, 673 (1925) (Holmes, J., joined by Brandeis, J., dissenting).

21. See West, *The Role of Law in Progressive Politics*, 43 *VAND. L. REV.* 1797, 1799, 1801, 1805 (1990).

22. See *id.* at 1800.

23. A. LORDE, *Uses of the Erotic: The Erotic as Power*, in *SISTER OUTSIDER* 53 (1984).

24. See West, *supra* note 21, at 1800.

25. See C. WEST, *THE AMERICAN EVASION OF PHILOSOPHY: A GENEALOGY OF PRAGMATISM* 211-39 (1989).

26. See J. KRISTEVA, *Women's Time*, in *THE KRISTEVA READER* 187, 190 (1986).

27. See M. FOUCAULT, *POWER/KNOWLEDGE: SELECTED INTERVIEWS AND OTHER WRITINGS 1972-1977*, at 126, 132 (1980).

28. See P. BOURDIEU, *OUTLINE OF A THEORY OF PRACTICE* (1977).

29. See M. DE CERTEAU, *THE PRACTICE OF EVERYDAY LIFE* (1984).

30. Morrison, *An Interview*, 24 *CONTEMP. LITERATURE* 413, 428 (1983). For a discussion of alternative forms from a legal point of view, see Matsuda, *Looking to the Bottom: Critical Legal*

the unofficial ways of knowing and doing that marginalized groups often must employ. West mentions rap artists,³¹ and Minow turns to popular music,³² but they both have in mind “naive” or indigenous cultural forms that seem to do a better job of dealing with the suffering of powerless people than do official “high” culture or the judicial system.³³

In this project narrative plays a major role. West exhorts progressive lawyers to learn from other disempowered peoples how to tell “enabling” or “analytically illuminating” stories.³⁴ Here he makes common cause with many minority legal scholars—particularly those who identify with the movement known as Critical Race Theory—in arguing that stories serve a strategic function in oppositional intellectual activity.³⁵ Through narrative, lawyers can keep alive the memory of progressive victories in the past and provide a basis for change in the future. West is somewhat unusual among theorists of postmodernism in stressing the positive value of memory and tradition³⁶ for a radical politics. Unlike many literary and cultural theorists, who view narrative as complicit with authority because of its linear, teleological, and unified character,³⁷ West proposes a legal practice that is “narrative in character and radical in content.”³⁸

Critical Legal Studies, Critical Race Theory, and feminist legal scholars have borrowed fruitfully from literary theorists, employing poststructuralist models of interpretation and of narrative to unsettle the dominant conventions of their discipline. Literary critics have begun to return the favor, writing on the law and drawing on legal concepts with increasing frequency,³⁹ in large part because the law gives

Studies and Reparations, 22 HARV. C.R.-C.L. L. REV. 323, 344-45 (1987).

31. See West, *supra* note 21, at 1802.

32. See Minow, *supra* note 4, at 1695-99.

33. For more on the importance of “discredited” forms of knowledge in both postmodern theory and minority literatures, see Clayton, *The Narrative Turn in Recent Minority Fiction*, 2 AM. LITERARY HIST. 375 (1990).

34. See West, *supra* note 21, at 1802.

35. See Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411 (1989); Matsuda, *supra* note 6, at 2320; see also Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 HARV. C.R.-C.L. L. REV. 401 (1987). See generally *Symposium: Legal Storytelling*, 87 MICH. L. REV. 2073 (1989).

36. See West, *supra* note 21, at 1804; see also West, *Reassessing the Critical Legal Studies Movement*, 34 LOY. L. REV. 265, 273 (1988) (arguing for the importance of preserving traditions of resistance).

37. See, e.g., E. SAID, *BEGINNINGS: INTENTION AND METHOD* 66 (1975); Miller, *Narrative and History*, 41 ENG. LIT. HIST. 455, 459-60, 467 (1974); White, *The Value of Narrativity in the Representation of Reality*, 7 CRITICAL INQUIRY 5, 17 (1980).

38. See West, *supra* note 21, at 1802.

39. See, e.g., J. CULLER, *Deconstruction and the Law*, in *FRAMING THE SIGN: CRITICISM AND ITS INSTITUTIONS* 139-52 (1988); S. FISH, *DOING WHAT COMES NATURALLY: CHANGE, RHETORIC, AND THE PRACTICE OF THEORY IN LITERARY AND LEGAL STUDIES* (1989); *INTERPRETING LAW AND LITERATURE: A HERMENEUTIC READER* (S. Levinson & S. Mailloux eds. 1988); M. RYAN, *supra* note 7;

them a chance to deal with texts that seem directly connected to social and political concerns. If legal scholars look to literary theory to remind themselves of the "textuality" of the law, literary critics turn to the law to convince themselves that the interpretation of texts has some "real" consequences. This interchange is one of the most valuable examples of the interdisciplinary impulse that characterizes intellectual activity at the beginning of the 1990s. But literary critics have been slower than legal scholars to let the questions raised by the other discipline challenge their findings. Narrative theorists, for instance, could learn much from the work of some legal scholars who are sensitive to the varying political contexts of narrative discourse.

