

THE WORD AND THE RIVER: PEDAGOGY AS SCHOLARSHIP AS STRUGGLE*

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I. PROLOGUE: AN UNTRANSLATED DREAM¹ ABOUT THE WORD

I am sitting in a room. On the other side of the room a man and a woman sit at a small table. The room is large, stark, and empty except for the chairs in which its occupants sit and the table. The man and the woman are talking. They are talking about me. They talk as if I were not there, although both are obviously aware of my presence.

The man is white, balding, bearded. I do not recognize him, but I know he is a colleague at the prestigious law school where I have been teaching as a visiting professor. He is sitting in the far corner of the

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1. This narrative first appeared as Charles R. Lawrence, III, *A Dream: On Discovering the Significance of Fear*, 10 NOVA L.J. 627 (1986). In it I record, to the best of my ability, an actual dream I had in 1981 when I was on the faculty of the University of San Francisco Law School and was a visiting professor at Boalt Law School. When I awoke, I went immediately to my typewriter and tried to put the dream down exactly as I had dreamed it. I read it through twice and put it aside, deciding that it was too personal and perhaps too provocative to share. Five years later, when the *Nova Law Journal* asked me to contribute to a volume entitled *Transforming Legal Education: A Symposium of Provocative Thought*, I remembered the dream and, after considerable searching, found my discarded draft beneath one of the piles of paper on my office shelves. I showed it to a couple of friends, who wisely counseled me to keep it in mothballs. "Who knows. You might want to teach at one of those prestigious law schools one day," they cautioned. "Perhaps you could edit it to make it more abstract and theoretical—less concrete and personal."

Obviously I gave their wisdom little heed. The dream, and Roberto Unger's *Passion*, through which I had recently struggled, counseled a different wisdom. I have edited the original draft only minimally, choosing to sacrifice what might have been gained in stylistic refinement in order to preserve the chronology and feel of the dream.

room behind the small table. He leans back in his chair. His body language conveys aloofness, arrogance, and condescension. Occasionally he looks off into the distance, as if reflecting on some important thought.

The woman sits on the other side of the table. She is a colleague at my home school, the University of San Francisco, and a friend. She knows that I am able to hear them but pretends that I am not there. I think she does so because she is embarrassed, both for me and for herself. She is embarrassed by my invisibility and by her own tacit complicity in rendering me invisible. But she is not comfortable with confrontation. She knows I am capable of making myself seen and heard. If I choose to ignore them, she will allow it.

My colleague from USF is defending me, or rebutting the argument the gentleman from the more prominent institution is making against me. She does not presume to represent me. (Remember that all three of us are acting as if I were not there. And, at this point, I think we may all believe it.) The discussion is about my qualifications to assume a full-time teaching position at the eminent law school I am visiting. Its tone is more that of an academic debate than a trial or a hearing. Again, I remark on my invisibility because the debate seems less a debate about me than a debate on the capabilities of my species.

My friend from USF has just said something in my favor. In the dream, I do not actually hear her words, but she is very earnest. The man across the table barely listens to her argument, though his professorial theatrics mime all the appropriate listening postures. He deigns to listen, but he already knows that she is wrong. He is preparing his rebuttal.

He says (and I think these are the first words I hear),

But what has he done, produced? Does he have an area where he can really claim expertise? Why, just the other day I was talking to one of his admiring students. She praised his teaching, but when I asked her if she could direct me to an important and well-recognized scholarly contribution he had made to the field, she could not.

At this point I pick up my chair and cross the room to join the conversation. I must speak for myself. I can no longer accept invisibility. I am not experiencing anger. I don't remember deciding that I must make my presence known and felt. I simply get up and move because it seems the right time to do so.

"I have done a not insignificant amount of work in the area of equal protection," I say, "particularly with reference to its application to issues of race discrimination."

I say this as if I had always been part of the conversation. The gentleman seems, at first, mildly startled by my presence. But his expression changes quickly from surprise to anticipated triumph. It is a look that says, Now I have you where I want you. He will test me and prove me a presumptuous fool.

"What is the significance of fear?" he asks, raising his eyebrows—anticipating that I will not answer. He knows he has won. He will prove his point to the young woman across the table.

I have a sinking sensation in my stomach. My palms are sweaty. I do not know the answer. I don't even understand the question. I have failed my race. For a brief and agonizing moment I am transported back to a first-year contracts class at Yale. I am one of two black students in the class, on my feet struggling to make some sense of Professor Kessler's hypotheticals about consideration and my progress up a flagpole.

Then, just as suddenly, I am back at the table with the professor from the prominent law school who would disparage my collegueship. But now I am very calm ("cold," in the honorific sense that word is used in the street vernacular). I realize now that I have won. Even before I have conceptualized my answer, I know that I will triumph. I am no longer struggling to find my protagonist's answer. I am calmly contemplating my own. Because I am now in search of my own answer, I know it is there and that it is right. It just needs discovering.

The answer is not fully given in the dream. But in the millisecond before I wake, it is fully conceived. I have begun to respond, and my protagonist understands that he should have never given me the opportunity.

This is my answer:

The significance of fear must be understood from two points of view: that of the oppressor, or master, and that of the oppressed, or slave. Each of the perspectives must in turn be understood on several different levels of consciousness. The first is the fear of the slave. I begin here because it is the fear that is most apparent and because it is the fear that I know first hand—that I am experiencing at this moment.

I am not certain where my answer is headed; that is, I have not thought through my entire argument prior to embarking upon my verbal response. But I am confident it is there. The words I speak are new to

me. It is almost as if I become aware of them for the first time as they are spoken. But the thoughts they embody are somehow familiar. It is because they are mine. I am searching for *my* answer, not that of the questioner.

This is a sensation I have often experienced in teaching. A student poses a problem. I begin my answer certain of the theme, knowing that I understand what must be understood, but not sure how I will get there or precisely where I will be when I arrive. I am thinking out loud before an audience of eighty-five students. There are times when I conclude my answer with the sensation that I have listened appreciatively while someone else explains something I never understood before.

All of this takes a great deal of time to write, but in my dream I feel it in its entirety in the time it takes me to speak my opening sentence. To repeat: "The first is the fear of the slave." I continue:

This fear is experienced at three levels of consciousness. At the most immediate level, the slave fears the *physical violence* of the master. It is a violence that may be experienced in many ways: that he will feel the cut of the overseer's lash, or that men in white sheets will come in the night and hang and burn him, or that she and her family will be deprived of food and forced to starve, or that she will be beaten by her husband. At this level of consciousness, the slave does not understand the reason for the master's violence. The master is viewed as hateful, crazy, depraved, immoral. In the extreme, where the slave has been conditioned to self-hate, the slave may view the master's violence as justified.

At the second level, the slave fears rejection. [This is the fear I experienced only moments ago. It is a fear with which I continue to struggle.] The fear is in response to a different form of oppression. The slave has been told and comes to believe that he is welcome in the master's house if only he can prove himself worthy of admission. He feels secure from the physical violence of the whip and the lynch mob. Now he fears the emotional violence of being deemed inadequate, or not being accepted by the master. This fear, like the fear of the battered wife or the god-fearing peasant, is even more debilitating than the fear of the irrational whip because the injury is internalized and, in part, self-inflicted.

At the third level, the slave no longer fears rejection because he now understands the cause of the violence he has experienced at the two previous levels. He has discovered the sham of white supremacy and the divine right of kings and social Darwinism. He has no respect for those who reject him. He understands that they are not superior, but more than that he begins to suspect that their need to do violence

to him is evidence of their inferiority. Again, the slave fears physical violence from the master, but this time because he understands its source. If the master suspects his comprehension, the master will strike out in a desperate effort to maintain the master's ill-gotten status.

As I verbalize this thought, I feel myself somewhere between the second and third level. Will the master dismiss my analysis as "intellectually inadequate," as "unsupported by documented evidence," as further proof of my "lack of qualifications"? Will I believe him and accept and internalize his judgment? Or will he recognize that I have discovered his charade and act it out one more time, mouthing the argument of "inadequacy," "incompetence," and "lack of qualification" while black-listing me as "dangerous" behind the scenes? Will he see that I have understood too well and inflict violence by denying me the resources of academia or access to its forums of communication?

I press on, despite my fears, with the sense of exhilaration and fatalism that one experiences in battle. Perhaps I have the skill to walk the tightrope, to tell just enough of the truth to be bought out instead of wiped out. But that can only result in continued enslavement. I am still in the midst of improvisation. The theme is within me but I do not know the final chord. Like Dr. J. in midflight, I do not know until the shot is made whether it will be a slam dunk or a reverse lay-up off the glass.

My answer continues:

From the perspective of the master, there are also three levels of fear. The first level is the fear that the ignorant slave will rise up and kill him. Because he believes in the myth he has created—the myth of his own superiority over the slave—the violence he fears is an irrational animal violence. If the oppressed fear him and hate him, it is because they do not understand their proper place. It is because they have been misled into thinking they are capable of independence.

The second level of fear experienced by the master is the fear that he will be found out by the slave—that the oppressed will discover the sham of a *meritocracy* wherein the master defines that which constitutes *merit*. He fears that when the slave discovers that the master's superior position is ill-gotten, he will rise up in revolt. This is a greater fear than the first because the rational violence of the human being is more certain than the irrational violence of the animal.

The third level of fear experienced by the master is the fear of self-discovery. He fears that in the slave's challenge to the slave system, he, the master, will be brought face-to-face with his own image; that he

will be confronted with his own insecurity and inadequacy; that he will understand that his need to define others as inferior and treat them as such springs from his own feelings of inferiority. He fears that his shell game is all that he has—that he is nothing without the slave.

Finally, I realize that the ultimate fear of the slave and the master are the same. Each is forced to confront his solitariness in the world. Each is compelled to accept responsibility for who he or she is.

The dream ends. I do not know my protagonist's response. It no longer matters.

II. INTRODUCTION

This Article is an exploration of vocational aspirations and efforts. It is an appendix to the brief contained in my dream—an account of my continuing efforts to respond to my interrogator's challenge and, more importantly, to the challenge posed by the insight of the dream, the challenge to take responsibility for who I am and what I do about my fears and those of the master. I reflect on what I do as a law teacher/scholar and why I do it. I describe the work to which I aspire as a scholar, citing the exemplary work of those I strive to emulate. I also tell the story of my work as a teacher and how my vision of that work has been formed. I hope that this essay is more than a self-indulgent, self-justifying exercise; that there will be those who will share my experiences and aspirations; and that there will be others who will benefit by my attempt to better understand and articulate what I value and how I try to pursue those values as a law professor. My motive for engaging in this introspective effort is to begin to frame a paradigm for other scholars of color to build upon and critique. A more modest goal for this model is that it serve as a standard by which I may evaluate my own work.

In Part III, I describe the genesis of this Article. My initial efforts at a comprehensive articulation of my ambitions as a teacher and scholar were occasioned by a panel presentation on minority scholarship to students at Stanford and by a faculty seminar, in which I engaged several colleagues in a conversation about the substance and evolution of my race discrimination law course. I summarize the content of these conversations, setting forth the elements of the model that will be discussed in the remainder of the Article. I relate the experience of discovering the inextricable relationship of my roles as teacher, scholar, and political activist. This discovery lies at the center of the model for my work. It is the starting point of this Article. My immodesty in calling what I describe a "model" is related to another discovery: The model is not

new. It is rooted in a well-established tradition among black teacher/scholar/activists. I have only discovered a tradition of which I am a part.

Part IV, the remainder of the Article, explains each of the elements or characteristics of this model or tradition. I call these elements "gifts." In so doing it is my intention to convey their intrinsic value as liberating intellectual weapons, to locate their source outside of the individual practitioner and in the community of those who have experienced racial oppression, and to say that it is in the nature of the work required by the model that it be donated or returned to the community from whence it came. I discuss four talents that serve the teacher/scholar/activist who works in this tradition and note how and why each is a valuable gift. In each of these four subsections I relate how the gift is exemplified in African-American scholarship and draw upon examples of how the gift can be employed in teaching. I also consider, in each of these subsections, the resistance that each aspect of the work encounters in the legal academy.

III. THE GENESIS OF THE ARTICLE: REFLECTING ON WHAT I/WE THINK ABOUT AND DO

A. TALKING TO STUDENTS ABOUT BEING A SCHOLAR

[W]hat is the role of the word—the spoken word, the preached word, the whispered-in-the-nighttime word, the written word, the published word—in the fight for black freedom?²

A group of students at Stanford have asked me to speak on minority scholarship and I have begun my presentation with this quote from *There Is a River*,³ Vincent Harding's compelling and inspirational history of black radicalism in America. I have told the panel's organizers that I am neither willing nor able to attempt even a cursory description of the multifaceted work of my colleagues of color, but that I would be glad to ruminate on my own work as well as my aspirations for that work. I have recently assigned several chapters from Harding's book to one of my classes, and his portrayal of the tradition of "radical teaching among dominated African peoples"⁴ has given focus to my reflections concerning my own scholarship.

2. VINCENT HARDING, *THERE IS A RIVER* 82 (1981).

3. *Id.*

4. *Id.* at 86.

I feel an immediate kinship with the tradition that Harding describes and names "the Word."⁵ It is a tradition of teaching, preaching, and healing; an interdisciplinary tradition wherein healers are concerned with the soul and preachers with the pedagogy of the oppressed;⁶ a tradition that eschews hierarchy in the face of the need for all of us who seek liberation to be both teachers and students. The Word is an articulation and validation of our common experience. It is a vocation of struggle against dehumanization, a practice of raising questions about reasons for oppression, an inheritance of passion and hope.

By contrast I am struck by the strong sense of alienation that I have felt from the role of "scholar." Some of this may be self-deprecation, a lingering self-doubt about whether I am up to playing the part.⁷ But I sense that the primary source of my resistance to this role lies in the question of whether the character of this tradition is in direct opposition to that of the Word. The scholar is "objective." He views his work as a value-free inquiry, an effort to clarify the world rather than to change it. He is guided by an orthodoxy that equates objectivity with emotional disengagement, cognitive distance, and moral indifference.⁸ It is the work of those who remain cool and distant in the face of suffering or anger because it is not their liberation, their humanity, which is at stake.⁹

I tell my audience that my talk will be a brief account of what I strive to do in my work. It will be an account of aspirations: a description of my efforts to join this tradition and to begin to frame a paradigm for its praxis in legal academia. I briefly outline the elements of this paradigmatic work—the special gifts that people of color bring to our work, the ingredients that give it special character. In this initial effort I borrow generously from Professor Mari Matsuda's richly insightful piece, *We the People: Jurisprudence in Color*,¹⁰ in which she notes that our work "is grounded in the particulars of a social reality that is

5. *Id.* at 82.

6. My family history is populated by men and women who were teaching, preaching, and healing activists. For an account of this history, see SARA LAWRENCE LIGHTFOOT, *BALM IN GIL-EAD: JOURNEY OF A HEALER* (1988).

7. See *supra* note 1. In noting my occasional discomfort in the role of scholar, I want to be certain to distinguish my position from those who have of late achieved great notoriety by arguing that they have been harmed by the stigmatization of affirmative action programs. See, e.g., STEPHEN L. CARTER, *REFLECTIONS OF AN AFFIRMATIVE ACTION BABY* (1991); SHELBY STEELE, *THE CONTENT OF OUR CHARACTER* (1990).

8. See RENATO ROSALDO, *CULTURE AND TRUTH: THE REMAKING OF SOCIAL ANALYSIS* (1989).

9. See *infra* part IV.

10. Mari J. Matsuda, Address Before the American Association of Law Schools, Minority Section (Jan. 9, 1988) (transcript on file with author).

described by the experiences of people of color.”¹¹ The work is “consciously historical and revisionist.”¹² It recognizes the subjectivity of perspective and the need to tell stories that have not been told and that are not being told. Our voices and the voices of our parents and grandparents are valuable not just because they tell a different story, but because as outsiders we are able to see more clearly that what we see is not all that can be seen.

But we are not wholly outsiders, and I remind myself and the student audience that the burden of belonging and not belonging that is part of being black in America¹³—the duality of a heritage of slave foremothers and slave-master forefathers—is also a gift, a talent that must be engendered in our work.¹⁴ This burden/gift of dual subjectivity enables those who bear it to recognize and articulate social realities that are unseen by those who live more fully within the world of privilege.¹⁵ But our duality can also be experienced as disabling when the seduction of privileged status or internalization of insider values threatens to subvert the Word’s liberating insight.

Finally, I note that our scholarship must strive to be both pragmatic and utopian. Our work must respond to the immediate needs of the oppressed and subordinated.¹⁶ Education must involve both action and reflection. Theory must be informed by active struggle, and in turn it must inform that struggle. But we are also keepers of the dream. We are gifted by an ability to imagine a different world—to offer alternative values—if only because we are not inhibited by the delusion that we are well served by the status quo.¹⁷

None of this is new to me, but the students have forced me to articulate what my work is and what I would like it to be. The process of having to describe the nature of my “scholarly agenda” has been extremely helpful. It is not just that I have been forced to clarify my thoughts; more importantly, the articulation is a reaffirmation. It has served me well to name this work that is so important to me, to describe

11. *Id.* at 1.

12. *Id.*

13. See W.E.B. DU BOIS, *THE SOULS OF BLACK FOLK* 16-17 (1922).

14. See PATRICIA WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* 6 (1991) (discussing “purposeful doublevoicedness”).

15. See Martha Minow, *Foreword: Justice Engendered*, 101 HARV. L. REV. 10 (1987).

16. See Mari J. Matsuda, *Looking to the Bottom*, 22 HARV. C.R.-C.L. L. REV. 323 (1987).

17. Matsuda, *supra* note 10, at 2 (stating that “the hopeful part of the description offered by outsider theorists is the recognition of the vulnerability of racist structures”).

its parts, and to explain why I value it. The seeds of this paper lie in this self-affirming experience.

B. TALKING TO COLLEAGUES ABOUT HOW I TEACH

Shortly after the panel on scholarship I am given an opportunity to carefully consider another aspect of my work. A group of my colleagues has been meeting on a regular basis to develop a coordinated set of readings and courses for students interested in preparing themselves to work with subordinated people.¹⁸ I have been asked to talk about my course *Racism and American Law*. The course has evolved rapidly in recent years, and once again I find myself forced to find words for ideals, objectives, and strategies that I have been improvising in the midst of the pressures of class preparation and teaching and without the luxury of deliberate contemplation. The careful cross-examination by my colleagues helps me to concretely conceptualize aspects of my teaching that are largely intuitive. Again, this initial effort is cursory, only suggesting themes that are central to my pedagogical aspirations.

In its early incarnations my course on race discrimination law was in some respects a traditional civil rights law course. My chief goal was to hook students on the idea of becoming civil rights lawyers and to start them down the road to becoming good ones. It was primarily a how-to course. We gave more careful consideration to race cases they had studied in constitutional law, with an eye toward creative manipulation of existing doctrine. I introduced my students to the federal and state statutes that would become the staple of their civil rights practices, and I assigned written and oral exercises designed to teach lawyering skills. We talked a good deal about the real-life experience of the parties to the cases and our own potential clients. We noted the values manifested in the cases and statutes and explored the values that prompted our interest in becoming legal activists.