Robert Cover,⁴⁰ Stephen L. Winter,⁴¹ Richard Delgado,⁴² Mari Matsuda,⁴³ and other legal scholars attend to the specific historical setting—the social and institutional contexts—of storytelling before attempting to assess the form's political value. Winter, to look at one of these scholars, argues that the narrative is "an iconoclastic tool" of "legal and social change" because it is not the principal method that institutions use to legitimate themselves.⁴⁴ "Narrative does not meet the threefold demands of generality, unreflexivity, and reliability that are necessary if a prevailing order is credibly to justify itself."⁴⁵ Winter's perspective would present a useful challenge to poststructuralist narrative theorists, among whom there is a general consensus that narrative is a prop of the status quo and that the disruption of narrative is, in and of itself, politically liberating.

OTHER VOICES: "You don't have anything / if you don't have the stories" (Leslie Marmon Silko).⁴⁶

SHE: Sometimes I wonder if narrative really has any effect on behavior. How do we know that telling the story of violence makes a difference? The example that comes most immediately to my mind is that of medical training, an experience that is often demeaning and humiliating.⁴⁷ One need look only to the flurry of books written in recent years by

Casero, *Supreme Court Discourse vs. Homosexual Fiction*, 88 S. ATLANTIC Q. 267 (1989). For criticism of this exchange, see R. POSNER, *LAW AND LITERATURE: A MISUNDERSTOOD RELATION* (1988).

40. See Cover, *The Supreme Court*, *supra* note 3, at 16-17, 18, 44-45.

41. See Winter, *The Cognitive Dimension of the Agon Between Legal Power and Narrative Meaning*, 87 MICH. L. REV. 2225 (1989).

42. See Delgado, *supra* note 35, at 2414-15.

43. See Matsuda, *supra* note 6, at 2324-25.

44. Winter, *supra* note 41, at 2228.

45. *Id.*

46. L. SILKO, *CEREMONY 2* (1977).

47. Investigators recently have begun to study the ill treatment of medical students. See, e.g., Sheehan, Sheehan, White, Leibowitz & Baldwin, *A Pilot Study of Medical Student 'Abuse'*, 263 J. A.M.A. 533 (1990); Silver & Glicken, *Medical Student Abuse: Incidence, Severity, and Significance*, 263 J. A.M.A. 527 (1990).

people recounting their own medical school and residency training.⁴⁸ Their accounts abound with tales of how they have been degraded even though some of the authors seem eerily unaware of how fully they have been demeaned. Yet we know that this systematic humiliation is not without consequences. The stories of how doctors come to view their patients as "gomers" and admissions as "hits" demonstrate that it is hard to care for others when you yourself are being brutalized. It is also difficult for the physician with an ego made fragile by assault to respond to uncertainty and complexity as anything other than a threat.⁴⁹ In addition, it is plainly true that patients die unnecessarily when residents are pushed beyond their limits, as allegations regarding the death of Libby Zion made all too clear.⁵⁰ We know all this, we tell ourselves these stories, and yet we seem unable to transform medicine into a humane institution. To be sure, the economic cost of providing less stressful work schedules is a major barrier to change. But a large part of the resistance to change is the fact that many physicians believe that stringent working conditions are necessary to turn students and residents into "special" people,⁵¹ even though I would contend and the stories show that this very "specialness," this sense of being different because one has done things that others have not, contributes to the insensitivity with which physicians sometimes treat their patients.

Minow, too, asks whether telling stories makes a difference, and she asks the question in a striking way.⁵² She recounts her experiences in a program at Brandeis University in which she discusses literature with judges. They often are deeply engaged in the conversation and sometimes have remarkable insights and draw striking parallels between the stories and their own work.⁵³ Yet she worries. She worries that she may be too bound by academic notions of what it is to respond sensitively to a text, that she and they may be missing the possibility that none of them truly understands the story, that the real wisdom may be in not knowing what to say. Finally, she implicitly wonders whether this sort

48. See, e.g., M. HARRISON, *A WOMAN IN RESIDENCE* (1982); P. KLASS, *A NOT ENTIRELY BENIGN PROCEDURE: FOUR YEARS AS A MEDICAL STUDENT* (1987); P. REILLY, *TO DO NO HARM: A JOURNEY THROUGH MEDICAL SCHOOL* (1987); S. SHEM, *HOUSE OF GOD* (1981).