What made the course different from many other civil rights courses was its instructor and its primary text. In 1974, I was one of a too-small

18. The proposed curriculum, *Lawyering for Social Change*, will give students intensive training in the theory and practice of representing the politically and socially subordinated. The curriculum would begin in the second semester of the first year of law study, with courses on basic lawyering skills and on subordination itself. The content of the latter courses

would be drawn from (1) political, social, and economic theory on how and why some groups are disadvantaged; (2) literature—autobiography, fiction, oral testimony, drama, poetry, and so forth—expressing 'the experience of that form of living and life'; and (3) observations by people in allied efforts, such as social workers, organizers and lay people.

Innovative Academic Courses, 40 STAN. LAW. 40, 42 (1989).

group of persons of color teaching law. Civil rights courses were almost as rare as black professors, and most of them were taught by white professors. From the start I used my friend Derrick Bell's book *Race Racism and American Law*.¹⁹ This book of cases and materials was a groundbreaking effort at exploring the role of law in creating and remedying racial injustice. (It remains, along with Bell's second edition, a unique effort.) It manifested both Bell's critical skepticism about the achievements of civil rights law and his commitment to using the law as a vehicle for social change. Professor Bell's "racism hypos" added an important pedagogical contribution to this significant piece of scholarship. These hypothetical legal problems required students to develop creative and novel legal arguments, outside the scope of existing doctrine, sufficiently powerful to win redress for racial injuries. The hypotheticals provoked discussions that forced both teacher and student to reflect upon the connections among the intellectual, political, and emotional aspects of race and law.

Two recurring dilemmas presented themselves during the early years of teaching this course. One was a methodological problem and the other a substantive one; each pushed my teaching in the same direction. The methodological problem was straightforward and familiar. There was simply too much to teach. The substantive legal doctrine was massive, complex, and rapidly changing. Introducing the basic doctrine, carefully analyzing that doctrine, and putting the doctrine into context via a brief introduction to the wealth of literature from the social sciences were all time-consuming. Training in lawyering skills is also intensive and time-consuming. Finally, one cannot talk about race in America without addressing the personal experience, feelings, and values of class participants.²⁰

The substantive problem posed an even more serious challenge. In 1974, when I first taught this course, the story I told my students was one of a difficult but victorious legal battle. Despite the Burger Court there was reason for optimism among those engaged in civil rights litigation.²¹ But each succeeding year brought new Supreme Court decisions that

19. DERRICK BELL, *RACE RACISM AND AMERICAN LAW* (1973). For years I called this course Derrick's course and still think of it that way despite his more recent adoption of my pedagogical method.

20. Law school teachers typically respond to these pedagogical problems by avoiding them. We select a small universe of substantive materials, leave skills training to law firms and clinics, and avoid issues of experience, feelings, and values by declaring them irrelevant, beyond the scope of our professional interest and expertise, or even counterproductive to the task of training lawyers.

21. *Wright v. Council of Emporia*, 407 U.S. 451 (1972); *Griggs v. Duke Power*, 401 U.S. 424 (1971); *Swann v. Charlotte-Mecklenberg Bd. of Educ.*, 402 U.S. 1 (1971).

made my message less hopeful and more bleak.²² I was often tempted to encourage my students by explaining a new and horrible decision as an aberration—by suggesting that it was the product of a poor litigation strategy or of the Supreme Court majority's faulty understanding of sound doctrine. But these explanations were unsatisfactory and dishonest. I soon abandoned them in favor of an approach that encouraged students to see developing civil rights doctrine as the natural and foreseeable product of an enterprise whose function it was to maintain fundamental patterns of race and class in American society.

Alan Freeman's brilliant piece of doctrinal deconstruction, *Legitimizing Racism Through Antidiscrimination Law*,²³ was a cornerstone text in my course. It argued persuasively and with considerable documentation that even those cases that seemed to advance the cause of minorities served an ideology that promoted racist and class-based structures.²⁴ Derrick Bell's second edition of *Race Racism and American Law* appeared two years after the Freeman article. It too was impatient with legal doctrine, seriously challenging the liberal myth that the civil rights struggle has been a long and slow but always progressing march toward full equality. Professor Bell argued that when blacks were successful it was only because their interests happened to coincide with those of powerful whites.²⁵ This approach to the doctrine served to assuage my conscience and brought with it the benefits of speaking truth, but it also presented serious pedagogical problems. If the truth appeared to be so hopeless and the pursuit of legal remedies counterproductive, what was I doing teaching this stuff?

22. See, e.g., *Pasadena Bd. of Educ. v. Spangler*, 427 U.S. 424 (1976); *Washington v. Davis*, 426 U.S. 229 (1976); *Warth v. Seldin*, 422 U.S. 490 (1975); *Milliken v. Bradley*, 418 U.S. 717 (1974).

23. Alan Freeman, *Legitimizing Racism Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine*, 62 MINN. L. REV. 1049 (1978).

24. Freeman later summarized his argument as follows:

In [*Legitimizing Racism Through Antidiscrimination Law*], I argued that civil rights law for the twenty-five years since the *Brown* case has served more to rationalize the continued effects of racial discrimination than to promote any genuine liberation from a history of oppression. Those developments led me to conclude that the process by which the law absorbed the civil rights struggle, reprocessed it, and turned it out in recent cases is in some fashion a part of what may be called the legitimization process. Today's legal ideology pretends in many ways that racism has been cured, that the problem has been dealt with, that we can go on to other problems, that the legal rights that have been created amount to sufficient equality or liberation for formerly oppressed people. To call those ideas ideology is to contend that their content masks rather than accords with reality as we experience it.

Alan Freeman, *Race and Class: The Dilemma of Liberal Reform*, 90 YALE L.J. 1880, 1893-94 (1981) (reviewing Derrick Bell's *Race Racism and American Law*).

25. See Derrick Bell, *Brown vs. Board of Education and the Interest Convergence Dilemma*, 93 HARV. L. REV. 518 (1980).

I did not have a ready answer to this question. Nor did Alan Freeman, who had posed a similar query in a thoughtful review of Bell's new book.²⁶ I turned to my students, employing the well-worn professor's ruse of anticipating the students' most difficult question by posing it to them. It was this act of desperation that marked the advent of my pursuit of the pedagogical paradigm that is the subject of this paper.

In 1983, while teaching my course as a visiting professor at Stanford, I began by assigning Freeman's article and candidly explaining to students the nature of my dilemma. I was hoping that they could help me find the ways to help them become effective advocates for liberation while living and working within institutions and cultures that appeared hell-bent on perpetuating racist domination. I asked them to keep Freeman's challenge in mind as they approached the readings, exercises, and discussions throughout the course.

I did have some intuitions of my own that suggested ways of changing my approach to teaching these materials, ways that might help free us from our sense of powerlessness and frustration in the face of debilitating doctrine and ideology. I thought that an important first step might be to find a way to get students to think more expansively about what it means to be a civil rights lawyer.²⁷ It was fairly obvious that if the courts were becoming less receptive to legal arguments that advanced the cause of civil rights, we should look for other venues in which to press our case. But what was called for was more than a change of institutional forum. If retrenchment in the federal courts was a reflection of political climate or predictable historical forces, it would not suffice to go to Congress, administrative agencies, state courts, or state legislatures with the same arguments. We had to imagine how best to create change in the political climate. Contemplating methods likely to effect such change required that we reevaluate not only our image of the appropriate role for lawyers but also our image of ourselves and our relation to the dominant culture.

I took my first steps in implementing this methodology with some trepidation. My students had invested a good deal of time and energy in learning to "think like a lawyer" and to value the mode of thought, the professional role, and the self-image that characterize traditional lawyering. I was not at all certain that my students would respond well to a

26. Freeman, *supra* note 23, at 1066.

27. My own peripatetic professional story reflects an ongoing struggle with this question. I have moved from legal services lawyer to school principal/community organizer to public interest lawyer engaged primarily in impact litigation to law teacher/scholar/activist, always searching for the best way to match my inclinations, talents, and limitations with the struggle's needs.

pedagogical approach that encouraged them to place less stock in these hard-earned prerogatives. I began by introducing a simulation that would extend throughout the course of the semester. The simulation divided the class into seven groups of five students each. Each group was assigned to represent a specific interest group or constituency within the minority community.²⁸ Students were asked to think of themselves in the role of an attorney who had volunteered to work with clients to determine how the client group might best effectuate needed social change.²⁹ The simulation was divided into two stages. In the first stage, the students assessed the client group's current position in the political arena and the effectiveness of existing legislation, judicial precedent, and administrative remedies available to the constituency they represented.³⁰ In the second stage, each group mapped out a proposed long-term strategy, including a list of short-term goals and specific activities its members planned in pursuit of those goals.³¹

28. The groups included blacks in major urban areas (National Conference of Black Mayors); national civil rights organizations (National Association for the Advancement of Colored People, Urban League, NAACP Legal Defense and Education Fund); Jesse Jackson Presidential Campaign; Congressional Black Caucus; Latino organizations (Mexican American Legal Defense and Education Fund, League of United Latin American Citizens, Puerto Rican Defense Fund); Leadership Conference for Civil Rights (an old-line coalition of blacks, women, labor, and Jewish civil rights organizations); Black Women Organized for Political Action (black women affiliated with NOW). Memorandum from Charles R. Lawrence, III, to students in Race Relations Law class, Stanford Law School 3 (on file with author).

29. Your task will be to determine what strategies for legal reform will best serve the interests of the group you represent and then to come together with the rest of the class to formulate a common strategy. Your approach should be political in the broadest sense. That is, you should explore the viability of all possible avenues for change including litigation, negotiation, legislation, self help, political education, economic sanctions, demonstrations, etc. Your work should involve the identification of critical barriers or elements of resistance to change as well as possible sources of coalition and support. You should also identify those issues which may create conflict among segments of the minority community.

Id. at 3-4.

30. Your task during this stage will be to gather sufficient information about the group to which you have been assigned to describe its current position in the political arena: Who is its constituency? How has the law improved its position with respect to access to the political process? What appear to be the most important barriers which still remain? What are its goals? What are the key issues they would like to see addressed? What are its major resources and liabilities?

Id. at 4.

31. You should also note where you anticipate the greatest resistance, where you anticipate support, the resources you anticipate will be at your disposal, where you think resources must be developed, supporting precedent where litigation is considered, political allies where legislation or administrative action is considered, legal and organizational impediments where direct action is considered. If possible, the specific activities you propose should have some internal consistency or be reflective of some more general theory of social change or view of the nature of American race relations.

Id. at 5.

In a memorandum describing the simulation I indicated that this exercise was designed to simulate a process by which lawyers concerned with the struggle for racial equality in America might work as a group to develop long- and short-term strategies for legal reform. I told the students that I hoped to broaden their perspective of how individuals with legal skills might contribute to the process of social change and political and legal reform.³² I said that it was also my intent to respond, in part, to Professor Freeman's characterization of Professor Bell's impatience with legal doctrine as "despairing." While I did not want to minimize in any way the harsh reality of American race relations or the legal establishment's role as a handmaiden of racial oppression, I did think that such a realization counseled us to seek alternatives to reliance on legal doctrine rather than simply throwing up our hands in despair or adopting an attitude of self-righteous radical chic. As my third purpose I stated my desire to have them "experience and reflect upon the emotions (anger, guilt, frustration, hope, ambivalence, etc.) that accompany the pursuit of lofty ideals or strongly held commitments within a system where neither one's ultimate goals nor the emotions one experiences in their pursuit are highly valued."³³

I asked each group to keep a detailed account of internal group process by appointing an individual to record what went on at group meetings. Each student was also required to write two or three pages following each group meeting reflecting on his or her ideas, role in the group, and feelings evoked by both the process and the substantive issues discussed.³⁴ The response to this simulation was overwhelmingly positive. Despite an early uneasiness and some grumbling about the open-endedness and enormity of the task, students worked hard at it. Once they became convinced that I was more interested in what they could learn from the process than in a pretty product, they seemed to enjoy the exercise. More importantly, the simulation allowed them to view the limitations of the doctrine as a point of departure rather than as a despairing final chapter. Exploring alternative political strategies also

32. Both the form and substance of much of our legal training tend to restrict our view of our appropriate role as lawyers. This exercise is intended to encourage you to explore a wide range of options for achieving social and political change and to consider the ways in which the lawyer's skills of analysis, adversarial argument, counseling, conflict resolution, negotiation, etc., can best be used to implement those options.

Id. at 1.

33. *Id.*

34. This was my first use of reflection pieces, a pedagogical method that has become central to this course.

helped them see the potential for telling our stories to different audiences, in different forums, and in ways different from traditional legal discourse.

I found that there were similar benefits to be gained by asking students to consider the issues in Bell's hypotheticals from the perspective of nontraditional roles. Instead of asking students to prepare briefs and oral arguments for presentation to an appellate court, I asked them to prepare a presentation for a legislative committee, a community meeting, a high school class, or a dinner discussion with friends. When students assumed nonlawyer roles to discuss the issues presented in legal hypotheticals, several important things happened:

1. Students were able to experience how the hierarchy of lawyer-client relationships distorted both the lawyer's and the client's view of whether there had been an injury, how the injury had occurred, the strategy for addressing that injury, and the appropriate remedy. They also experienced firsthand how this distortion was even more severe when the client was a poor or otherwise subordinated person.³⁵ Thus, when students were asked to assume the role of a good friend of a community board chair who had dropped by the house for drinks and coffee and just happened to be a lawyer, the discussions were much different from when students assumed the role of a lawyer representing the board in litigation. Students playing the role of the community board chair reported that the discussions with the "good friend" were also much more helpful.³⁶

2. Students also discovered how significantly the law shaped the way they thought about human problems, how using dominant legal discourse or "thinking like a lawyer" caused them to devalue or deem irrelevant certain observations, feelings, ideas, and ideals that seemed important to them when they self-consciously assumed a nonlawyer's role.³⁷ It also became apparent that more often than not these devalued aspects of their intelligence were those that they associated with their identities as members of oppressed or marginalized groups.³⁸

3. Students more easily recalled and related personal experience. They were also more effective and articulate in conveying these experiences. This increased facility was directly related to my assigning value

35. See, e.g., Derrick Bell, *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470 (1976).

36. See *supra* notes 29-33.

37. *Id.*

38. In other words, what they experienced was not just a matter of form or technique, although this too was important. It was not that they were thinking more clearly as lawyers, but that they were making assumptions about the relevancy and importance and even the existence of things that they knew and understood.

to the experience and giving authority to the role. Creating a role that enabled them to play themselves, or some part of themselves, gave legitimacy to their subjective view. It made their positioned perception relevant and important to the task of determining how best the law might describe and analyze the issues presented by the hypothetical. I often placed the hypothetical in a setting in which my students had been directly involved and then asked them to play themselves.³⁹ When role-playing exercises or simulations are brought closer to home, participants gain an additional benefit. Reflection is brought closer to praxis and student/teachers may experience the liberation of giving authority to ideas by acting on them.

In the years since 1983 I have moved steadily toward increasing the number of exercises and readings that encourage and legitimate the telling of students' stories. My materials surround cases and law review articles with narrative—with history, social science, and literature that makes no pretense to objectivity.⁴⁰ The law remains, but we are always involved in testing its ability to incorporate and respond to our experience. Where the law fails we look for ways to create new analytic constructs that are more faithful to the reality we experience. We work to resist the inclination to think ourselves crazy and join the crowd in proclaiming the beauty of the emperor's new clothes. We struggle to find ways to be more articulate, more forceful, and more passionate in describing what we see so that others may share our vision. Bell's text has become a supplementary reading and his book of allegorical essays, *And We Are Not Saved*,⁴¹ is now required reading.

In 1986 I began using a pedagogical method that has significantly improved the work I do with my students toward the promulgation of the Word.⁴² Each week students are required to write a brief essay recording their reactions to some portion of the readings for that week or to the impact of the readings as a whole. I ask that the students use these

39. These included situations such as the discussion of a racial issue at the family dinner table, a conversation with the provost or dean at an informal university reception or in the context of negotiating student demands, an interview with a judge or hiring partner, a discussion with roommates about an incident that had occurred in school, etc.

40. Charles R. Lawrence, III, Syllabus for Constitutional Law: Critical Race Perspectives (Fall 1991) (on file with *Southern California Law Review*).

41. DERRICK BELL, *AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE* (1987).

42. A number of law teachers have adopted this technique and reported beneficial results. See BELL, *supra* note 19; Frances Lee Ansley, *Race and the Core Curriculum in Legal Education*, 79 CAL. L. REV. 1511, 1546 (1991); Patricia Caine, *Teaching Feminist Legal Theory at Texas: Listening to Difference and Exploring Connection*, 38 J. LEGAL EDUC. 165, 168 (1988).

essays, which I call reflection pieces, as a vehicle for reporting gut reactions or feelings evoked by the readings. I tell them that I do not want legal analysis. Reflection pieces are due the day before the class meets. I read them, make comments on most, and refer to them during the class, often selecting a few to read in part or in full.⁴³

Reflection pieces serve several purposes. Students come to class prepared. But more than that, they come having already engaged in the process of experiencing the harmony or dissonance between their own perspectives and the perspectives described in the readings. The assignment privileges experience and the forceful articulation of that experience. Each week I am newly impressed by the thoughtfulness of these pieces. I am struck by their honesty, by my students' willingness to risk making themselves vulnerable, and by their bravery in their criticism of my manifested bias or myopia as well as that of the cases or the authors assigned. The power of these pieces is not just in their usefulness as a method for discovering new insights gained from a diversity of experience and perspective, but in the authority they give to the voices of those who have come to experience themselves as lacking authority.

This student-centered, student-generated pedagogical method is what I describe to my colleagues who have asked to hear about my teaching.

C. UNDERSTANDING THAT PREACHING AND PRACTICE ARE ONE

Within the Word we find two dimensions, reflection and action, in such radical interaction that if one is sacrificed—even in part—the other immediately suffers. There is no true word that is not at the same time a praxis.⁴⁴

This rambling and disconnected conversation with my colleagues about my race discrimination course produces the same self-affirming results as did my talk with students about my scholarship. But it is the juxtaposition of these two conversations that is most enlightening. As I talk with colleagues about dialogue with my students, it becomes clear to me that all of these conversations are critical to what I have been striving to comprehend and articulate about my scholarship, about the Word. It

43. I tell students that I want them to feel free to say things in their reflection pieces that they may not be prepared to share with the entire class. I ask that they write "DO NOT SHARE" at the top of the piece or indicate any portion of the piece that they do not wish to share. I assure them that these portions of their writing will remain confidential. I have found that offering this option not only allows students to share things with me when they are not prepared to go public, it frees students to be more candid in what they do share.

44. PAULO FREIRE, *PEDAGOGY OF THE OPPRESSED* 75 (1982).

is evident to me that the Word requires a unity of pedagogy and scholarship, and that I cannot, I should not, separate methodology from substance or objective. This was not a new idea to me; I had heard it from others and nodded my head in agreement.⁴⁵ I had even been a practitioner of this ideal, probably more so than most. But this was nonetheless a "eureka" type of experience. This was a way of understanding what might enable me to transmit my experience to others.

If the role of the Word includes its use and value as a unifying force, a statement of protest, an expression of courage, an organizing tool, the articulation of utopian dreams or a higher law, then our methodology must inspire and advance those uses and values. If the nature of the Word is that it is subjective, consciously historical, and revisionist; if it is both pragmatic (responding to the immediate necessities of survival and struggle) and poetic (responding to the immediate need of expression of feeling); if it must proceed from the specifics of experience and articulation of that experience toward the abstraction of theory; if it is reflection on action, informed by active struggle and in turn informing that struggle; if it is double voiced, expressing the ambiguity of those who know the experience of belonging and not belonging, then our methodology must be a vehicle designed to carry out these complex and varied tasks. Our way of speaking the Word, of gathering the Word, of spreading the Word, must be open. It must be a form that admits all comers, that does not have a dress code or a requirement that it be filed in triplicate.

One of the ways I have experienced this necessary relationship between substance and methodology, between reflection and action, is through my teaching and the way my teaching informs my scholarship. In fact my teaching (in the broadest sense, my dialogue with others) is the chief source of nourishment for my scholarship. The Word is praxis, not just in the more obvious ways the thoughtful work of a scholar provides strategy or frames new conceptual arguments for the activist lawyer or community organizer, but in the ongoing work of the scholar as teacher. By speaking and hearing the Word in our classrooms, in our offices, or in community meetings we transform our own understanding of our relationship with the world and thereby transform the world. In my teaching about law I try to leave space for, to encourage and value, the articulation of feeling and experience. This is particularly important in teaching law, where the story that is told within the dominant discourse has systematically excluded the experience of people of color and

45. See ROSALDO, *supra* note 8.

other outsiders and where we are trained to believe that the story told by those in power is a universal story.

Every new and important understanding or insight that I have reached and found a way to articulate in my writing has come from dialogue with my students and with teachers. The conversations that produce theory are those that identify and articulate dissonance between existing legal theory and our individual/collective feeling and experience. Articulate descriptions of what we experience and feel must be placed alongside the descriptions produced by dominant theorists. Where there is discord or where there are notes missing in the law's written score, our conversations must be an improvisational search for notes that are harmonious with the way we experience the world.

Conversations, when they are real conversations, are open. They invite firsthand, subjective accounts of feeling and experience. These conversations must begin with our own stories, because unless we privilege what we see, hear, and feel we may never hear the discord, or when we do hear it we may interpret it as some problem with our own sensibilities. Our stories must be privileged because in the dominant discourse they have either been unheard or, when they have been heard, devalued.⁴⁶

This Article contains two stories that are inspired by the experience of having begun to tell them to my students and colleagues at the scholarship panel and in the curriculum workshop. These two stories, of scholarship and pedagogy, are actually one. They are united in the Word by an ethos of liberatory activism. In Part IV of this Article I explore in more detail the characteristics that describe these two intersecting parts of the paradigm of the Word.⁴⁷

46. See Richard Delgado, *The Imperial Scholar: Reflections on Civil Rights Literature*, 132 U. PA. L. REV. 561 (analyzing the citation practices of mainstream civil rights scholars and finding that most ignore the work of scholars of color); Richard Delgado, *The Imperial Scholar Revisited: How to Marginalize Outsider Writing, Ten Years Later*, 140 U. PA. L. REV. 1349 (1992) (updating earlier argument on the same subject and noting that things have not changed significantly in the years since); Jerome M. Culp, *Posner on Duncan Kennedy and Racial Difference: White Authority in the Legal Academy*, 1992 DUKE L.J. 1095 (noting that Posner is dismissive of all minority scholarship and argues that it has made no contribution to the discourse in an article in which he fails to cite any of the work he demeans).

47. While Part IV will focus on the elements of the Word as they are manifested in the scholarship of its practitioners, I will also draw upon examples of pedagogy that serve to foster each of those elements. My treatment of this aspect of the Word is necessarily limited by the scope of this Article. I plan to explore my teaching more fully in a later article. For the moment, I hope that the examples I employ here will serve to further an understanding of the interrelationship of pedagogy and scholarship.

There is a third story in this Article. It is a story about resistance to the message and methods of the Word by those who dominate legal discourse—a story about the devaluation of this important work by the established legal academy. The Word and its would-be practitioners are too often met with hostility, belittlement, deprecation, disregard, and lack of understanding. I seek to clarify the objections that are voiced in criticism of and in opposition to this work. These objections are often expressed in neutral terms. The work is deemed unworthy, inappropriate, or lacking in merit without reference to the pedagogical principles, the intellectual ideology, or the political and moral vision that inform those judgments. By articulating the values that cause us to hold this work in high esteem and those that cause others to think it of little worth, I hope to make explicit what is at stake for all of us, to make explicit the norms that are contained in the white male academy's evaluation of scholarship, and to argue that the alternative values advanced by the Word will better serve us all. This story is intended as a brief to my white colleagues in support of hiring, promoting, and learning from practitioners of the Word. But, more importantly, it is a message to my brothers and sisters that what they are doing is good and important, that there are others of us who understand the immense day-by-day effort required by this work, and that this work must be done whether it is valued by the dominant white academy or not.⁴⁸

IV. THE GIFTS OF THE WORD: A PARADIGM FOR SCHOLAR/TEACHERS

In this part of the Article I return to each of the elements or characteristics of the paradigm that I have called the Word and explore more fully how it expresses itself in both scholarship and pedagogy. In so doing I will refer to the work of exemplary scholars, artists, teachers, and activists, keeping in mind my earlier observation that the Word eschews any segregation of these roles. I begin by focusing on that part of the Word that would be called scholarship in the dominant academic culture. This is that part of our work that manifests itself in a formal written product.⁴⁹

48. This story of the resistance to the Word, like the story of pedagogy, deserves more attention than I can give it in this introductory Article. Here, resistance to the Word will be addressed primarily in footnotes. I plan to tell this story in a more complete form in the future.

49. I believe that this written product is only one form of reflection on and articulation of the understandings that nourish and are nourished by teaching, art, and activism. For a discussion of several ways the Word is manifested in the work of one law professor, see Charles Lawrence, III, *Doing "The James Brown" at Harvard: Professor Derrick Bell as Liberationist Teacher*, 8 HARV. BLACKLETTER J. 263 (1991).

A. THE GIFT OF IDENTITY: EMBRACING SUBJECTIVITY

A self-conscious commitment to a subjective perspective is critical to the work of practitioners of the Word. I will consider three separate, although interrelated, meanings that may be given to the term "subjective" that enable and are central to our scholarship. These meanings are the following: 1) subjective, indicating the scholars' positioned perspective in viewing and recording social constructs, 2) subjective, indicating nonneutrality of purpose, that the scholar embraces certain values and that her work is avowedly political (read liberationist), 3) subjectivity, indicating that the scholar places herself in the linguistic position of subject rather than object, a being capable of acting upon the world rather than as one upon whom others act.

1. *Subjectivity as Positioned Perspective*

Most legal academics aspire to the classical scholarly paradigm of the detached, objective observer/recorder. This model envisions scholars achieving an unbiased and universal perspective by distancing themselves from the social reality they seek to describe.⁵⁰ The Word, in stark contrast, embraces positioned perspective. It recognizes the impossibility of distance and impartiality in the observation of a play in which the observers must also be actors.⁵¹ But championing subjectivity is more

50. This model is exemplified by the tension traditional legal scholars perceive between teaching students to be professional advocates and the scholarly enterprise of discovering "truth." See, e.g., Anthony T. Kronman, *Foreword: Legal Scholarship and Moral Education*, 90 YALE L.J. 955, 968 (1981) ("The essential difference between scholarship and advocacy should now be clear: whereas the latter is indifferent to truth in that it does not regard the discovery of truth as something valuable for its own sake, the former has the apprehension and expression of the truth as its internal, constitutive goal.") Renato Rosaldo has noted that the Weberian tradition legitimized scholarship that attempts, in the name of value-free inquiry, to clarify the world rather than to change it, but that Weber's successors have bastardized the original demanding ethic of "disinterestedness," transforming it into an orthodoxy that equates objectivity with an attitude of emotional disengagement, cognitive distance, and moral indifference. ROSALDO, *supra* note 8.

51. Acknowledging the inevitability of positioned perspective has gained increased legitimacy in the social sciences, see generally PAUL RICOEUR, *HERMENEUTICS AND HUMAN SCIENCE* 208 (1981) (arguing that in the same way that text exists beyond the intent of the author and gains new meaning with the interpretive effort of every reader, "human deeds are also waiting for fresh interpretations which decide their meaning"); among critics of art and literature, see, e.g., LINDA HUTCHEON, *A POETICS OF POSTMODERNISM: HISTORY, THEORY, ACTION* (1988); and even among legal scholars. But the continuing novelty of and resistance to this idea is expressed by mainstream scholars who continue to claim objectivity in their own work and suggest that the work of minorities and feminists is less valid because of their closeness to the subject matter. The relative novelty of Martha Minow's *Justice Engendered* and my cultural meaning test are also evidence of the law's reluctance to accept the value of positioned perspective. See Minow, *supra* note 15; Charles R. Lawrence, III, *The Id, the Ego and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987). See also Kronman, *supra* note 50 (noting that a law professor's perspective on

than an acknowledgement of the existence and validity of many different and competing perspectives.⁵² Practitioners of the Word must learn to privilege their own perspectives and those of other outsiders, understanding that the dominant legal discourse is premised upon the claim to knowledge of objective truths and the existence of neutral principles. We must free ourselves from the mystification produced by this ideology. We must learn to trust our own senses, feelings, and experiences and give them authority, even (or especially) in the face of dominant accounts of social reality that claim universality.

“Universal” accounts are particularly pernicious when the assertion of universality is left unstated, as is most often the case.⁵³ An exchange between two colleagues, one a white male and the other a woman of color, demonstrates both the oppressive power of the unstated, universalized premise and the liberating power of the outsider’s ability to give her own positioned perspective authority.

The faculty group to which I had presented my thoughts on teaching and my race discrimination class was also developing a curriculum for lawyering for social change. We were now in our second semester of regular meetings.⁵⁴ Two of my colleagues had taken on the burdensome and thankless task of assembling materials for the group to read and discuss in a seminar format.⁵⁵ The third set of readings included a series of articles discussing I.Q. and theories about its relationship to race and poverty. The articles were highly technical “scientific” pieces and, with the exception of a chapter from Stephen Jay Gould’s *The Mismeasure of Man*, were all by “neoconservative” authors.⁵⁶ The cover memorandum attached to the materials read as follows:

moral instruction is different from that of a student). *But see generally* Ronald Dworkin, *Law as Interpretation*, 60 TEX. L. REV. 527 (1982), *reprinted in* THE POLITICS OF INTERPRETATION 249 (W. Mitchell ed., 1983) (advancing an interpretivist view).

52. A chief criticism of Minow’s otherwise brilliant piece is that it is not sufficiently explicit about the relationship between power and perspective.

53. *See* Minow, *supra* note 15, at 50-54.

54. *See supra* part III.B.

55. There were widely differing perceptions within the group about whether these first sets of materials were being offered as proposed course materials or whether we were simply using them for purposes of self-education, covering the range of literature that might be important in a foundation course for such a curriculum. There was, however, consensus that we were discussing the materials for the purpose of determining their efficacy as pedagogical tools in such a course.

56. The materials included excerpts from Mark Snyderman & S. Rothman, *Science, Politics and the IQ Controversy*, PUB. INTEREST, Spring 1986, at 79; Frank L. Schmidt, *Can Measurement Technology Solve the Problem of Group Differences*, (unpublished manuscript, on file with author); STEPHEN J. GOULD, *THE MISMEASURE OF MAN* (1981); Bernard D. Davis, *Neo-Lysenkoism, IQ and the Press*, PUB. INTEREST, Fall 1983, at 41; EDWARD C. BANFIELD, *THE UNHEAVENLY CITY*

We thought we'd begin by continuing the discussion on Marxism, focusing on the Reich/Edwards/Gordon material. I've attached a set of readings on "neoconservative" theory, not because they'd necessarily come next in the actual course, but because they seem to pose a very different (but very powerful) set of pedagogical problems. Unlike the Marxist material (unfamiliar and difficult), these materials may seem quite familiar but quite offensive to a large number of the students. I'd like to discuss that problem, as well as the substantive issues.⁵⁷

Several days before we met to discuss these materials another member of the working group, a black woman colleague, came by my office. She was upset and concerned about the readings, particularly by their format and the cover memo that accompanied them. I shared many of her concerns and encouraged her to draft a memorandum sharing them with the group. Although the memorandum, an eleven-page effort, is too long to quote in full here, the section that responded to the cover memorandum is most relevant to this discussion in that it demonstrates how outsiders can be liberated by embracing a positioned perspective.

[T]here is a very small, subtle, perhaps unconscious but devastating frame contained in the cover memo to these materials. I refer to the language that these materials "may seem offensive." This is a *laissez-faire*, open-ended throw away that implies that the opinions expressed herein are just opinions and that all opinions are valid or equal. While this may be true in some ultimate sense, as reflecting the truth of the speaker's world, I thought we wanted, in this course, to have a more specific political agenda.

It seems to me that an important shift of reference comes about when you assume not that some "might" be offended but that these ARE offensive because there are some who are not just offended, but powerful and visible enough to have that opinion extend itself as an attribute of the materials themselves. I am offended. Therefore, these materials are offensive. It is at this point that we can begin to have a discussion about why I am offended, about what it is in these materials that has the property of "offense-to-me."

REVISITED (1979); George Gilder, *The Collapse of the American Family in Welfare's "New Consensus,"* PUB. INTEREST, Fall 1987, at 20; Charles Murray, *In Search of the Working Poor,* PUB. INTEREST, Fall 1987, at 3; Martin Kilson, *Black Social Classes and Intergenerational Poverty,* PUB. INTEREST, Summer 1981, at 58; Thomas Sowell, *Black Excellence: The Case of Dunbar High School,* PUB. INTEREST, Spring 1974, at 3.

57. Memorandum from "Your Conveners" to Lawyering for Social Change Work Group (Oct. 10, 1988) (on file with author).

Any other stance, I think any other balance, allows the laziness of majoritarian opting out. The materials, because they "might" be offensive to an invisible unnamed some, therefore take on the property of "might-being" a little bit offensive in small part. But because, after all, they only might be offensive, they could just as well take on the character of being for the most part not offensive. It is thus that materials can get manipulated imagistically rather than analytically, as though the topic were something that could be decided by a simple vote. So if a majority of people enter the class feeling that their I.Q. is higher than that of Blacks, these readings, as presently constituted, will allow them to feel OK about that. Black inferiority is just one of several valid interpretations. And if most of the class is authorized to feel that way by the cues in the materials or in the presentation of them, then we have succeeded only in legitimating the status quo and in subordinating the already subordinated.⁵⁸

"I am offended. Therefore, these materials are offensive." It is these words that are revolutionary. The author has done much more than offer a different perspective on the materials. She has given her/our perspective authority and in doing so has shown us that we can do the same. The unstated assertion of objectivity and universality in the materials and in their presentation is made explicit and challenged. It is unmasked and revealed as a perspective that advances values and goals inimical to our own. Thus, by embracing a positioned perspective, this gifted practitioner of the Word reallocated the power to define what is real.⁵⁹

In an analysis of the Afro-American autobiographical statement,⁶⁰ Selwyn Cudjoe notes the intense regard for personal positioned perspective in the cultural tradition of American blacks. She quotes Harlem

58. Memorandum from Patricia Williams to Law and Subordination Work Group (Oct. 28, 1988) (on file with author). Prof. Williams' memo included several other criticisms concerning the ways the substance and presentation of these materials could serve to legitimate racist points of view and disempower minority students. She notes that the presentational format of the materials privileges the viewpoint of this "informed" technical elite, that students will most likely not be conversant with the basic research and data and hence will not be prepared to counter the pseudoscience contained in the articles, and that the Gould dissent is bracketed by materials that serve contextually to undervalue its viewpoint.

59. Of course, in addition to offering her perspective, the author has also made an objective normative claim that the materials are offensive. For an insightful discussion of how recognizing the subjectivity of one's perspective does not preclude making objective normative claims, see Veronica Gentili, *A Double Challenge for Critical Race Scholars: The Moral Context*, 65 S. CAL. L. REV. 2361 (1992).

60. Selwyn R. Cudjoe, *Maya Angelou and the "Autobiographical Statement,"* in BLACK WOMEN WRITERS (1950-1980): A CRITICAL EVALUATION (Mari Evans ed., 1984) [hereinafter BLACK WOMEN WRITERS]. Cudjoe calls the autobiographical statement "the most Afro-American of all Afro-American literary pursuits. During the eighteenth and nineteenth centuries, thousands of

street philosopher Hanna Nelson on the capacity of blacks' speech to transmit experience.

Our speech is most directly personal, and every black person assumes that every other black person has a right to a personal opinion. In speaking of great matters, *your personal experience is considered evidence*. With us, distant statistics are certainly not as important as the actual experience of a sober person.⁶¹

Paradoxically, the special authority given to personal expression of intensely lived experience in the black community results in an Afro-American autobiographical form that is free of excessive subjectivism or mindless egotism. In speaking of Afro-American autobiography, Cudjoe says,

[I]t presents the Afro-American as reflecting a much more impersonal condition, the autobiographical subject emerging as an almost random member of the group, selected to tell his/her tale. As a consequence, the Afro-American autobiographical statement emerges as a *public* gesture, me-ism gives way to *our-ism* and superficial concerns about individual subject usually give way to the *collective subjection* of the group.⁶²

Matsuda's observation that the jurisprudence of color is "consciously historical and revisionist"⁶³ identifies a particularly important function of positioned perspective. Adopting a positioned perspective is to write our histories: to tell the silenced stories, the unrecorded perspectives, of our foremothers and forefathers. Historical revisionism is critical because full personhood is itself defined in part by one's authority to tell one's own story.⁶⁴ Historians make history even as they record it.⁶⁵

autobiographies of Afro-American slaves appeared. . . . The practice . . . remains the quintessential literary genre for capturing the cadences of the Afro-American being." *Id.* at 6.