49. Cf. J. KATZ, *THE SILENT WORLD OF DOCTOR AND PATIENT* 165-206 (1984) (arguing that difficulty in confronting uncertainty affects almost all interactions between doctors and patients).

50. Asch & Parker, *The Libby Zion Case: One Step Forward or Two Steps Backward?*, 318 *NEW ENG. J. MED.* 771 (1988); see also Ritchie, *Professionalism, Altruism, and Overwork*, 13 *J. MED. & PHIL.* 447 (1988) (arguing that overworking residents is not ethically justifiable).

51. See, e.g., Bergman, DeAngelis, Feigin & Stockman, *Regulation of Working Hours for Pediatric Residents*, 116 *J. PEDIATRICS* 478 (1990). Even some of my close friends and medical colleagues defend this position vigorously.

52. See Minow, *supra* note 4, at 1686-94.

53. Sometimes, however, they seem to miss the point altogether as her hilarious footnote about the tribulations of teaching Camus demonstrates. *Id.* at 1694 n. 147.

of discussion actually changes what the judges do when they return to the bench.

IT: The same question could be raised about all intellectual activities, both within and outside the academy.

HE: I still take heart from this kind of exchange. Until the last decade, how often did faculty in law schools—as well as lawyers and judges outside of the academic community—read, teach, and debate scholars in the humanities? How often did literary critics think about issues beyond the confines of their discipline? This Symposium—like others around the country⁵⁴—represents a fundamental reorganization of intellectual boundaries. Even though the university is still divided into departments and schools, it often has responded favorably to the interdisciplinary turn, a turn many critics identify with postmodernism.⁵⁵

OTHER VOICES: “Since the salient feature of postmodernism is thought to be incoherence, why not use this very word in an incoherent way? . . . (Others, it is true, claim this same incoherence . . . for the discourse that reigns supreme in the humanities centers of American universities)” (Tzvetan Todorov).⁵⁶

SHE: It does not hurt that we are married to each other and that we talk about our work at home. The formal recognition of this dialogue parallels one of the most significant changes in the way the law views families. Well into this century, marriage legally extinguished the voice and identity of the wife. She could not enforce any claims against her spouse during the course of the ongoing marriage.⁵⁷ If some third party injured her, she could rarely sue in her own name.⁵⁸ As some have said,

54. See, e.g., *Interpretation Symposium*, 58 S. CAL. L. REV. 1 (1988); *Symposium: Law and Literature*, 39 MERCER L. REV. 739 (1988); *Symposium: Law and Literature*, 60 TEX. L. REV. 373 (1982); *Symposium: Deconstruction and the Possibility of Justice*, Cardozo School of Law, Oct. 2-3, 1989; *Symposium on the Renaissance of Pragmatism in American Legal Thought*, University of Southern Cal. Law Center, Feb. 23-24, 1990.

55. For critics who view the interdisciplinary impulse as an important aspect of postmodernism, see L. HUTCHEON, *A POETICS OF POSTMODERNISM: HISTORY, THEORY, FICTION* 9 (1988); J.-F. LYOTARD, *THE POSTMODERN CONDITION: A REPORT ON KNOWLEDGE* 52 (1984); and Jameson, *Postmodernism and Consumer Society*, in *THE ANTI-AESTHETIC: ESSAYS ON POSTMODERN CULTURE* 111 (H. Foster ed. 1983). For an influential discussion of the interdisciplinary turn in anthropology and the social sciences, see C. GEERTZ, *Blurred Genres: The Refiguration of Social Thought*, in *LOCAL KNOWLEDGE: FURTHER ESSAYS IN INTERPRETIVE ANTHROPOLOGY* 19-35 (1983).

56. Todorov, *Postmodernism, a Primer*, NEW REPUBLIC, May 21, 1990, at 32.

57. See, e.g., *McGuire v. McGuire*, 157 Neb. 226, 59 N.W.2d 336 (1953) (denying wife's claim for maintenance and support from well-to-do husband); see also Finley, *A Break in the Silence: Including Women's Issues in a Torts Course*, 1 YALE J.L. & FEMINISM 41, 45-48 (1989) (discussing evolution of intrafamily immunity in torts).