61. JOHN L. GWALTNEY, *DRYLONGSO: A SELF PORTRAIT OF BLACK AMERICA* 8 (1980) (quoting from a conversation with Hanna Nelson, a 61-year-old black woman from Harlem). Prof. Gwaltney reports that Mrs. Nelson's neighbors call her "Professor" and notes that she has "read and listened avidly and systematically. . . and has taught herself languages, cuisines and art forms." *Id.* She has supported herself for most of her life through the drudgery of domestic service. *Id.*

62. Cudjoe, *supra* note 60, at 4-5.

63. Matsuda, *supra* note 10, at 7.

64. See discussion *infra* notes 68-72 and accompanying text.

65. Joan Scott, describing the role of history in the construction of gender differences, argues that

[h]istory figures . . . not exclusively as the record of changes in the social organization of the sexes but also crucially as a participant in the production of knowledge about sexual difference. I assume that history's representations of the past help construct gender for the present. Analyzing how that happens requires attention to the assumptions, practices, and rhetoric of the discipline, to things either so taken for granted or so outside customary practice that they are not usually a focus for historians' attention. These include the notions that history can faithfully document lived reality, that archives are repositories of

Discovering and rewriting the record reshapes history itself and our contemporary social context is in turn changed.⁶⁶ This becomes important to the liberating task of embracing a positioned perspective. What we see and feel today, our own perspectives and perceptions, appear distorted and unreal when they appear against the background of a history that has excluded the voices of those who have seen the world from positions most like our own. When we hear their stories our own stories take on a contextual frame that gives them meaning. They become more comprehensible. They are easier to trust.

In *Saving the Life that Is Your Own*⁶⁷ Alice Walker tells the story of her discovery of the monumental life work of Zora Neal Hurston during her search for historical material on the craft of voodoo as practiced by blacks in the nineteenth century—material that would help her write a short story about a black woman who was such a craftsperson.⁶⁸ Walker read all she could find on the subject; all of the authors were white, most of them were racist. “How was I to believe anything they wrote,” she asks, “since at least one of them . . . was capable of wondering, in his book, if ‘the Negro’ had a large enough brain?”⁶⁹ When all seemed lost she saw in a footnote to the white voices of authority the name Zora Neal Hurston—novelist, essayist, anthropologist, autobiographer, and serious student of voodoo. Walker tells the story of this search and discovery to relate how she found the model that she feels every artist must have. Hurston was her model. Without a history of our own we have no models. It is these historical role models that give us a sense of the possibilities for our own work. It is the historical underpinning of the work of those who have shared our perspective that prepares the ground for us and gives our work context. Speaking of this story that occasioned the discovery of her most important role model, Walker says,

facts, and that categories like man and woman are transparent. They extend as well to examinations of the rhetorical practices of historians, the construction of historical texts, and the politics—that is, the power relationships—constituted by the discipline. In these essays history is as much the object of analytic attention as it is a method of analysis. Taken in both ways together, it provides a means for understanding and contributing to the process by which gender knowledge is produced.

JOAN SCOTT, *GENDER AND THE POLITICS OF HISTORY* 2-3 (1988). See generally RICOEUR, *supra* note 51.

66. SCOTT, *supra* note 65, at 2-3.

67. ALICE WALKER, *Saving the Life that Is Your Own: The Importance of Models in the Artist's Life*, in *IN SEARCH OF OUR MOTHERS' GARDENS* 3 (1983).

68. Alice Walker, *The Revenge of Hannah Kemhuff*, in *THE BEST AMERICAN SHORT STORIES* (Martha Foley ed., 1974).

69. WALKER, *supra* note 67, at 11.

In that story I gathered up the historical and psychological threads of the life my ancestors lived, and in the writing of it I felt joy and strength and my own continuity. I had that wonderful feeling that writers get sometimes, not very often, of being *with* a great many people, ancient spirits, all very happy to see me consulting and acknowledging them, and eager to let me know, through the joy of their presence, that, indeed I am not alone.⁷⁰

Finally, engaging in revisionist history is healing. In her work with black children and their families at Harlem Hospital and in Mississippi and Georgia, black child psychiatrist Margaret Lawrence has used both catharsis and the exploration of family ego strength to help children and their families cope with severe trauma and stress. Where too many of her colleagues have recognized only pathology among the black poor, Dr. Lawrence espouses and employs a "humanizing approach which recognizes a shared developmental dynamics common to all socio-economic classes."⁷¹ She says that it is the "identification and utilization of existing ego strengths among these families that makes therapeutic intervention possible."⁷² For Lawrence, ego strengths are representative not only of individual development but of cultural and historical evolution. In *Young Inner City Families*⁷³ she uses a series of case studies to demonstrate the evidence of persistent ego strengths in these families and to show how engaging in revisionist developmental history with these families can help them combat the effects of societal trauma.

In a paper describing a similar study of Georgia preschool children whose families had recently been active in the civil rights struggle of the '60s, Lawrence reports the same success in achieving therapeutic results by bringing to light and identifying vital family ego strengths, many of which were discovered through the exploration of the historical, social, and cultural backgrounds of those families.⁷⁴ She writes,

70. *Id.* at 13.

71. Margaret Morgan Lawrence, *Family Trauma and Preventive Interaction*, in *THE CHILD IN HIS FAMILY: PREVENTIVE CHILD PSYCHIATRY IN AN AGE OF TRANSITION* 473 (E. James Anthony & Colette Chiland eds., 1980).

72. *Id.*

73. MARGARET MORGAN LAWRENCE, *YOUNG INNER CITY FAMILIES: DEVELOPMENT OF EGO STRENGTH UNDER STRESS* (1975).

74. Lawrence, *supra* note 71, at 480. See also ROBERT COLES, *CHILDREN OF CRISIS* (1967) (making similar observations of children and their families involved in school desegregation in the South). Derrick Bell also considers the healing power of revisionist history in DERRICK BELL, *The Right to Decolonize Black Minds: The Chronicle of the Slave Scrolls*, in *AND WE ARE NOT SAVED, supra* note 41, at 215-35 [hereinafter BELL, *The Right to Decolonize Black Minds*]; see also Derrick Bell, *Foreword: The Civil Rights Chronicles*, 99 HARV. L. REV. 4 (1984) (an earlier version of BELL, *The Right to Decolonize Black Minds, supra*.)

A study of the strengths of pre-school children must be done in the context of family, even extended family and community. Ego ideals over many generations, coping patterns, patterns of conflict resolution, and sources of support are to be recognized. The young children's family plays, comparable dreams, their families' stories, myths, and dreams [must be] searched for evidence of assertiveness, good self-images, expressiveness, conflict resolution and self-control, creativity, and use of body in graceful pursuits and manipulative skills.⁷⁵

Searching history to retrieve collective strengths is part of the work that must be done by law teachers engaged in liberating pedagogy.

2. *Subjectivity as Taking Sides: Embracing Nonneutrality*

If anything I do, in the way of writing novels or whatever I write, isn't about the village or the community or about you, then it isn't about anything. I am not interested in indulging myself in some private exercise of my imagination . . . which is to say yes, the work must be political.⁷⁶

The Word is also subjective in the sense that it makes no claim to value neutrality. Matsuda describes the jurisprudence of people of color as "pragmatist" and "bottom-line instrumentalist."⁷⁷ Freeman contrasts the result-oriented "victim perspective"⁷⁸ with a "perpetrator perspective" that claims to seek neutral principles based on shared values but is "ultimately indifferent to the condition of the victim."⁷⁹ This is another way of saying that practitioners of the Word evaluate work product (judicial opinions, legislation, organizing tactics, ideas, theory, poetry) according to the degree to which the effort serves the cause of liberation.

Embracing instrumentalism, like owning one's perspective, serves a dual liberatory purpose. By keeping our politics at the forefront and measuring our work and that of others by the bottom line of results, we

75. Lawrence, *supra* note 71, at 9-10. See also BELL, *The Right to Decolonize Black Minds*, *supra* note 74, at 215-35. In this allegory Bell's protagonist describes the healing power of the message of the slave scrolls, a revisionist account of the seldom-read history of slavery in America. These scrolls, if studied as prescribed in "healing groups," produced a changed self-image in their readers that had a profound rehabilitative effect, eliminating the myriad marks of racial oppression, criminality, and self-hate. *Id.* at 215-21.

76. Toni Morrison, *Rootedness: The Ancestor as Foundation*, in BLACK WOMEN WRITERS, *supra* note 60, at 339, 339-45.

77. Matsuda, *supra* note 10, at 4.

78. This perspective judges the efficacy of theories and remedies by whether using them eliminates objective conditions associated with discrimination. See Freeman, *supra* note 23, at 1052-53.

79. *Id.* at 1054.

can be certain that theory is disciplined by purpose and guided by the needs and resulting insight of those for whom change is most urgent.⁸⁰ An avowedly political posture also serves as an antidote to the mystifying and oppressive properties of the dominant ideology of shared values and neutral principles. This is particularly important to the scholar concerned with racial equality under circumstances in which the dominant legal ideology of equal opportunity employs the rhetoric of antidiscrimination and equal treatment to disguise the clash in values between those who are burdened by and committed to ending discriminatory conditions and those who are responsible for and benefit from those conditions.⁸¹

The contrast between the Word's nonneutral commitment to results and dominant scholarship's professed quest for value neutrality and the identification of shared values, a quest that may well be indifferent to results, is striking in the context of faculty debates over the appropriateness of quotas and set-asides to achieve race and gender diversity on law school faculties. A student paper submitted for my race discrimination class recounts the history of students' efforts to encourage the Stanford faculty to increase the numbers of minorities and women teaching at the law school. These efforts had included several informational forums featuring the dean and members of the appointment committee, informal conversations with individual faculty members, letters to the student paper, a student-sponsored affirmative action proposal (at times referred to as student demands), and student demonstrations in the dean's office and the faculty club. The paper also reports faculty responses to the student hiring proposal, a proposal that was submitted to the faculty by a coalition of student organizations representing minorities, women, and progressive white male students.⁸²

80. Pragmatism helps the scholar avoid elitism by forcing her always to judge the efficacy of theory by its usefulness in righting the everyday wrongs committed against those who are most oppressed. See Matsuda, *supra* note 16, at 344-45.

81. Alan Freeman has described the approach that seeks to find neutral constitutional principles in shared values as a "new formalism" that disguises the fact that legal doctrine arises from "a continuing dialectic of struggle, characterized by value clashes that . . . share no agreed upon reference point." Freeman, *School Desegregation Law: Promise, Contradiction, Rationalization*, in *SHADES OF BROWN: NEW PERSPECTIVES ON SCHOOL DESEGREGATION* 71, 72 (Derrick Bell ed., 1980). See also Freeman, *supra* note 23, at 1065-67.

82. With respect to immediate hiring goals, the student demands included the following:

1. Hire sufficient women and minority faculty to ensure that all students entering in fall, 1988, are taught during their first year by at least one woman and one minority professor. This goal is not meant to create pressure on present or future women and minority faculty to teach first year classes, but to require sufficient appointments so that any normal rotation of assignments will result in instruction by women and minority faculty for all first years.

The quota demand proved a useful point of separation among faculty members. People of color on the faculty supported the proposal. The white women on the faculty supported the "spirit" of the proposal, including most of the "process" changes, but would not publicly endorse the call for numerical quotas. The white men all actively opposed the quotas, while supporting some, but not all, of the process changes. It is undoubtedly exaggerated to say that people of color know we need quotas to make progress, white men won't accept quotas which require them to change, and white women are ambivalent, sympathizing with the pro-affirmative action portion because of their own experience with sexism, but unwilling to support quotas because of an unwillingness to break with white skin privilege. Nevertheless, this generalization would accurately predict the positions of Stanford law faculty: "No 'whites' acting 'black' here!"⁸³

The paper's author, himself a member of the student coalition that had presented the "quota demand," begins his analysis with a clear articulation of the goal he would have affirmative action serve. This goal is the *transformation* of a "community dominated by eurocentric, patriarchal, hierarchical values" into a "genuinely multicultural community." He explains,

Affirmative action means bringing sufficient numbers of women, people of color, lesbians, gays, working class people, into communities dominated by upper-class, heterosexual white men to transform the communities into genuinely multicultural communities: to eradicate the domination of these men. Although any individual is capable of supporting or opposing eurocentrism or patriarchy or hierarchy, we recognize that the social experiences of race, class, gender and sexual orientation are so profound that no one from one group can act as proxy for another; that there cannot be feminism without a community of women; a non-racist community without a community of black people; a sexually liberated community without a community of lesbians and a community of gays; a non-hierarchical community absent the presence, as equals, of people from the working class. Our voices cannot be heard while it is still white men who dominate the hearing, nor while we internalize a manner that is not our own.⁸⁴

2. Of the six current open and funded faculty positions, fill at least four of the six with women and minorities; at least two women, at least two minorities, at least one woman of color. Also seek to hire lesbian and gay candidates and those sensitive to lesbian and gay issues.

3. After the current six positions are filled, for every subsequent six openings, two women professors should be appointed and two minority professors should be appointed.

83. Peter Haviland, Drawing Lines 17 (1987) (unpublished manuscript, on file with author).

84. *Id.*

Once this result is articulated and embraced as essential to the liberatory struggle, a critical analysis of theories, policies, and practices that claim to support our cause is simplified. Such critical analysis begins by asking whether the policy or practice has or will produce results. One can then ask why the theory, practice, or policy under study falls short and, by employing this methodology, discover the mechanism whereby “neutral” principles disguise conflicting value-based choices.

The student’s paper effectively employs this mode of analysis to assess the statements of two faculty members in response to the student proposal. The first faculty statement reads, in relevant part, as follows:

While individuals may differ about particular cases, the Law School clearly is committed to affirmative action. To the extent that numbers matter—and although they’re only a part of the picture, they *do* matter—we have reason neither for great shame *nor* for great pride. Our regular faculty has five women, two Blacks, two Latinos, and we have an Asian-American visiting professor—a higher proportion than most law schools comparable to Stanford. Although I do not believe in quotas, I agree that we have farther to go. The Law School is unequivocally committed to the affirmative action *search*. This has been central to the Appointments Committee’s agenda for many years, and is something that the Committee—which itself is a broadly representative group—is pursuing with extraordinary vigor this year. Because of our society’s long histories of discrimination, the numbers of women, and especially of minority, law teachers are not large—though fortunately they are growing. In looking for visitors as well as new permanent faculty, the Committee is searching widely for qualified minority and women candidates. Faculty members do differ in their views of what counts as “qualified” and how much risk the School should take in hiring individuals who do not meet the “standard” qualifications (for example, who have not graduated high in their classes at a major law school or published significant works of scholarship). These differences within a diverse faculty should not be surprising when there is lack of consensus throughout American society and when the Supreme Court itself has not been able to agree on the *legality* of certain forms of affirmative action. My own view, expressed in the forum on hiring last year, is that we should be open to examining our assumptions about what count as “qualifications,” and in particular to understanding the qualities that members of underrepresented groups may contribute to the institution. But I should say that I would be cautious in departing very far from conventional standards of excellence.⁸⁵

85. *Id.*

The position taken in this statement is twofold: (1) commitment to affirmative action means, most importantly, a commitment to a *process of searching for candidates*; (2) this commitment, while important, must be *balanced* against other priorities. Affirmative action is a discrete commitment competing with others that may outweigh, or trump, affirmative action.

Process is the key here because the purpose of affirmative action, presumed by the first statement, is merely to act as a counterbalance to particular discriminatory decisions in the hiring process. If "excellent" women and minority candidates are overlooked on the basis of their gender or race, the active search for qualified women and minorities, taking race into account, is justified as a narrow corrective step designed to guard against discriminatory exclusion.

The problem with this formulation of the situation is that "old-fashioned" discrimination—any overt statement indicating that the candidate has been opposed because of race or gender—does not comport with the liberal ideology of an institution like the Stanford Law School. If there are those on the faculty harboring consciously racist or sexist attitudes, they will not admit them. A far greater number of us are likely to have repressed discriminatory motives.⁸⁶ Thus, no candidates are excluded because of identifiable conscious discrimination, and an affirmative action process designed to correct such discrimination will not yield any new candidates because none have been discriminated against. The pool of injured parties is zero.

The process of searching for candidates might also serve the purpose of discovering "overlooked" candidates who would not come to the attention of the faculty through the regular appointments process. But the concept of overlooked candidates, when examined closely, eventually leads to the more fundamental question of qualifications and standards. Minority candidates who have met the traditional standards—exceptional achievement at a prestigious law school and "outstanding" scholarship published in a leading professional journal—would and do come to the attention of the academic network. Individuals who are not given attention are overlooked because the faculty does not think their credentials or work are of sufficient merit.⁸⁷

86. See generally Lawrence, *supra* note 51 (arguing that equal protection doctrine fails to remedy or recognize unconscious racism).

87. See Charles R. Lawrence III, *Minority Hiring in AALS Law Schools: The Need for Voluntary Quotas*, 20 U.S.F. L. REV. 429 (1986).

Thus, a focus on process will yield few, if any, appointments because in the end the process continues to rely upon the validity of "standards," and the primary content of these standards is the subjective judgment of the faculty. Moreover, these standards do not place much value on achieving the students' primary goal: "the transformation of the law school community." On the contrary, faculty invocation of "standards" fatally undermines this goal by allowing it to be preempted, or trumped, by the conflicting goal of maintenance of "standards," in which those standards are defined in large part according to the subjective judgment of faculty members who are committed to maintaining the status quo within the law school community.⁸⁸

The positions of minority and progressive students and faculty in this debate fall squarely within Alan Freeman's categories of victim perspective and perpetrator perspective.⁸⁹ The students' goal of "transformation of the community" is an articulation of their understanding that until the conditions of discrimination are eliminated there can be no equality of opportunity. The faculty response views the task as the elimination of discriminatory conduct by identifiable perpetrators. If they are convinced that this has been done, they are not troubled by unchanged conditions.

By embracing the "victim perspective," practitioners of the Word will know that until there are results the fight must continue. We will also more easily deconstruct perpetrator theory by beginning our analysis with the understanding that failed results are symptomatic of an enterprise that has not given the goal of our liberation top priority. With this in mind, we must locate the point where our values (those things we put first among our priorities) diverge from the values of the perpetrators and work from there.

3. *Subjectivity as Standing in the Position of the Subject*

Stories are important. They keep us alive. In the ships, in the camps, in the quarters, fields, prisons, on the road, on the run, underground, under siege, in the throes, on the verge—the storyteller snatches us back from the edge to hear the next chapter. *In which we are the subjects. We, the hero of the tales.* Our lives preserved. How it was; how

88. The student paper notes that the faculty member's statement claims an openness to criticizing standards. "We should be open to examining our assumptions about what count as 'qualifications,' and in particular to understanding the qualities that the members of underrepresented groups may contribute to the institution. But I should say that I would be cautious in departing very far from conventional standards of excellence." Haviland, *supra* note 83, at 30-31.

89. Freeman, *supra* note 23, at 1053.

it be. Passing it along in the relay. That is what I work to do: to produce stories that save our lives.⁹⁰

I AM SOMEBODY!

—Jesse Jackson

In this section I use the word “subjectivity” to indicate that as practitioners of the Word we must endeavor to place ourselves in the linguistic position of “subject” rather than “object.” That is, we must be actors rather than those upon whom others act. This is, for us, an especially important understanding of subjectivity, for the language we use to describe ourselves is both evidence of how we see ourselves and part of the means whereby our self-image is shaped. Language shapes our reality even as it describes it. This, in part, was the lesson of my discussion of positioned perspective. But I want to suggest something more than what is learned from the observation that our perceptions of the world are valid and that the articulation of those perceptions must be privileged in the context of a discourse that objectifies and universalizes the perceptions of those who dominate that discourse. When we use language to refer to ourselves, we do more than offer another possible description of the world around us. We define ourselves and our relationship to that world.

The language of self-description has been a particularly powerful and important weapon in the liberationist struggle by African Americans. The absence of a collective black voice was central to the ethnocentric ideology of the European Renaissance and the Enlightenment—an ideology that denied Africans their humanity and thereby justified their enslavement. Henry Louis Gates notes that for the Enlightenment philosophers the absence of a self-portrayal, of a written history, meant that Africans had “no true self consciousness, no power to present or represent the black and terrible self”.⁹¹

[B]lacks lay veiled in a shroud of silence, invisible not because they had no face, but rather because they had no voice. Voice, after all, presupposes a face. That alone which separates the subject from the object is, for Hegel, the absence or presence of the voice, the phenomenological voice; the blackness of invisibility is the blackness of this silence. Without a voice, the African is absent, or defaced, from history.⁹²

90. Toni Cade Bambara, *Salvation Is the Issue*, in *BLACK WOMEN WRITERS*, *supra* note 60, at 41, 41-47.

91. HENRY LOUIS GATES, JR., *Frederick Douglass and the Language of Self*, in *FIGURES IN BLACK: WORDS, SIGNS, AND THE “RACIAL” SELF* 98, 104 (Henry Louis Gates, Jr., ed., 1987).

92. *Id.*

Early practitioners of the Word recognized the necessity of self-representation to combat this dehumanizing ideology that determined one's very being by presence, or lack thereof, in history and in turn viewed one's absence from history as proof of one's lack of consciousness. Frederick Douglass and others created the genre of slave narratives to render in horrific detail the inhumanity of the slave system, but their purpose was also to break the silence that made them objects. Gates says of the slave narratives, "[T]his written language of the ex-slave signified for *someone* even before it signified *something*."⁹³

By speaking, by writing, African Americans placed themselves in the active position of the "I," or "eye." They became the writer/producer/directors and the audience of the play. In so doing they subverted the ideology that claimed them incapable of consciousness. It is the *act* of telling one's own story, of creating the characters and writing the script, that transforms the teller from object to subject. Thus, Gates speaks of the "fictive selves" that Douglass created in his three autobiographies.⁹⁴ Gates does not use the word "fictive" to suggest falsity or intent to deceive; rather, he refers to "the act of crafting or making by design."⁹⁵

There is another important element in the work of Douglass that is paradigmatic in its use of subjectivity. His autobiographies are representations of public selves. He is concerned with making individual experience the source of public history. In this way he breaks the silence for all blacks and, by becoming the representative for his brothers and sisters, makes them all subjects. I have spoken earlier of how this public, representational stance is of central importance to Afro-American autobiographical statement.⁹⁶

Postmodern literary theorists have articulated the occurrence of this act of self-identification through language by defining subjectivity as the "capacity of the speaker to posit himself as subject." Subjectivity is viewed as a fundamental property of language. 'It is in and through language that man constitutes himself as *subject*, because language alone

93. *Id.* at 105.

94. *Id.* at 103. Douglass' three autobiographies are *THE NARRATIVE OF THE LIFE OF FREDERICK DOUGLASS: AN AMERICAN SLAVE, WRITTEN BY HIMSELF* (Dublin, Webb and Chapman 1845) (note Douglass' reference in the title to his authorship); *MY BONDAGE MY FREEDOM* (New York, Miller, Orten and Mulligan 1855); and *THE LIFE AND TIMES OF FREDERICK DOUGLASS* (Citadell Press 1984) (1881).

95. GATES, *supra* note 91, at 103.

96. Cudjoe, *supra* note 60, at 10.

establishes the concept of ego in reality, in *its* reality.'⁹⁷ Thus, language is important because its use signifies, is symbolic of, the speaker's capacity for creativity; and it is the capacity for creativity that makes us human.

The history of African-American efforts to name ourselves, as the first enunciating act of self-definition, and of the resistance to that effort, is testimony to the importance of the symbolism of language in the political/cultural hegemony of American racism. African slaves were prohibited from using their family, ancestral, and tribal names. Instead they were required to use the "Christian" names by which their masters chose to identify them. After emancipation, the practice of whites naming blacks and denying blacks the power to name themselves remained central to the system of symbols that objectified African Americans and denied their humanity.⁹⁸

In the 1920s the NAACP launched a hard-fought campaign for the use of the word "Negro" (with a capital "N"). For too long African Americans had heard themselves called "niggers," "jigs," "dinges," "blackbirds," "crows," and "spooks." "Colored," the word then used by respectable whites and many Negroes, was offensive in the main because whites insisted on using it. Whatever its origin, the name was now the white man's property, a word he used to name those who could not name themselves. Our insistence, in the 1960s, on being called "Black" rather than "Negro" was likewise an effort to assume the position of subject.⁹⁹

97. HUTCHEON, *supra* note 51, at 1611 (quoting EMILE BENVENISTE, *SUBJECTIVITY IN LANGUAGE* (1971)).

98. Perhaps the most striking example of the objectification of blacks is the black minstrel show. White men in blackface literally created blacks in their own image (imaginings). This white imaging of blacks as "natural slaves," as "Sambo," lived on in the radio voices of Amos 'n Andy, in screen characters like Step 'n Fetchit, and in American cultural artifacts like Aunt Jemima. See JOSEPH BOSKIN, *SAMBO: THE RISE & DEMISE OF THE AMERICAN JESTER* (1987). See also DONALD BOYLE, *TOMS, COONS, MULATTOES, MAMMIES AND BUCKS: AN INTERPRETATIVE HISTORY OF BLACKS IN AMERICAN FILMS* (1973) (historical treatment of the portrayal of African Americans in the mass media).

99. In 1964, when Cassius Clay won the heavyweight crown from Sonny Liston, he announced that he had become a Black Muslim and that the Hon. Elijah Muhammed had given him the name Muhammed Ali. Initially most reporters refused his request that he be referred to by his new name. Ali responded by saying, "I know where I'm going . . . and I don't have to be what you want me to be." Bayard Rustin, *Blacks? African Americans?*, N.Y. Times, Feb. 1, 1989, at A25.

The contemporary version of resistance to our subjective naming of self is more subtle and ingenious. Recently, when Jesse Jackson suggested that black Americans should call themselves African Americans there ensued a vigorous debate in the white press. Some, including the *New York Times*, supported the Rev. Jackson's suggestion. Others argued against the proposal. What I found interesting and instructive was that the tone of all of these commentators was proprietary. White folks assumed that they would be the final judge of whether this new name was appropriate. See also

When I was an undergraduate at Haverford College, the white girls at Bryn Mawr, our sister college, still followed the tradition of calling the black women who worked as maids and cooks in the dorms "Mary" or "Sarah," while the black women, many of whom were old enough to be their grandmothers, called them "Miss Williston" or "Miss Jones." I had been taught by my parents to take special care to address black adults by their appropriate title and surname. They wanted me to know that one should show respect for one's elders, but this was also a lesson in subjectivity; we must not allow white folks to define us as children. By addressing these women as "Miss" and "Mrs." I named myself.

Ralph Ellison's powerful prologue to his classic *Invisible Man* exemplifies the empowering use of subjectivity. Ellison not only places his narrator in the position of a viewing, interpreting, and creating subject, but also has the narrator describe his complete and utter objectification by whites.¹⁰⁰

I am an invisible man. No, I am not a spook like those who haunted Edgar Allan Poe; nor am I one of your Hollywood-movie ectoplasms. I am a man of substance, of flesh and bone, fiber and liquids—and I might even be said to possess a mind. I am invisible, understand, simply because people refuse to see me. Like the bodiless heads you see sometimes in circus sideshows, it is as though I have been surrounded by mirrors of hard, distorting glass. When they approach me they see only my surroundings, themselves, or figments of their imagination—indeed, everything and anything except me.¹⁰¹

Ellison's narrator goes on to describe a chance encounter with a tall blond man who bumps into him in the darkness and calls him an insulting name.

Alice Walker's discussion of reclaiming the word "Mammy," in ALICE WALKER, *LIVING BY THE WORD* 58-63 (1981).

100. By creating a speaking subject who describes himself as object Ellison employs the rhetorical strategy of antithesis. Henry Gates discusses Frederick Douglass' use of this technique. In speaking of Douglass' use of binary opposition, Gates says,

Douglass's narrative strategy seems to be this: He brings together two terms in special relationships suggested by some quality that they share; then, by opposing two seemingly unrelated elements, such as sheep, cattle, or horses on the plantation and the specimen of life known as slave, Douglass's language is made to signify the presence and absence of some quality—in this case, humanity. Douglass uses this device to explicate the slave's understanding of himself and of his relation to the world through the system of perceptions that defined the world the planters made.

Henry Louis Gates, Jr., *Binary Oppositions in Chapter One of Narrative of the Life of Frederick Douglass an American Slave Written by Himself*, in *AFRO-AMERICAN LITERATURE: THE RECONSTRUCTION OF INSTRUCTION* 212, 222-23 (Dexter Fisher & Robert Stepto eds., 1979).

101. RALPH ELLISON, *INVISIBLE MAN* 3 (1952).

I sprang at him, seized his coat lapels and demanded that he apologize. He was a tall blond man, and as my face came close to his he looked insolently out of his blue eyes and cursed me, his breath hot in my face as he struggled. I pulled his chin down sharp upon the crown of my head, butting him as I had seen the West Indians do, and I felt his flesh tear and the blood gush out, and I yelled, "Apologize! Apologize!" But he continued to curse and struggle, and I butted him again and again until he went down heavily, on his knees, profusely bleeding. I kicked him repeatedly, in a frenzy because he still uttered insults though his lips were frothy with blood. Oh yes, I kicked him! And in my outrage I got out my knife and prepared to slit his throat, right there beneath the lamplight in the deserted street, holding him in the collar with one hand, and opening the knife with my teeth—when it occurred to me that the man had not *seen* me, actually; that he, as far as he knew, was in the midst of a walking nightmare! And I stopped the blade, slicing the air as I pushed him away, letting him fall back to the street. I stared at him hard as the lights of a car stabbed through the darkness. He lay there, moaning on the asphalt; a man almost killed by a phantom. It unnerved me. I was both disgusted and ashamed. I was like a drunken man myself, wavering about on weakened legs. Then I was amused: Something in this man's thick head had sprung out and beaten him within an inch of his life. I began to laugh at this crazy discovery. Would he have awakened at the point of death? Would Death himself have freed him for wakeful living? But I didn't linger. I ran away into the dark, laughing so hard I feared I might rupture myself. The next day I saw his picture in the *Daily News*, beneath a caption stating that he had been "mugged." Poor fool, poor blind food, I thought with sincere compassion, mugged by an invisible man!¹⁰²

Ellison makes his black narrator an articulate subject who is capable of seeing and describing (of creating) a white male subject. This subject, the narrator's white victim, cannot see the narrator because for him the narrator is object. He can only be a nightmare, a figment of the white man's imagination. By juxtaposing the subject-narrator with the objectified invisible man created by the tall, blond mugging victim, Ellison subverts the ideology of the unified white writing subject. When he places himself in the position of subject, Ellison, through his narrator, does not simply assume the white male role and make all others object. He creates another subject. This is apparent from the narrator's ability to see (or not see) himself through the eyes of his victim. "I got out my knife and prepared to slit his throat . . . when it occurred to me that the man had

102. *Id.* at 4.

not *seen* me, actually; that he, as far as he knew, was in the midst of a walking nightmare!"¹⁰³

Linda Hutcheon has observed that this positing of multiple subjects constitutes a considerably more radical challenge to notions of "universal truths," or a "transcendental . . . subject that is outside of any social, political or sexual history,"¹⁰⁴ than would a mere assumption of the traditional universal subject's role by those who have historically been objectified. In speaking of another novel, *The White Hotel*, and its use of a similar rhetorical technique in relation to gender subjectivity, she says,

Both *The White Hotel* and much feminist theory today confront the relation of non-coincidence between the discursive construct of "woman" and the historical subjects called "women." Both expose this as a culturally determined relationship, intimately related to cultural notions of femininity. And both suggest that the representation of woman must now be destabilized and altered.¹⁰⁵

Practitioners of the Word must assume the position of subject. We must assert our humanity by making ourselves the heroes and heroines of our tales and by unashamedly employing "I" and "We" in our language. We must describe other subjects in our stories and, by presenting multiple points of view, subvert the closed, coherent, noncontradictory world that makes us objects.¹⁰⁶

B. THE GIFT (AND BURDEN) OF SECOND SIGHT: EMBRACING DUALITY

The Universe sends me fabulous dreams! Early this morning I dreamed of a two-headed woman. Literally . . . Who was giving advice to people . . . Her knowledge was for everyone and it was all striking. While one head talked the other seemed to doze. I was so astonished! For what I realized in the dream is that two-headedness

103. *Id.*

104. See HUTCHEON, *supra* note 51, at 165.

105. *Id.* at 166.

106. The justice-engendering power of multiple subjectivity is central to much of Patricia Williams' jurisprudential work. "Rights contain images of power, and manipulating those images, either visually or linguistically, is central to the making and maintenance of rights. In principle, therefore, the more dizzyingly diverse the images that are propagated, the more empowered we will be as a society." Patricia Williams, *On Being the Object of Property*, 14 SIGNS 5 (1988). This quote is followed by six paragraphs, each describing the same incident (a child killed by a polar bear at the Prospect Park Zoo) from six different subjective views: the polar bear, the newspapers, the public debate, the pluralist, the keynote speaker of the Law & Society Association (the author, Pat Williams), and the presiding priest at the child's funeral. *Id.*

was at one time an actual physical condition and that two-headed people were considered wise. Perhaps this accounts for the adage "[t]wo heads are better than one . . ." ¹⁰⁷

In 1903 W.E.B. Du Bois, in his small and powerful work *The Souls of Black Folk*, described the gift and burden that are inherent in the dual and conflicting heritage of all African Americans.

[T]he Negro is a sort of seventh son, born with a veil, and gifted with second sight in this American world, a world that yields him no true self-consciousness, but only lets him see himself through the revelation of the other world. It is a peculiar sensation, this double consciousness, this sense of always looking at oneself through the eyes of others, of measuring one's soul by the tape of a world that looks on in amused contempt and pity.

One ever feels this twoness in the American Negro. Two souls, two thoughts, two unreconciled strivings; two warring ideals in one dark body, whose dogged strength alone keeps it from being torn asunder. ¹⁰⁸

Du Bois' consciousness and understanding of this duality within himself was critical to his work as one of the leading practitioners of the Word. He kept his twoness before him despite the pain and anxiety it caused him. He understood that the gift of second sight was contained within and was nurtured by the burden and the pain. Patricia Williams, echoing Du Bois' words eighty-five years later, demonstrates the contemporary validity of his insight. In *On Being the Object of Property*, ¹⁰⁹ she recalls the origins of her discovery of her duality in a story about her mother's admonition, as she departed to begin her studies at Harvard Law School, that she remember that she had the law "in her blood." ¹¹⁰

What I know of my mother's side of the family begins with my great-great-grandmother. Her name was Sophie and she lived in Tennessee. In 1850, she was about twelve years old. I know that she was purchased when she was eleven by a white lawyer named Austin Miller and was immediately impregnated by him. She gave birth to my great-grandmother Mary, who was taken away from her to be raised as a house servant. I know nothing more of Sophie (she was, after all, a black single mother—in today's terms—suffering the anonymity of yet another statistical teenage pregnancy). While I don't remember what I was told about Austin Miller before I decided to go

107. WALKER, *supra* note 99, at 1.

108. DU BOIS, *supra* note 13, at 16-17.

109. Williams, *supra* note 106, at 5-6.

110. *Id.* at 6.

to law school, I do remember that just before my first day of class, my mother said, in a voice full of secretive reassurance, "The Millers were lawyers, so you have it in your blood."

When my mother told me that I had nothing to fear in law school, that law was "in my blood," she meant it in a very complex sense. First and foremost, she meant it defiantly; she meant that no one should make me feel inferior because someone else's father was a judge. She wanted me to reclaim that part of my heritage from which I had been disinherited, and she wanted me to use it as a source of strength and self-confidence. At the same time, she was asking me to claim a part of myself that was the dispossessor of another part of myself; she was asking me to deny that disenfranchised little black girl of myself that felt powerless, vulnerable and, moreover, rightly felt so.

In somewhat the same vein, Mother was asking me not to look to her as a role model. She was devaluing that part of herself that was not Harvard and refocusing my vision to that part of herself that was hard-edged, proficient, and Western. She hid the lonely, black, defined-female part of herself and pushed me forward as the projection of a competent self, a cool rather than despairing self, a masculine rather than a feminine self.¹¹¹

It is this exploration, understanding, and embracing of her duality that allows Williams to employ the gift by using what she refers to as "an intentionally double-voiced and relational, rather than a traditionally legal black-letter, vocabulary."¹¹² Her work moves back and forth across the boundaries of her experience—a professor of contracts and commercial law who is knowledgeable of and facile with theories of promissory estoppel, unconscionability, and market norms, and her life as a black woman who is refused entry into exclusive New York boutiques¹¹³ and feels a sense of powerlessness, despite her training and knowledge, as she prepares to negotiate her rental contract with a New York landlord.¹¹⁴ She does not compartmentalize these two parts of her life, teaching and

111. *Id.*

112. WILLIAMS, *supra* note 14, at 6. For further discussion of the intentional use of multiple consciousness, see Kendall Thomas, *A House Divided Against Itself: A Comment on "Mastery, Slavery, and Emancipation,"* 10 CARDOZO L. REV. 1481, 1489-91 (1989) (discussing how slaves presented different sides of themselves when interacting with a white master and with other slaves); see also Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 WOMEN'S RTS. L. REP. 7 (1989) (urging lawyers to see the world from the standpoint of the oppressed and to maintain multiple consciousness as a way of transferring the details of our own special knowledge to the standard jurisprudential discourse).

113. Matsuda, *supra* note 112, at 44-51.

114. Patricia Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 HARV. C.R.-C.L. L. REV. 401 (1987).

writing from her privileged and powerful professional perspective and living her experiences of subordination, anger, fear, shame, solidarity, and guerrilla warfare in a private, secret life. Instead, the law professor is informed and provoked by the black woman's personal knowledge of blacks as property and women as gender property. She uses that part of her which is her great-grandmother to illuminate the socially constructed foundations on which the law is built. Her purposeful attention to and nurturing of her duality allows her to build bridges between the real-world experience of the dispossessed and elite legal discourse.

In *And We Are Not Saved*,¹¹⁵ Professor Derrick Bell employs the literary device of conversations with a fictional colleague and friend to express his own duality and that of all African Americans. Geneva, a black woman, is a talented, committed, and highly skilled civil rights attorney. A valued colleague and trusted friend, she worked closely with her protagonist, Professor Bell, when they were both young lawyers doing civil rights work in the South. Geneva's brilliant career was cut short when she suffered a serious mental illness, the result of a racial attack, and was hospitalized. During a two-decade hospitalization she loses contact with her old friends and colleagues. She also experiences a series of visions. She has now returned, seeking her friend Professor Bell's assistance in interpreting her otherworldly experiences.