58. See *Thompson v. Thompson*, 218 U.S. 611, 615-16 (1910) (discussing common-law position that married women had no legal existence apart from their husbands and limited encroachment on that rule by Married Women's Property Acts). See generally Williams, *The Equality*

husband and wife were merged into one upon marriage, and that one was the man.⁵⁹ Only recently has the law started to come, however haltingly, to realize that there are *two* people in a marriage, each with an independent voice and interests. As we already have seen, dialogue is possible only when there is more than one voice in the room.

HE: Although there always have been many voices in the room, some have been muted unfairly. Feminists,⁶⁰ gay and lesbian critics,⁶¹ and scholars of minority literature⁶² have taught us to listen more carefully, to hear the altered emphases, the ironies, the significant absences, which are some of the marks of unauthorized voices struggling to be heard. Literary critics have concentrated primarily on recovering these muted texts in the literature of the past, but contemporary scholarly conventions also may serve to exclude some voices. Many people are arguing that the "dominant discourse" of scholarship works to silence alternative voices, stifle the prospects for radical change.⁶³ This kind of critique lies behind many of the experiments in scholarly writing with storytelling, nonlinear arguments, fragmentation, collage, autobiography, and dialogue.⁶⁴

Crisis: Some Reflections on Culture, Courts, and Feminism, 7 WOMEN'S RTS. L. REP. 175 (1982).

59. See, e.g., 1 W. BLACKSTONE, COMMENTARIES *430.

60. See, e.g., A. LORDE, *supra* note 23, at 53-59; N. MILLER, SUBJECT TO CHANGE: READING FEMINIST WRITING 25-46 (1988); A. WALKER, IN SEARCH OF OUR MOTHERS' GARDENS 231-43 (1983); Showalter, *Feminist Criticism in the Wilderness*, in NEW FEMINIST CRITICISM: ESSAYS ON WOMEN, LITERATURE, AND THEORY 243-70 (E. Showalter ed. 1985); Kolodny, *A Map for Rereading: Or, Gender and the Interpretation of Literary Texts*, 11 NEW LITERARY HIST. 451 (1980).

61. See, e.g., J. BOONE, TRADITION COUNTER TRADITION: LOVE AND THE FORM OF FICTION (1987); E. SEDGWICK, BETWEEN MEN: ENGLISH LITERATURE AND MALE HOMOSOCIAL DESIRE (1985); Zimmerman, *What Has Never Been: An Overview of Lesbian Feminist Literary Criticism*, 7 FEMINIST STUD. 451 (1981).

62. See, e.g., W. ANDREWS, TO TELL A FREE STORY: THE FIRST CENTURY OF AFRO-AMERICAN AUTOBIOGRAPHY, 1760-1865 (1986); H. BAKER, BLUES, IDEOLOGY, AND AFRO-AMERICAN LITERATURE: A VERNACULAR THEORY (1984); H. GATES, THE SIGNIFYING MONKEY: A THEORY OF AFRO-AMERICAN LITERARY CRITICISM (1988); A. LORDE, *supra* note 23; V. SMITH, SELF-DISCOVERY AND AUTHORITY IN AFRO-AMERICAN NARRATIVE (1987); A. WALKER, *supra* note 60.

63. See Delgado, *When a Story Is Just a Story: Does Voice Really Matter?*, 76 VA. L. REV. 95, 103 (1990) (arguing that dominant legal discourse makes reform difficult to imagine).

64. Advocates and practitioners of storytelling in legal writing include the authors cited *supra* at note 35. See also Cover, *Violence*, *supra* note 3; López, *Lay Lawyering*, 32 UCLA L. REV. 1 (1984); West, *Authority, Autonomy, and Choice: The Role of Consent in the Moral and Political Visions of Franz Kafka and Richard Posner*, 99 HARV. L. REV. 384 (1985); West, *Jurisprudence As Narrative: An Aesthetic Analysis of Modern Legal Theory*, 60 N.Y.U. L. REV. 145 (1985). Legal scholarship that explores the value of dialogues or dialogic modes includes B. ACKERMAN, SOCIAL JUSTICE IN THE LIBERAL STATE (1980); Bell, *The Supreme Court, 1984 Term—Foreword: The Civil Rights Chronicles*, 99 HARV. L. REV. 4 (1985); Cornell, *Toward a Modern/Postmodern Reconstruction of Ethics*, 133 U. PA. L. REV. 291 (1985); Cornell, *Two Lectures on the Normative Dimensions of Community in the Law: In Defense of Dialogic Reciprocity*, 54 TENN. L. REV. 335 (1987); Gabel & Kennedy, *Roll Over Beethoven*, 36 STAN. L. REV. 1 (1984); Paul, *A Bedtime Story*, 74 VA. L. REV. 915 (1988); Singer, *Persuasion*, 87 MICH. L. REV. 2442 (1989); Abrams, *The Deluge: A Trial and Judgment in One Act* (Book Review), 65 TEX. L. REV. 661 (1987); Delgado, *Derrick Bell and the*