Geneva is militant, mystical, poetic, uncompromising, impatient, and demanding. She does not suffer fools gladly, particularly the all-too-often-evidenced foolishness of her friend and brother Professor Bell. Her analyses are quick and incisive. Her otherworldly experience has freed her from any of the ambivalence of belonging to the ranks of the oppressed and commitment to the status quo. She is not seduced by arguments and ideologies that promise freedom but do not deliver.

Professor Bell shares her aspirations and her instinct but is imprisoned by his faith in the law, by his hard-earned success and status in the legal academy, and by having experienced the last twenty years of slow but steady change in the legal and economic status of many blacks. His eyes are clouded and his perceptions are inhibited by his own investment of emotion and energy in the system that Geneva attacks so mercilessly and by the ways his work has been rewarded by that system.

Bell's use of the fictional female character in this outsider role is not fortuitous. African Americans have traditionally used fiction to mask their most radical thoughts and aspirations. From the Negro spirituals

115. BELL, *supra* note 41.

that disguised their own quest for freedom in the stories of Old Testament heroes to the Brother Rabbit stories to the contemporary work of Toni Morrison and Alice Walker, blacks have often told their most compelling truths in fiction. That Geneva is a woman is in part a reflection of Bell's own personal experience with black women.¹¹⁶ It is black women who have most consistently called us to account and required our allegiance to the outsider half of our duality. They are more completely outsiders in a world that is patriarchal as well as racist.

Professor Bell plays the role of translator in this story. When Geneva tells a visionary chronicle it is Bell who provides us with the perspective that the dominant legal doctrine would bring to the story. He is ambivalent and sometimes embarrassed at having to be the spokesperson for the legal establishment, but he cannot easily abandon this role. The part of our duality that wants to belong, that feels a part of the world that excludes us, wants that world to be an ally and not an enemy. This part of Bell is looking for ways the law will aid and abet out liberation. He is looking for ways to show his white colleagues and friends how their work has failed us. He is looking for words that will help them understand Geneva's visions. This is Professor Bell's real-life role, and that of most of us who seek to do the work of the Word from within the white academy. By using himself to express this side of our duality Bell reveals that aspect of his twoness that makes him most vulnerable. He practices the Word by candidly sharing his own struggle against the internalization of dominant ideology. It is Geneva who chastises Bell, who is often more persuasive, who calls him and us back to our own experiential truths. But it is Bell's willingness to tell the story of his not always successful struggle to reconcile his desire to belong with his commitment to struggle for his people's freedom that helps the rest of us continue that struggle.

The first gift of our inherent duality is its revelation of the inevitability and value of positional perspective. What Du Bois described as "this sense of always looking at oneself through the eyes of others" gives the outsider at least two pictures of the object that is himself.

As nonwhites we are constantly bombarded with more or less severe caricatures of ourselves as we are seen by whites. We cannot help but contrast these views, these perspectives, of who and what we are with our own experience. Nor can we help but understand that our own view is

116. Bell dedicates the book as follows: "To Ada Elisabeth Bell, my mother; to Jewel Hairston Bell, my wife; and to all our Genevas."

not universal. Those who stand wholly within the dominant culture seldom if ever hear how others view them and often ignore or deny those descriptions on the rare occasions when they are confronted by them.¹¹⁷

Duality also engenders empathy. One can put oneself in the shoes of another and share another's experience and feeling only to the extent that one can imagine an experience other than one's own. We who experience the duality of belonging and not belonging know the possibility of different and even conflicting experience at the same moment in time and space and our ability to imagine experience other than our own is thus enhanced. This talent for empathy is particularly important for practitioners of the Word whose ultimate task is to liberate. We must strive to understand experiences of oppression that are not our own, we must work in concert with those who experience other forms of oppression, because we cannot achieve freedom while others remain enslaved.

Our duality also allows us to empathize with the oppressor. This is essential to the task of casting out that part of each of us that is a slavemaster.¹¹⁸ Our ability to recognize the oppressor's experience, to know it within ourselves, is also useful in our efforts to heal and reform others who participate in our oppression. When we have struggled with that part of our duality that identifies with the oppressor, we possess an empathy that helps us explain how our oppression is integrally linked to that of our oppressors.¹¹⁹

117. See *infra* notes 169-70 and accompanying text. See also SHIRLEY ANNE WILLIAMS, DESSA ROSE (1986). Williams describes a white writer observing a slave woman. We learn that the slave woman is acutely aware of how the white writer/researcher perceives her and that he is quite unaware of how she is seeing him. *Id.* See also Mari J. Matsuda, *Beside My Sister, Facing the Enemy: Legal Theory out of Coalition*, 43 STAN. L. REV. 1201 (1991) (discussing the importance of building coalitions in the struggle against subordination and arguing that coalition building requires an understanding of the intersectionality of various forms of oppression). Prof. Matsuda says,

The way I try to understand the interconnection of all forms of subordination is through a method I call 'ask the other question.' When I see something that looks racist, I ask, "Where is the patriarchy in this?" When I see something that looks sexist, I ask, "Where is the heterosexism in this?" When I see something that looks homophobic, I ask, "Where are the class interests in this?" Working in coalition forces us to look for both the obvious and non-obvious relationships of domination, helping us to realize that no form of subordination ever stands alone.

Id. at 1207.

118. FREIRE, *supra* note 44, at 32-34.

119. In speaking of how the oppressed must participate in developing the pedagogy of their own liberation, Paulo Freire says, "Only as they discover themselves to be 'hosts' of the oppressor can they contribute to the midwifery of their liberating pedagogy The pedagogy of the oppressed is an instrument for their critical discovery that both they and their oppressors are manifestations of dehumanization." *Id.* at 33.

Freire on objectivity:

The investigator who, in the name of scientific objectivity, transforms the organic into something inorganic, what is becoming into what is, life into death, is a man who fears

There are heavy burdens that accompany the gift of second sight, the talent for bridge building and the skill of bilingualism. Bearing these burdens is especially stressful for people of color who work in the relative isolation of the white academy, and these burdens can become disabling if they go unrecognized or ignored. Practitioners of the Word must learn to support one another in bearing these burdens and they must learn how and when to refuse to carry the load.¹²⁰ There is a saying among Irish poets that the translator is a traitor. Black scholars work within a tradition and discourse in which the white male voice is dominant. Much of our work is necessarily translation. We are either translating the work of our colleagues in the legal establishment for use by our brothers and sisters who seek needed, if temporary, remedies in that establishment's legal institutions, or we are translating the life experience of our brothers and sisters in the hope that broader awareness of that experience will produce new converts to the cause of liberation. But translation is a treacherous business. Translation of the colonizer's canon spreads its hegemonic message to ears and minds that it might not otherwise have reached. I experience a strong sense of ambivalence as I help black law students understand and work with legal doctrine. As they become fluent in this new language I watch them internalize its assumptions and accept its descriptions and meanings. I see them lose fluency in first and second languages of understanding that they brought with them to law school.¹²¹

I also watch myself struggle to maintain some fluency in languages that are expressive of liberating themes. This is particularly difficult when one is submerged in an institutional and professional culture where neither these languages nor the themes they express are valued or rewarded.¹²² When, for example, I was writing my article on the intent

change. He sees in change not a sign of life, but a sign of death and decay However, in seeing change as a sign of death and in making people the passive objects of investigation in order to arrive at rigid models, he betrays his own character as a killer of life.

Id. at 99-100.

120. Audre Lorde, *The Master's Tools Will Never Dismantle the Master's House*, in THIS BRIDGE CALLED MY BACK 98, 100 (Cherrie Moraga & Gloria Anzaldua eds., 1983). See also Rennard Strickland, *Scholarship in the Academic Circus or the Balancing Act at the Minority Side Show*, 20 U.S.F. L. REV. 491, 497-98 (1986).

121. Cf. Catherine Weiss & Louise Melling, *The Legal Education of Twenty Women*, 40 STAN. L. REV. 1299, 1313-21 (1988).

122. See generally Derrick Bell, *Strangers in Academic Paradise: Law Teachers of Color in Still White Schools*, 20 U.S.F. L. REV. 385 (1986); Richard Delgado, *Minority Professors' Lives: The Bell-Delgado Survey*, 3 INST. FOR LEGAL STUD. (1988); Andrew Haines, *Minority Law Professors and the Myth of Sisyphus: Consciousness and Praxis Within the Special Teaching Challenge in American Law Schools*, 10 NAT'L BLACK L.J. 247 (1988); Strickland, *supra* note 120.

requirement and unconscious racism,¹²³ I found myself constantly struggling to maintain an integrity of both voice and substantive position. I recognized quite early on that it was my effort to speak to two audiences—the ambivalent, and potentially treacherous, role of translator—that was causing me such anxiety and fueling an always lurking writer's block. In order to integrate new insights into existing theory and case law I was forced to speak in terms that accepted by implication certain assumptions I did not share.¹²⁴ Even when I managed to remain true to my convictions, professional pressures required that I employ language and references that threatened to make my work inaccessible to a large part of the audience I most hoped to reach.¹²⁵

We must always keep in mind Du Bois' insight that it is precisely these burdens that bear the gift of second sight. We must learn not to flee to the safety of assimilation or isolationism, but to learn from the war within us and use the pluralist integration of our two selves as a guiding star in our pursuit of liberation. We must strive for a single voice that does not subvert or subordinate either of our selves, that instead demands that others recognize in our contradictory persona a paradigm for multidimensionality, for connecting understandings of our reality, understandings that reveal the complexity of social meaning and foster the fight for freedom.¹²⁶

123. Lawrence, *supra* note 51.

124. Perhaps the best example of this was my effort to demonstrate that by use of a cultural meaning test the Court could avoid the slippery slope of applying heightened scrutiny to all classifications that disadvantage the poor. Despite my disclaimers the impact of this argument was to accept and support the Court's position that wealth classifications are not suspect. I am contemplating writing an article arguing that poverty has taken on a cultural meaning which is sufficiently akin to that traditionally associated with race to support the application of heightened scrutiny to legislation disadvantaging the persistently poor. My efforts at translation in this piece did not entirely avoid treachery to my cause.

125. On "the street," my book *The Bakke Case: The Politics of Inequality* (written with J. Dreyfuss) is considered my best work. It was written in the context of a particular political struggle. The primary audience was not academicians but students, workers, and others who were directly affected by and involved in that struggle. My colleagues at Stanford and Harvard assessed the work as "well written" and "interesting" but "not the kind of work that we require for tenure." I still have not heard a satisfactory explanation of what that kind of work is, but I did understand that it required speaking the academy's language. In writing the unconscious-racism piece I was not immune to the pressures of professional recognition.

126. WILLIAMS, *supra* note 14, at 9-11. ("I think, moreover, that there is a paradigm at work, in the persistent perceptions of me as inherent contradiction: a paradigm of larger social perceptions which divide public from private, black from white, dispossessed from legitimate. This realization, while extremely personal, inevitably informs my writing on a professional level.")

C. THE GIFT OF STORYTELLING: EMBRACING NARRATIVE

We are a tongued folk. A race of singers. Our lips shape words and rhythms which elevate our spirits and quicken our blood.¹²⁷

What I enjoy most in my work is the laughter and the outrage and the attention to language. . . . Forays to the Apollo with my daddy and hanging tough on Speakers Corner with my mama taught me the power of the word, the importance of the resistance tradition, and the high standards our community has regarding verbal performance.¹²⁸

If the Word is to validate and legitimate the experience of those it seeks to serve, its form as well as its content must say to our brothers and sisters that what you see, think, and feel, the way you experience life and your creative articulation of that experience, is "scholarship/art"—is valid and of value. Storytelling, the articulation of experience and imagination in narrative, poetry, and song, is an important part of the tradition of African peoples.¹²⁹

There is also a tradition of storytelling in the law. Litigation is highly formalized storytelling.¹³⁰ The drafting of a contract tells the story of an agreement and future expectations. But the law's tradition of storytelling is very different from the African tradition. Where our tradition values rich contextual detail, the law excludes large parts of the story as irrelevant. Where we seek to convey the full range and depth of feeling, the law asks us to disregard emotions. Where we celebrate the

127. Maya Angelou, *Shades and Slashes of Light*, in BLACK WOMEN WRITERS, *supra* note 60, at 3-5.

128. Bambara, *supra* note 90, at 43.

129. The reverence for the word in traditional African thought and its transformative power in the changed historical conditions of America demanded that the word be used as a weapon and a shield from the cruel reality of American life. The capacity for speech (that is, the capacity to rap) assumed a primary place in the culture of Afro-Americans; a necessary though not a sufficient condition for liberation.

Cudjoe, *supra* note 60, at 10.

See also Robert O'Meally, *Frederick Douglass' 1845 Narrative: The Text Was Meant to Be Preached*, in AFRO-AMERICAN LITERATURE, *supra* note 100, at 192 (exploring the use of narrative in the tradition of the black preacher); ZORA NEALE HURSTON, *THE SANCTIFIED CHURCH* (1983).

130. The idea of legal disputes as formalized storytelling contests has long been a part of the folklore of advocacy. Quintillian, the Roman theorist of rhetoric, wrote: "The purpose of the statement of facts (narration) is not merely to instruct, but rather to persuade the judge," and he went on to give much advice about techniques of persuasive narrative. MARCUS FABIVS QUINTILIANUS, *INSTITUTIONIS ORATORIAE* (Clarendon Press 1958). Similarly, John W. Davis wrote in his classic *The Argument of an Appeal* that "the statement of the facts is not merely a part of the argument, it is more often than not the argument itself. A case well stated is a case far more than half argued." 26 A.B.A. J. 896 (1940).

specific and the personal, the law tells stories about disembodied “reasonable men.” Where our tradition is oral, anticipating that the story will change with each new teller and listener, the law gives primacy to the words within the four corners of the contract or evidentiary record, making time stand still and silencing the storyteller who comes with news of events or understandings that preceded or followed the written word.¹³¹

But the most important difference in these traditions is that they embody different sets of stories. Our stories have, for the most part, not been told or recorded in the literature that is the law. Accordingly, the first reason for embracing narrative is that more of our stories must be told and heard.¹³² We remain invisible and unheard in the literature that is the evidentiary database for legal discourse, and when we are seen, in stories told by others, our images are severely distorted by the lenses of fear, bias, and misunderstanding.

There is great persuasive power in narrative. Sara Lawrence Lightfoot locates the source of this power in the story’s ability to inspire feelings of commonality and connectedness among tellers, listeners, and the subjects of stories:

[S]tories express depth and complexity. They allow for ambiguity, multiple interpretation, and refracted images. The reader or listener can be convinced *and* moved, by intellect *and* emotion. And stories are not exclusive property. One story invites another as people’s words weave the tapestry of human connection.¹³³

Consider the insight, the compellingly articulated nonrational knowledge, that is contained in the following student reflection pieces responding to readings I assigned in recent classes on title II of the 1964 Civil Rights Act and on the First Amendment and racist speech.

Heart of Atlanta Motel (Sometimes, news travels slowly.)

Summer, 1965. Father, mother, brother, me. En route to New York City, by way of Gettysburg, Pennsylvania, Washington, D.C.,

131. See Thomas Grey, *Symposium on Interpreting the Ninth Amendment: The Uses of an Unwritten Constitution*, 64 CHL.-KENT L. REV. 211 (1988) (discussing the textualism implicit in the parol evidence rule). See also *infra* notes 135-38 and accompanying text (discussing the *City of Richmond* case).

132. Several scholars of color have called for the use of narratives as a way to bring these stories of our communities to the legal discourse. See Richard Delgado, *Story Telling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411 (1989); Matsuda, *supra* note 16. See generally BELL HOOKS, *PHILOSOPHY NOT THEORY FROM MARGIN TO CENTER* (1984) (suggesting that the theorist first look to the experiences of those at the margin).

133. Sara Lawrence Lightfoot, *Balm in Gilead: On Love, Justice and the Word, Speech Presented to the Equal Rights Advocates Annual Luncheon* (June 15, 1988) (transcript on file with author).

and Annapolis, Maryland. First stop Annapolis, late, tired from hours of driving, and hungry. Hotel, after hotel, after hotel, we find. Simply no room for a family like mine. Brother to the rescue. Colored bell-hop gives directions to the nearest colored inn. Where we find club sandwiches and a good night's sleep.

I could talk about how it felt to see my father go in and out of those red and brown brick buildings, in the rain, wondering how they said what they said to him, but I've promised myself not to get angry this trip. Anyway, my grandfather earned a good living for many years as the proprietor of two colored hotels in Columbus, Ohio, made profitable by the grace of segregation.

"What factors have made it harder to integrate the schools than to integrate the lunch counters, buses and hotels?"

The white folks at lunch counters
 Work the same too long
 For the same too little
 While we pay, side by side,
 For the privilege that is not.
 And we pay,
 Though the key to the hotel suite
 Opens neither minds nor opportunity.
 And we pay,
 Though the ribs in the bottom are sweet.
 White folks never give, only sell
 That which is worth less.
 And we pay.

Protecting Racist Speech

Last summer, a summer associate and I drove from Memphis to Nashville to see a concert. The next morning, her car broke down just outside of Nashville so we spent the day in a small town waiting to get it fixed. We sat in the convenience store connected to the gas station/repair shop watching customers come and go. One young woman wore a t-shirt saying:

**"FIFTH ANNUAL NIGGER NATIONALS"
 "THE FREE RIDE IS OVER"**

Between the two lines was a drawing of a black man in chains being pulled in opposite directions by two white men on motorcycles. The black man held a banner saying, "Get back, Jack." Would Justice Black consider this "addressed to or about individuals"? I don't think she planned on running into me (needless to say, we did not acknowledge each other) or any other blacks on that day. Does that matter? Why should it matter that the depiction was of a cartoonish character and not of someone in specific?

Friday Night Videos, April 15, 1988. Two white comedians host. One describes the Democratic frontrunners as Spanky, Buckwheat, and Alfalfa. Goes on to say that the white voters of Wisconsin finally woke up and realized they couldn't vote for Jackson because, "It is the 'White' House and, after all, rules are rules." Both have a good laugh. I'm not interested in banning books or in monitoring Klan meetings, but those bastards came into my home and burned a cross right in the middle of my living room.

It is this power of narrative to build bridges of validation, understanding, and empathy that makes it so powerful as an intellectual and political tool. We must "flood the market with our stories."¹³⁴ Only when these stories are told will we begin to recognize the limitations and distortions of narrowly constructed traditional legal analysis. Only as these rich and varied stories are increasingly heard will we begin to shape a new public discourse.

1. *Narrative as Methodology for Contextualization*

Stories always refer to a particular context, place, and moment. The historical and cultural setting is critical to the reader's interpretation of facts, feelings, and understandings. Much of legal analysis is both ahistorical and acontextual.¹³⁵ Human problems considered and resolved in the absence of context are often misperceived, misinterpreted, and mishandled. But the hazards and liabilities of noncontextual interpretation and decision making are not experienced randomly. Blacks and others whose stories have been and are excluded from the dominant discourse are more likely to be injured by the error of noncontextual methodology.

134. Robin West, *Jurisprudence and Gender*, 55 U. CHI. L. REV. 1, 65 (1988). I think it is important to say here that for me, "flooding the market with our stories" is an activity that should be engaged in primarily for our benefit—for the benefit of those whose stories have not been heard. Although it is important that those who are powerful, and whose voices are consequently dominant, hear our stories, the mere hearing of them will not alter the power relationship and the resultant authority to give credence and value to those stories. This can only occur through our engagement in active political struggle. We must flood the market with our stories because they will inform that struggle. Cf. Christine Littleton, *Feminist Jurisprudence: The Difference Method Makes*, 41 STAN. L. REV. 751 (1989) (reviewing CATHARINE MACKINNON, *FEMINISM UNMODIFIED* (1987), MacKinnon's critique of liberal feminism).

Thus liberal feminists make liberal theory respond to women's situation, but only on liberalism's terms. The 'women' who are made comprise merely an idea that can be changed by attention to the empirical reality of female individuals acting like individuals. Unfortunately, this only works when those who *know* they are individuals (men) recognize the behavior of women as 'acting like an individual.'

Id. at 758.

135. See Robert W. Gordon, *Historicism in Legal Scholarship*, 90 YALE L.J. 1017 (1981).

This is because the reader considering facts and abstract argument without context will inevitably provide a setting of his or her own. This imaginary, though often unacknowledged, contextualization will be based on his or her experiences or upon stories that he or she has heard. The imagined context often directly contradicts the context that would be described by the stories of individuals who are actually involved.

For example, in the case of *City of Richmond v. J.A. Croson Co.*, Justice O'Connor adopts an ahistorical, noncontextual analysis in finding that there was "no direct evidence of race discrimination on the part of the city in letting contracts or any evidence that the city's prime contractors had discriminated against minority owned subcontractors."¹³⁶ In declining to hear the many stories that might describe the experience of pervasive historical and contemporary racism in Richmond, stories that would give the city's set-aside policy a compelling purpose, she substitutes stories of her own, stories told by those who have not been the victims of racism. The unarticulated, perhaps unconscious, thought process underlying her opinion goes as follows:

I have not seen or heard stories of discrimination that have moved me to empathize with the black person who has been denied access to the contracting business. In fact, the stories I have heard are stories about men and women who are able to go as far as their talents and motivation will take them.

Thus, Justice O'Connor is able to speculate that perhaps the dearth of minority contractors can be explained by the small number of blacks who desire to become contractors.¹³⁷ Justice O'Connor's substitute context is also shaped by an abstract ideal—the "color blind" society. Thus, implicitly she treats this ideal as if it had already been achieved.¹³⁸ The set-aside program is placed in the setting of a society where discrimination has been eradicated. Consequently, the city must present evidence that Richmond is an aberration, an exception in this society that is free of racism. Furthermore, she warns against the creation of race consciousness in the future, raising the specter of the destruction of this already achieved ideal.

136. 488 U.S. 469, 480 (1989).

137. "[T]here are numerous explanations for this dearth of minority participation, including past societal discrimination in education and economic opportunities as well as both black and white career and entrepreneurial choices. Blacks may be disproportionately attracted to industries other than construction." *Id.* at 503.

138. See Joel Dreyfuss, *The New Racism*, BLACK ENTERPRISE, Jan. 1, 1978, at 410; Freeman, *supra* note 81; Charles R. Lawrence, III, *Justice or 'Just Us': Racism and the Role of Ideology*, 35 STAN. L. REV. 831 (1983). See also Neil Gotanda, *A Critique of "Our Constitution is Color Blind,"* 44 STAN. L. REV. 1 (1991).

If we are to bring fairness and justice to legal interpretation and discourse, those processes must be informed by the context of history and culture. Our stories must become a chief source of that contextualization.

2. *Stories as Text: Narrative as a Form of Knowing*

It is not enough for us to tell our stories. We must use them as text for research and interpretation. Giving narrative form to experience creates a rich evidentiary record for analysis and assessment of complex social processes. This text will look quite different from that which has served as a ground of inquiry for research and discourse in an academy dominated by white men. This is so because new stories will be told and heard. But it is also essential that narrative be valued as a source of data.¹³⁹

In embracing the use of narrative as cultural text, practitioners of the Word must consider and employ methodologies of research and interpretation that draw upon the wealth of articulated experience and feelings contained in our stories. These methodologies must also serve to give legitimacy and authority to this way of knowing. In the white male academy, narrative is valued primarily as an instrument of private expression and self-actualization. Scientists and politicians may occasionally employ the private sphere of literature as a diversionary escape or they may find, in literary criticism, useful paradigms for the interpretation of legal or cultural text. But narrative is most often viewed by legal scholars and other social scientists as a source of distortion rather than as a resource for understanding.¹⁴⁰

Fortunately, we are not without role models in our efforts to give authority to narrative. There is a strong tradition among black scholars of wedding literary narrative to social/political science. Frederick Douglass, W.E.B. Du Bois, Zora Neal Hurston, Paul Robeson, Ira Reid, and Pauli Murray all found artistic expression to be an important source

139. See BLANCA G. SILVESTRINI, *WOMEN AND RESISTANCE: HER STORY IN CONTEMPORARY CARIBBEAN HISTORY* (1990) (discussing the use of narrative in political and social reform).

140. See RICHARD A. POSNER, *LAW AND LITERATURE: A MISUNDERSTOOD RELATION* (1988) (suggesting that while intellectually interesting, the Law and Literature movement can offer little by way of social reform and that law and literature are and should remain separate disciplines). "One potentially troublesome feature of the Law and Literature Movement is that it seems to draw some of its law-trained practitioners away [from law]." *Id.* at 362.

of social/political knowledge as well as an indispensable vehicle for sharing that knowledge. Du Bois' *Souls of Black Folk*¹⁴¹ is perhaps the paradigmatic example of literature as social science and political theory.¹⁴² Other examples include Du Bois' autobiography, *Dusk of Dawn*,¹⁴³ and the autobiographical works of Douglass, Hurston, Hughes, and Murray.

Narrative is valuable as text because it is dense in the detailed and moving articulation of the teller's or subject's life experience and feeling. Paradoxically, its value as a vehicle for cultural interpretation also arises out of its capacity to create space for the reader's imagination. Patricia Williams' work is exemplary in this use of narrative. In applying the insights of critical theory to the jurisprudence of rights, she uses language and style in a self-conscious effort to unearth understandings that the law has buried in arcane vocabulary and abstraction. She says of her work:

It is not my goal merely to simplify; I hope that the result is a text that is multilayered—that encompasses the straightforwardness of real life and that reveals complexity of meaning. I am trying to create a genre of legal writing to fill the gaps of traditional legal scholarship. I would like to write in a way that reveals the intersubjectivity of legal constructions, that forces the reader both to participate in the construction of meaning and to be conscious of that process.¹⁴⁴

In the form of her argument, Williams presents a paradigm for its substantive themes. She critiques partializing, constricting social/legal construction in which rights are conceived as islands of empowerment and where there is no safe haven for those whose life is not described and inscribed by those islands. In making this critique, Williams seeks to practice what she preaches by employing narrative to create framework, setting, and tone that are inclusive, not exclusive. She uses words with multifaceted meanings so that different readers will bring different meanings to the text, and so that the same reader will recognize the many possibilities of meaning. She describes personal experiences that most of her audience will have shared to introduce analogous unshared experiences. She leaves thoughts and scenes unfinished and white space on the printed page. Her images are both powerful and muted. Her prose is both spare and dense. If these adjective pairs seem paradoxical, they are. Our own imaginations, our own experiences, provide the density that fills the space she creates.

141. See DU BOIS, *supra* note 13.

142. See *infra* notes 147-48 and accompanying text.

143. W.E.B. DU BOIS, *DUSK OF DAWN* (Transaction Books 1984).

144. Williams, *supra* note 14, at 6-8.

It is the space created in good narrative, the invitation to identify with the literary character, that allows the reader to enter into the story and know the subjective experience of another. Robin West describes how stories advance our empathic ability and moral competence.

While reading narrative literature, a reader recognizes dimensions of a character's subjectivity to which the character himself is blind and constantly discovers dimensions of her own character as well, of which she was previously unaware. As Gadamer rightly insists, we "discover ourselves" as we engage in dialogue with texts, and part of what we discover in the text as well as in ourselves are wants, needs, prejudices, desires, and even "preferences" which we did not know we had, and for which we have no plausible explanation, so long as we focus narrowly on our "individualist" histories.¹⁴⁵

In short, narrative text facilitates our knowledge of others by its capacity for rich and complex contextual description of events and emotions. At the same time, stories leave space for interpretive intervention that furthers our ability to know ourselves and discover our interrelationship with others.

3. "Poetry Is Not a Luxury": Narrative as Imagination as Social Text

The gift of storytelling is especially precious to those who would practice the Word because it is the narrative form that gives license and authority to imagination. Through stories, poems, and dreams we are able to explore inarticulate feeling and experience and give them name and form. Imagination is the key to our deepest insights and sympathies. It allows us to create, "in the mind or in an outward form . . . images of things once known but absent, of things never seen in their entirety, of things actually nonexistent, of things created new from diverse old elements, or of things perfected or idealized."¹⁴⁶

In writing about the life of W.E.B. Du Bois, Arnold Rampersad identifies Du Bois' imagination as the *sine qua non* of his genius and notes that it was this faculty that compelled and pervaded his life's work as a historian, sociologist, journalist, activist, teacher, and autobiographer. Rampersad presents Du Bois' life as "a paradigm of the place of imagination in the practical world."¹⁴⁷ Du Bois was a sometime poet,

145. Robin West, *Economic Man and Literary Woman: One Contrast*, 39 *MERCER L. REV.* 867, 870 (1986). See generally HANS-GEORG GADAMER, *PHILOSOPHICAL HERMENEUTICS* (1976) (discussing the problem of self-understanding).

146. See Arnold Rampersad, *The Art and Imagination of W.E.B. Du Bois* 4 (1976) (unpublished manuscript, on file with author).

147. *Id.* at 5.

dramatist, and novelist, and while this literary work was more avocation than vocation, his work as a social scientist and activist is also suffused with poetry and narrative.

Du Bois declined to see a separation between science and art, believing that such a distinction violated the integrity of intelligence, which could set no wall between one fundamental form of knowledge and another, since all belonged to the world of nature, of truth He devoted himself to a knowledge of this world equal to the power of his mind to imagine a better one. Science—social science, historical science, the daily observations of persons, places, events—became the mast to which the sail of the imaginary was lashed.¹⁴⁸

The use of literature and literary criticism to inform legal analysis remains at the fringes of legal discourse but is sufficiently well represented in legal academia to be called a “movement.”¹⁴⁹ I will suggest, however, that there are critical differences in the way the Law and Literature movement has used and valued stories and the paradigm that is presented in the work of Du Bois, Hurston, and Hughes. Most advocates of a literary analysis of the law view law and the humanities as two distinct enterprises distinguished in the main by different goals and purposes.

The Law and Literature movement has advanced a number of arguments for the desirability of informing the legal enterprise with the narrative voice. One such argument is similar to one that I made earlier: Traditional legal discourse is dominated by an abstract, mechanistic, professional, and rationalist voice, a voice that would be well complemented by the concrete, empathetic, passionate, human voice of literary narrative. Thus, Julius Getman argues that legal education and scholarship are impoverished by the “undervaluing of ‘human voice.’”¹⁵⁰ Getman stresses the value of “language that uses ordinary concepts and familiar situations” as an adversarial tool, but also notes the power of such language in undermining the self-serving belief among academicians that their sophistication gives them a special and more authoritative perspective on legal issues. Paul Gerwitz makes a different but related point by

148. *Id.*

149. West, *supra* note 145.

150. Julius Getman, *Colloquy: Human Voice in Legal Discourse*, 66 TEX. L. REV. 577, 582 (1988). Getman argues that teaching skills in presenting the human voice should be an important feature of legal education, noting that “successful lawyering frequently requires human understanding far more than it does intellectual rigor.” *Id.* He also laments the virtual absence of this voice from legal scholarship. *Id.* at 584.

reminding us that passion, intuition, and feeling are inevitable cohabitants with reason in law, and by arguing that literature advances the legal enterprise "because it nourishes the kinds of human understanding not achievable through reason alone."¹⁵¹ I agree fully with both of these observations. But, as I have noted earlier, blacks and other marginalized persons are doubly disabled by the exclusion of the narrative voice.¹⁵² For those of us whose story has not been told, an expansion of the scope and nature of the text has particularly important, and even revolutionary, implications.

A second important theme of the Law and Literature movement focuses on what the law can learn from literature as a parallel form of cultural interpretation. Ronald Dworkin, the chief proponent of this theme, urges that literary criticism serve as a paradigm for the interpretation of legal texts. If the role of literary criticism is to find the way of reading a text that shows it as the best possible work of art, then by analogy interpreters of legal texts should seek the meaning that enables the text to manifest the soundest principle of social or political philosophy it can embody.¹⁵³ This suggested use of literary interpretation as an analogue for legal interpretation rests on Dworkin's vision of the unity of ethics and aesthetics in a larger cultural or social text. It is a vision that he shares with James Boyd White. White urges the integration of law and literature as a way of understanding the contingency in all intellectual, artistic, and political forms and of knowing that writers and readers delineate and define communities and cultures through the creation and interpretation of text.¹⁵⁴

These insights are valuable, but their value is limited, indeed they may even be counterproductive, for those individuals and groups whose life experience has been largely excluded from "the text." Robin West recognizes this danger when she notes that White's vision of a culture shaping its ideals and moral codes through the criticism of shared constitutive texts is "unduly bound by the very text he sets out to criticize."¹⁵⁵ Like the community he criticizes, the critic's morality is the product of

151. Paul Gewirtz, *Aeschylus' Law*, 101 HARV. L. REV. 1043, 1050 (1988).

152. See *supra* notes 60-71 and accompanying text.

153. Ronald Dworkin, *Law as Interpretation*, 60 TEX. L. REV. 527 (1982), reprinted in *THE POLITICS OF INTERPRETATION*, *supra* note 51, at 249.

154. James Boyd White, *Law and Literature: No Manifesto*, 39 MERCER L. REV. 739 (1986).

155. Robin West, *Communities, Texts, and Law: Reflections on the Law and Literature Movement*, 1 YALE J.L. & HUMAN. 129, 138 (1988).

the community's texts. "The result is social criticism which is constrained and stunted by the texts it criticizes."¹⁵⁶ The "constraint" to which West refers is caused by the exclusion of outsiders; those whose voice is not heard and who are therefore not part of the community's constitutive and defining text.

[T]hose who are excluded from participation simply do not exist for the Whitean "moral textualist." Because they do not participate as subjects in the process of critique and self-transformation, they become literally objectified . . . because they are outside the community, they do not speak; because they do not speak they are objects.¹⁵⁷

This exclusion and objectification is for West, and for me, the more serious problem. If social criticism is grounded in texts that systematically exclude certain voices, then the critics will never see the excluded. They will be morally invisible.¹⁵⁸

But I am not entirely sanguine about West's proposed solution to the oppressive inadequacies of "Whitean moral textualism."¹⁵⁹ For it seems to me that West's "different answer to the questions of 'how we form community' and 'how we might form better ones' "¹⁶⁰ does not promise more inclusion and may well perpetuate the objectification of blacks and other outsiders. West substitutes an "interactive community"¹⁶¹ for the community that is defined by text. She says that this community will be more inclusive because it will include those with whom we interact in nontextual ways, those we oppress and violate and those with whom we are loving and intimate. She argues that "the way to improve our nontextual interactive community is not to 'transform' our texts, but ourselves."¹⁶²

My uneasiness with West's formulation lies not in her desire to broaden the scope of the interpretive enterprise. Rather, it derives from her reasons for abandoning the textual metaphor. In examining the oppressive objectification of textualism West contrasts two novels, Mark Twain's *Huckleberry Finn* and Toni Morrison's *Beloved*.

Beloved takes as its explicit subject matter the very problem with "moral textualism" which *Huckleberry Finn* only illustrates: "moral

156. *Id.*

157. *Id.* at 140.

158. See *infra* notes 96-98 and accompanying text, discussing Ellison's prologue to *Invisible Man*.

159. West, *supra* note 155, at 132.

160. *Id.* at 146.

161. *Id.*

162. *Id.* at 147.

textualism" objectifies by excluding those who do not participate in the production, interpretation, or criticism of a society's texts. Huckleberry Finn illustrates the problem with authorial irony, but *Beloved* explores and corrects it. In *Beloved*, the silenced and objectified communicate and become subjects. In *Beloved*, those on the outside of the textual community—the dead, the illiterate, the young, the foreign, the gagged—speak *without speech* to those on the inside.

The illiterate and the *linguistically incompetent* impose their presence. . . .

The gagged, the excluded, and the objectified all become subjects. . . .

Beloved explores communications to, from, and among the textually excluded. When the textually excluded communicate in *Beloved*, they communicate *without texts*. They communicate, instead, through imagery. . . .

They communicate with color. . . and body language, song, dance, and play. . . .¹⁶³

There is a striking ambivalence in West's language here. She speaks of objects who become subjects and yet these subjects are "without speech" and "linguistically incompetent." The characters in *Beloved* communicate "without texts." Instead they use color, body language, song, dance, and play. West sees that Morrison has turned Twain's objects into subjects by giving them voice, but their voice is not "text." And it seems that she has done something more than simply make the observation that Dworkin, White, and Twain's community of critics will not hear these voices or know this is text when they see it. For even when the characters in *Beloved* communicate with each other, when they sing and dance for themselves, West sees them communicating "without texts."

West suggests that we adopt the paradigm of "interactive communities" because she abhors and condemns the exclusion of those "without texts,"¹⁶⁴ but I fear that in this description she has inadvertently compounded the objectification, or at best failed to escape what she calls "the unbreakable circle of objectivity."¹⁶⁵

Why are Morrison's characters "linguistically incompetent"? Their language is rich and moving and conceptually precise. Why are song and

163. *Id.* at 141-43.