OTHER VOICES: "Nothing remains from a desublimated meaning or a deconstructed form; an emancipatory effect does not follow" (Jürgen Habermas).⁶⁵

SHE: In medicine coauthored articles are the norm. Most of these pieces are linear in structure and seem to speak with one voice. We each have written such multiauthored, allegedly univocal papers before and can attest to the often protracted negotiations and compromises necessary to reach the final product. But Mikhail Bakhtin teaches us that all writing is dialogic, even when composed by a single author.⁶⁶ Every text, no matter how tightly organized, is implicitly in dialogue with other texts. In this Afterword, we want to make the different perspectives visible. This allows us not only to express our points of view but also implicitly to acknowledge that there are voices which are not heard here even though they have clear and legitimate claims to participate in the conversation.

OTHER VOICES: "One's racial (gender, religious, regional) identity is no substitute for the disciplined study essential to achieving expertise" (Randall L. Kennedy).⁶⁷

HE: This strategy attempts to combat the problem of representation that Michael Ryan notes. Admitting the existence of many voices may undermine the persuasiveness of unifying myths. It also may reveal how even the individual voice is constructed by other voices she has heard, other texts she has read.

OTHER VOICES: "Dialogical modes are not, in principle, autobiographical; they need not lead to hyper self-consciousness or self-absorption" (James Clifford).⁶⁸

SHE: And we remain inventions in our writing, constructed characters, whether we strive for the invisible cloak of neutrality or attempt openly

Ideology of Racial Reform: Will We Ever Be Saved? (Book Review), 97 YALE L.J. 923 (1988); and Delgado & Leskovac, *The Politics of Workplace Reforms: Recent Works on Parental Leave and a Father-Daughter Dialogue* (Book Review), 40 RUTGERS L. REV. 1031 (1988). For discussions and examples of experimental style in other scholarly disciplines, see J. CLIFFORD, THE PREDICAMENT OF CULTURE: TWENTIETH-CENTURY ETHNOGRAPHY, LITERATURE, AND ART 41-44, 145-48, 277-346 (1988) (advocating and illustrating techniques of collage and dialogical writing in ethnography); J. DERIDA, GLAS (1986) (juxtaposing discussions of Hegel and Genet); L. IRIGARAY, *This Sex Which Is Not One*, in THIS SEX WHICH IS NOT ONE 23-33 (1985) (fragmentation and ellipsis reflecting the multiplicity of the female subject); J. KRISTEVA, *Stabat Mater*, in THE KRISTEVA READER 160-86 (1986) (typographical experiments for recording the polyphony of voices constructing our conception of motherhood); and R. ROSALDO, CULTURE AND TRUTH: THE REMAKING OF SOCIAL ANALYSIS 1-21, 127-67 (1989) (exploring autobiography and narrative as vehicles for anthropology).

65. Habermas, *Modernity Versus Postmodernity*, 8 NEW GERMAN CRITIQUE 3, 10 (1981).

66. See M. BAKHTIN, THE DIALOGIC IMAGINATION (M. Holquist ed. 1981). For further discussion, see Habermas, *supra* note 65.

67. Kennedy, *Racial Critiques of Legal Academia*, 102 HARV. L. REV. 1745, 1777 (1989).

68. Clifford, *Introduction: Partial Truths*, in WRITING CULTURE: THE POETICS AND POLITICS OF ETHNOGRAPHY 1, 15 (J. Clifford & G. Marcus eds. 1986).

to incorporate autobiography into our scholarship. We—"HE" and "SHE"—are fictions. We have been written. Both of us have composed parts of each voice in this dialogue, and both have revised the words of the other.

IT: Whose voice am I?

WE: Our own, of course, and that of others as well. The internalized voice of the Other, if you like, which Lacan says is the origin of the unconscious,⁶⁹ of everything that must be repressed if the self is to speak at all. The Idiot Questioner, perhaps. "Id" is Freud's term.⁷⁰ But if we allow ourselves to believe in the therapeutic hope that both Freud and Bakhtin invested, in very different ways, in dialogue itself, then perhaps "Where It was, We shall be."⁷¹

69. See J. LACAN, *ECRITS: A SELECTION* 55, 172 (1977).

70. See S. FREUD, *THE EGO AND THE ID* 13 (1962).

71. See S. FREUD, *NEW INTRODUCTORY LECTURES ON PSYCHOANALYSIS* 80 (1965) (stating, "Where id was, there ego shall be").