164. *Id.*

165. *Id.* at 140.

dance atextual? I see these characters engaged in a parallel text, a text that constitutes another community in which those who are objectified by the dominant society become subjects. The speakers of this text are surely as linguistically competent as those who objectify them. West herself notes that their language expresses feelings as well as words. And this community's text is broader than that of the excluding community, for while Morrison's character Sethe may not have known of the Dred Scott decision,¹⁶⁶ she almost certainly understood white folks better than they understood her.¹⁶⁷

My insistence that the voices of the excluded be viewed as text is more than a matter of semantics. The ability to produce text, to stand in the position of subject and tell one's own story, is central to one's humanity and one's freedom. It is central to the Word. The fact that our text has been largely oral does not mean that it is not a text. Morrison becomes an exemplary practitioner of the Word by her own valuing of this oral text in *Beloved*. Historian Blanca Silvestrini, in discussing the use of women's stories in Caribbean historiography, speaks of the exclusion of Puerto Rican women from written texts and of the importance of valuing oral text:

But most of our women did not have access to the written word. For some publishing was beyond any reasonable expectation; they lacked the power, both of making their stories thinkable in a media controlled by men and of making it appear in print. For others, like my grandmother, a large portion of the written text was inaccessible; they were not given the gift of the written word. Does this mean then that a majority of women in the Caribbean were voiceless, thus ahistorical

166. In speaking of the central character in Morrison's book, West says, "Sethe, for example, does not know the Dred Scott decision. She never read it, criticized it, or participated in any other way in its production or transformation." *Id.* at 145. While it is true that Morrison does not speak of Sethe's knowledge of Dred Scott, it is also true that news of white folks' goings-on traveled quickly in the black community, slave and free. Morrison's book powerfully captures the vitality of this community's "grapevine." Sethe may well have heard of Dred Scott, and if she did, her textual community's interpretation of this text was probably a good deal more accurate than the interpretation it was given by the dominant legal community. Certainly the text produced by this community—the text of Nat Turner's rebellion, David Walker's appeal, and Harriet Tubman's underground railroad—inspired the text of Chief Justice Taney's effort to prop up the crumbling regime of slavery.

167. See OYONO FERDINAND, *HOUSEBOY* (1966), a novel set in western Africa. This is part of a large body of work explicating master-servant relationships, where servants are well versed in all of the intimacies of their masters' lives while their masters know almost nothing of them. In the prologue to Ralph Ellison's *Invisible Man*, the narrator's victim never sees him but the narrator sees his victim and even projects himself into the victim's consciousness. ELLISON, *supra* note 101, at 3.

and without culture, or does it point to the need to revise our conceptions of what makes a voice a historical source?¹⁶⁸

This understanding of the existence of and the need to validate a parallel text among those who are excluded and objectified by the dominant text is what separates the use of narrative by those who would practice the Word from its use by the mainstream of the Law and Literature movement. For us, the contextualization of ethical debate, the recognition of the contingency and complexity of textual meaning, and, above all, the assertion of our subjective presence as creators and interpreters of text are political acts.

The practitioner of the Word does not view art and literature as a privatized enterprise. No less than the social/political sciences, the arts and literature are viewed as informing and defining public discourse and morality. The way one is portrayed in literature and the way one's own stories are valued are symbolic of one's status in the culture and in the body politic. Moreover, our literature is a necessary vehicle of our liberation. Audre Lorde rightly insists that

poetry is not a luxury. It is a vital necessity of our existence. It forms the quality of light within which we predicate our hopes and dreams towards survival and change, first made into language, then into idea, then into more tangible action. Poetry is the way we help give name to the nameless so it can be thought. . . . [A]s they become known to and accepted by us, our feelings and honest exploration of them become sanctuaries and spawning grounds for the most radical and daring of ideas. They become a safe house for that difference so necessary to change and the conceptualization of any meaningful action.¹⁶⁹

Lorde's recognition of storytelling as the birthplace of revolutionary theory reaffirms a tradition that values the transposition of feelings and experience into language as a political discipline.

D. THE GIFT OF THE DREAM: EMBRACING UTOPIA

I heard a loud voice in the heavens, and the spirit instantly appeared to me and said . . . I should arise and prepare myself, and slay my enemies with their own weapons . . . for the time was fast approaching when the first should be last and the last should be first.

—Nat Turner, 1831

I have a dream that one day this nation will rise up and live out the true meaning of its creed

168. Silvestrini, *supra* note 139, at 29.

169. AUDRE LORDE, *SISTER OUTSIDER* (1984).

I have a dream that one day on the red hills of Georgia, the sons of former slaves and the sons of former slaveowners will be able to sit down together at the table of brotherhood

I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character.

—Martin Luther King, 1963

Perhaps the greatest gift bestowed upon practitioners of the Word is the gift of the dream.¹⁷⁰ It is also the most elusive gift. It is both difficult to define and infrequently bestowed. Dreams are unconscious and instinctual. They are more closely related to feeling and emotion than to rational thought, more akin to matters of the spirit than to matters of science. Thus, dreaming is thought to be the occupation of religious leaders, poets, and indolents. It is hardly considered a scholarly endeavor. But the scholar who would also be a freedom fighter must not be afraid to dream. For dreams are by their nature liberating. Furthermore, those who are gifted with the talent of dreaming are often engaged in some way with the work of liberation. Dreamers, be they prophets, politicians, or philosophers, challenge established understandings with the new and unfamiliar.

Black Americans, as a people and a culture, have been dreamers.¹⁷¹ We have valued our dreams and respected their power.¹⁷² As a community we have taken seriously the heightened empathy of the child born with a caul.¹⁷³ We have listened to the voices of our ancestors even when we did not know where those voices came from.¹⁷⁴ We have venerated

170. I use the word "dream" here to refer both to the symbolic language, visions, or unconscious thoughts that we experience during sleep or in trancelike states, and to the consciously conceived hope, goal, or insight about a heretofore-unimagined idea. I believe that these two sorts of dreaming, the dreams of the prophet and the dreams of the genius, are closely related. See CARL GUSTAV JUNG, *MAN AND HIS SYMBOLS* 5 (1964) (discussing the way dreams incorporate archetypal, symbolic language).

171. I believe that this is true of most cultures whose spirituality or religion is rural or natural in origin. It is safe to say that all religion has its origins in man's relationship to nature and that in the early, or "primitive," stages of man's development, before urbanization and the imposition of hierarchy and bureaucracy, religious practitioners were more open to the psychic properties of nature, to dreams and visions. It is not coincidental that the Jews of the Bible so often saw visions from God, that the Druids of the first century B.C. were seers and visionaries, and that dreams are so central to the religions of the Native American tribes. Nor is it an accident that it is the oppressed who have most often been dreamers.

172. JUNG, *supra* note 170, at 52-53 (describing a culture whose members did not believe dreams to be important and consequently did not believe they dreamed).

173. See TINA ANSA, *BABY OF THE FAMILY*. See also LIGHTFOOT, *supra* note 6, for Margaret Lawrence's description of her family's story of the origin of her special insight and healing talents.

174. See TONI MORRISON, *BELOVED* (1987) (drawing upon that part of black culture that is open to messages from ghosts).

those women and men within our communities who knew how to heal psychic wounds through prayer and the laying on of hands.¹⁷⁵ And there has been a special place in our hearts for those with visions of new and better futures. It is the revolutionary dreamer who is most revered in the black community.¹⁷⁶

Those who have enslaved and oppressed blacks have told a story of a people whose indolence, irrationality, excess of passion, and superstition justified their subordinated status. The black scholar who calls upon his colleagues to dream must be careful to distinguish his position from any that supports this stereotype of the naive primitive ruled by emotion and belief in the fantastic. In insisting upon the value of inspirational insight I do not intend to imply that rigorous rational analysis is not a critical part of this work. Dreams, sleeping or wakeful, may inspire the breakthrough to a new paradigm, but the work of carefully and critically testing that paradigm is essential.

1. *The Dream as Reconstructionist History*

Dreams serve the practitioner of the Word because they reconstruct history. I have discussed the value of reconstructionist history to the cause of liberation in the section on subjectivity as positioned perspective. It is particularly important for those whose story has been told by those responsible for their oppression to reconsider that story and retell it.¹⁷⁷ Much of what we experience as dreams is the expression of memory. Images, ideas, thoughts, and feelings, once experienced, are forced into unconsciousness because there is not enough room in the conscious mind¹⁷⁸ or because the experience or feeling is painful or upsetting and is thus repressed from consciousness.¹⁷⁹ These "forgotten" experiences, this history housed in the unconscious, emerge in dreams.¹⁸⁰ Moreover, dreams often reveal those aspects of experience and feeling that are most

175. Toni Morrison's character Baby Suggs in the novel *Beloved* embodies these members of our communities.

176. Nat Turner, Harriet Tubman, Sojourner Truth, Marcus Garvey, W.E.B. Du Bois, Martin Luther King, Jr., and Malcolm X.

177. See *supra* notes 111-20 and accompanying text.

178. See Lawrence, *supra* note 51, at 336.

179. "Freudian theory states that the human mind defends itself against the discomfort of guilt by denying or refusing to recognize those ideas, wishes, and beliefs that conflict with what the individual has learned is good or right." *Id.* at 322.

180. The dream is a specific expression of the unconscious. JUNG, *supra* note 170, at 6.

difficult for us to recognize or acknowledge.¹⁸¹ Thus, our dreams provide us with historical material for reconstruction, and they often begin the reconstructive project by bringing to the fore those aspects of memory that have previously been repressed.

In the dream that appears in the prologue to this Article I encounter a familiar experience. A member of the academic establishment questions the value of my work and challenges me to prove that I am deserving of my position in his elite company. The images in the dream represent both recent memories and memories from my law school days. I am confronted with my dream antagonist's challenge each day in discussions with colleagues, in the literature, and in judicial opinions about affirmative action, appointments, admissions, and scholarship. In my waking life the challenge is not made so forthrightly, and it is rarely made directly to or about me. It is made more obliquely in discussions about the qualifications or work of other colleagues or students of color.

Most often my response is to repress the feelings of inadequacy, self-doubt, hurt, and anger, to pretend that the discussion is not about me, to pretend not to have heard the challenge. At other times, I join the discussion accepting the ground rules of politeness and abstraction as well as the premises of dominant theory.

The dream presents the challenge and my reaction to that challenge more starkly, more vividly, and more truly. The disguises of abstract argument, hypothetical case, theoretical construct, and polite form have been removed. The full force of my feelings has been recaptured and expressed. By this re-presentation the dream has begun to reconstruct history. By valuing the message of the dream I am able to continue that reconstruction in interpretive conversations with others who have shared the experience and resonate with the dream's vivid images.

181. SIGMUND FREUD, *THE INTERPRETATION OF DREAMS* 252 (1965). A common dream among accomplished persons, for example, is one that reveals an unacknowledged insecurity, a fear that they may be discovered as a fraud.

Just before classes are to begin in the fall of each term I have a dream with a recurring theme. I am in a class at the Yale Law School. I am already a full professor, but it has been discovered that I am still lacking one course for graduation from law school and I have been required to return to complete this course. The students in the class know that I am a professor from another institution and are familiar with the circumstances under which I have been required to take this course. I am totally unfamiliar with the material assigned for the class. I have not done the reading. I am certain that the instructor will call on me first.

One of my colleagues has the following recurring dream: He is in court sitting at counsel table, dressed in a conservative blue pinstripe suit. The judge asks him to approach the bench. He stands up and discovers that he does not have any pants on.

Derrick Bell uses similar dreamlike visions to do reconstructionist history. In *The Chronicle of the Constitutional Contradiction*¹⁸² Geneva travels back in time to address the framers at the Constitutional Convention. We know that such a trip is fantastic, but we also know from Geneva that what she has experienced is real to her. Although Geneva and *The Chronicle* are Professor Bell's invention, it is no accident that Bell's message is presented in a form which, like a dream, is both fantastic and real. Bell's chronicles are the waking dreams of the prophet/poet. He must call upon that part of his consciousness that is not bound by reality. By opening himself to dreamlike fantasy he is inspired by parts of his experience that have been repressed as illegitimate, unacceptable, or in conflict with the dominant view of reality.¹⁸³

The Chronicle of the Constitutional Contradiction reconstructs history.¹⁸⁴ Like the sleeping dream, it starkly presents those parts of the story that were sublimated and repressed.¹⁸⁵ Geneva confronts the framers with the moral dilemma they sought to avoid, even forcing them to confront the enormity of the price their descendants will pay.¹⁸⁶ The framers resist this intrusion on their consciousness as do many readers of Professor Bell's chronicle.¹⁸⁷

2. *The Dream as Inspiration*

One can also speak of dreams as an expression of hope for the future or as an imagining of new possibilities. When Martin Luther King, Jr., spoke of having "a dream," he conveyed this meaning. The meaning contains both an optimism for a better future and a vision of how that future will be better. King's dream is inspirational in two senses: Its message is infectious and encouraging and its origin is spontaneous, a

182. BELL, *supra* note 41, at 26.

183. Many artists, philosophers, and even scientists owe some of their best ideas to inspirations that appear suddenly from the unconscious. JUNG, *supra* note 170, at 24-26.

184. BELL, *supra* note 41, at 26.

185. BELL, *supra* note 19, at 47. This is a metaphor for the repression of this reality from the national consciousness. *Id.*

186. "Do you recognize," Geneva asks, "that in order to gain unity among yourselves, your slavery compromises sacrifice freedom for the Africans who live amongst you and work for you? Such sacrifices of the rights of one group of human beings will, unless arrested here, become a difficult-to-break pattern in the nation's politics." BELL, *supra* note 41, at 32.

187. After an initial shocked silence, the delegates attempt to physically eject Geneva from their proceedings. "Woman! who are you and by what authority do you interrupt this gathering? . . . How dare you insert yourself in these deliberations." *Id.* at 27-28. Bell notes that many colleagues resist the message of this chronicle, expressing appreciation for the power of the story while ignoring its message of racism's centrality to our social compact. Conversation with Derrick Bell (June 1983).

seemingly divine imparting of knowledge, a brainstorm. Both of these elements of the wakeful dream are important to the practice of the Word. The sustained struggle for liberation from racial oppression must be fed by a faith in ultimate victory. A true revolution must be guided by ideas that do not arise from old paradigms of thought.¹⁸⁸

To say that an oppressed people has a special capacity for hope may seem paradoxical, but the slave knows intuitively that the system of slavery is vulnerable and that its destruction is inevitable. If this were not so, why would the master be so fearful of its demise? And why would he expend so many resources defending it? Mari Matsuda has noted that the attention given to maintaining conditions of racial oppression that "reveals the deep contradictions and instability inherent in any racist organization of social life."¹⁸⁹

But much of our faith in the inevitability of the victory of good over evil is exactly that: a faith. It is a faith that is perhaps best summed up in the expression "The Lord don't like ugly."¹⁹⁰ Although much of the black community grounds its faith in a theological belief, this faith in the ultimate demise of racist structures does not depend upon a belief in God. Rather, our morality rests in our personal knowledge of the subordinator's fear and disease. "The third level of fear experienced by the master is the fear of self-discovery . . . that he will understand that his need to define others as inferior and treat them as such comes from [and produces] his own feelings of inferiority."¹⁹¹ We know that racism ill serves the racists. We are hopeful because our vision, our morality, is a vision that will free us all.¹⁹²

We see this combination of hard-nosed skepticism and hopeful faith in the inevitability of a better world in the work of many scholars of color. One might expect that the work of people like Regina Austin,

188. CATHARINE MACKINNON, *TOWARD A FEMINIST THEORY OF STATE* 106-25 (1989) (on the impossibility of building the revolution with the oppressors' tools).

189. Matsuda, *supra* note 16, at 2.

190. Most of us first heard this expression from our grandmothers. It was used as an admonition to correct one's behavior, to invoke God's authority lest one might be foolhardy enough to believe that Grandma's authority were not enough.

191. Lawrence, *supra* note 1, at 632.

192. Several years ago a student approached me after my constitutional law class. In an earnest voice she asked how it was that I could maintain such a cheerful and optimistic attitude in my teaching when so much of what I taught was a story of the injustice of the law. I started to tell her that my positive tone was all a front, that I was angry and pessimistic and depressed. Then I realized that this was only partly true. I was more hopeful than not, and my optimism in the face of overwhelming odds could only be explained by my belief in the righteousness of my cause and the fact that I didn't want to change places with any white folks.

Derrick Bell, Kimberle Crenshaw, Gerald Torres, Mari Matsuda, and Patricia Williams would have a pessimistic bent. Their critical analysis of the law, as both a product and promoter of racism deeply rooted in political and social structures, is certainly a less than hopeful story. But the ultimate tone of their writings and their daily works in the world evidence an undeniably positive view of humankind.¹⁹³

The heightened ability of those who are oppressed to envision new possibilities is also a function of their discontent under the status quo. Those who are least well served by present structures and ideologies are most likely to dream of others that might serve them better.

There is another element, in addition to that of hope, in King's dream. This is the vision of new possibilities. Dreams are liberating because of their spontaneous and inspirational quality. I believe that the power of this kind of wakeful dreaming, this imagining of possibilities, is related to the fantastic quality of unreality that it shares with the sleeping dream.¹⁹⁴ In utopian dreams we imagine the unknown. We think that which is not possible within existing paradigms.¹⁹⁵ "But that's not possible" is not an adequate or even sensible rejoinder to one who asserts that she has a dream. A dreamer cannot be called to account because she does not have adequate evidence to support the feasibility of her dream. She can always reply, "I can dream, can't I?" Thus, dreams, like poetry, make the work of imagining new ideas a legitimate enterprise. Practitioners of the word will find little to validate this dream-work in the halls of legal academia, but it is work that must be nurtured.

193. See Regina Austin, *Employer Abuse, Worker Resistance, and the Tort of Intentional Infliction of Emotional Distress*, 41 STAN. L. REV. 1 (1988); Kimberlé Crenshaw, *Race, Reform, and Enfranchisement: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988); Derrick Bell et al., *Racial Reflections: Dialogues in the Direction of Liberation*, 37 UCLA L. REV. 1037 (1990); Mari J. Matsuda, *Voices of America: Accent, Antidiscrimination Law, and a Jurisprudence for the Last Reconstruction*, 100 YALE L.J. 1329 (1991); WILLIAMS, *supra* note 14. See also, John Denvir, *William Shakespeare and the Jurisprudence of Comedy*, 34 STAN. L. REV. 825, 848 (1987) (noting the optimism present in Derrick Bell's work as well as in my own).

194. There may be another way the wakeful inspiration of the philosopher, physicist, or revolutionary leader is related to the sleeper's dream. Psychologists have observed that there are always certain feelings, experiences, and events of which we have not consciously taken note. These events have remained, as it were, below the threshold of consciousness. They have been absorbed subliminally without our conscious knowledge. Jung notes that just as these events emerge into consciousness in dreams, we may also become aware of them in a moment of intuition, inspiration or profound thought. While the thought seems new, we realize that it must be the product of past experience. "Though we may have originally ignored (its) emotional vital importance, it later wells up from the unconscious as a sort of afterthought." JUNG, *supra* note 170, at 5.

195. There is another aspect of dreaming that engenders new insights. The symbolic language of a dream always stands for something more than its immediate meaning. It invites new and multiple interpretations.

V. CONCLUSION

This Article has its genesis in the history and tradition of radical teaching among dominated people of color who have made the struggle for liberation and humanization their life's work. We have inherited this vocation from parents and grandparents and from countless others who have resisted racial oppression. The meaning of "vocation" is central to the definition of this work. One is called upon to accept a legacy, but a vocation implies choice. One must *choose* to accept the gift and burden of this inheritance. One must choose to embrace the values of humanism. One must choose to engage in the practice of liberationist teaching. One must choose to join the river of struggle. I trust that this beginning effort at naming and describing this work will help to nurture and sustain those of my colleagues who have chosen to preach and practice the Word. I hope that it will encourage others to make that vocational choice and to join in the ongoing conversation that teaches freedom to us all.