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Storytelling for Oppositionists and Others: A Plea for Narrative

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STORYTELLING FOR OPPOSITIONISTS AND OTHERS: A PLEA FOR NARRATIVE

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INTRODUCTION

Everyone has been writing stories these days. And I don't just mean writing *about* stories or narrative theory, important as those are.[1] I mean actual stories, as in "once-upon-a-time" type stories. Derrick Bell has been writing "Chronicles," and in the *Harvard Law Review* at that.[2] Others have been writing dialogues,[3] stories,[4] and metastories.[5] Many others have been daring to become more personal in their writing, to inject narrative, perspective, and feeling — how it

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1. *See* ON NARRATIVE (W. Mitchell ed. 1981); 1 & 2 P. RICOEUR, TIME AND NARRATIVE (1984-85); Cover, *The Supreme Court, 1982 Term — Foreword:* Nomos *and Narrative,* 97 HARV. L. REV. 4 (1983); Des Pres, *On Governing Narratives: The Turkish-Armenian Case,* 75 YALE REV. 517 (1986); West, *Jurisprudence As Narrative: An Aesthetic Analysis of Modern Legal Theory,* 60 N.Y.U. L. REV. 146 (1985) [hereinafter *Jurisprudence As Narrative*]; *see also* J. ADAMS, THE CONSPIRACY OF THE TEXT: THE PLACE OF NARRATIVE IN THE DEVELOPMENT OF THOUGHT (1986); J. CAMPBELL, THE POWER OF MYTH (1988) (transcript of interview with Bill Moyers); T. LEITCH, WHAT STORIES ARE: NARRATIVE THEORY AND INTERPRETATION (1986).

2. D. BELL, AND WE ARE NOT SAVED (1987) [hereinafter AND WE ARE NOT SAVED]; Bell, *The Supreme Court, 1984 Term — Foreword: The Civil Rights Chronicles,* 99 HARV. L. REV. 4 (1985) [hereinafter *The Civil Rights Chronicles*].

3. *E.g.,* Delgado, *Derrick Bell and the Ideology of Race Reform Law: Will We Ever Be Saved?* (Book Review), 97 YALE L.J. 923 (1988) [hereinafter *Saved?*]; Delgado & Leskovac, *The Politics of Workplace Reforms: Recent Works on Parental Leave and a Father-Daughter Dialogue* (Book Review), 40 RUTGERS L. REV. 1031 (1988); *see also* B. ACKERMAN, SOCIAL JUSTICE IN THE LIBERAL STATE 238-39 (1980) (dialogue between a disadvantaged and an affluent person on the notion of equal sacrifice).

4. *E.g.,* I NEVER TOLD ANYONE, WRITINGS BY WOMEN SURVIVORS OF CHILD SEXUAL ABUSE (E. Bass & L. Thorsten eds. 1983); Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights,* 22 HARV. C.R.-C.L. L. REV. 401, 401-02 (1987) [hereinafter *Alchemical Notes*]; *see also* West, *Authority, Autonomy, and Choice: The Role of Consent in the Moral and Political Visions of Franz Kafka and Richard Posner,* 99 HARV. L. REV. 384 (1985); Meisol, *A New Genre of Legal Scholarship: Storytelling Feminist Takes on the Fundamentals of Law,* L.A. Times, Oct. 7, 1988, part V, at 8, col. 1 (quoting Robin West: "We need to flood the market with our own stories until we get [the] point across.").

5. *E.g.,* Bracamonte, *Foreword: Minority Critiques of the Critical Legal Studies Movement,* 22 HARV. C.R.-C.L. L. REV. 297, 297 (1987); *Alchemical Notes, supra* note 4, at 401. *See generally* J. GARDNER, THE ART OF FICTION 82-94 (1984) (defining and giving examples of metafiction).

was for me — into their otherwise scholarly, footnoted articles[6] and, in the case of the truly brave, into their teaching.[7]

Many, but by no means all, who have been telling legal stories are members of what could be loosely described as outgroups,[8] groups whose marginality defines the boundaries of the mainstream, whose voice and perspective — whose consciousness — has been suppressed, devalued, and abnormalized. The attraction of stories for these groups should come as no surprise. For stories create their own bonds, represent cohesion, shared understandings, and meanings. The cohesiveness that stories bring is part of the strength of the outgroup. An outgroup creates its own stories, which circulate within the group as a kind of counter-reality.

The dominant group creates its own stories, as well. The stories or narratives told by the ingroup remind it of its identity in relation to outgroups, and provide it with a form of shared reality in which its own superior position is seen as natural.[9]

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6. *E.g.*, Colker, *Feminism, Sexuality, and Self: A Preliminary Inquiry into the Politics of Authority* (Book Review), 68 B.U. L. REV. 217, 230 (1988); Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 U. PA. L. REV. 561, 574-75 (1984) [hereinafter *The Imperial Scholar*]; Estrich, *Rape*, 95 YALE L.J. 1087 (1986) (beginning article on rape reform by recounting her own rape); Freeman, *Racism, Rights and the Quest for Equality of Opportunity: A Critical Legal Essay*, 23 HARV. C.R.-C.L. L. REV. 295, 329 (1988); *see also* MacKinnon, *Feminism, Marxism, Method, and the State: An Agenda for Theory*, 7 SIGNS 515 (1982) [hereinafter MacKinnon, *Theory*]; MacKinnon, *Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence*, 8 SIGNS 635 (1983) [hereinafter MacKinnon, *Jurisprudence*].

7. *E.g.*, Crenshaw, *Foreword: Toward A Race-Conscious Pedagogy in Legal Education*, 11 NATL. BLACK L.J. 1 (1989); Johnson & Scales, *An Absolutely, Positively True Story: Seven Reasons Why We Sing*, 16 N.M. L. REV. 433 (1986); Matsuda, *Affirmative Action and Legal Knowledge: Planting Seeds in Plowed-Up Ground*, 11 HARV. WOMEN'S L.J. 1, 14-16 (1988) [hereinafter *Affirmative Action*] (use of S. WEBB & R.W. NELSON, SELMA, LORD, SELMA: GIRLHOOD MEMORIES OF THE CIVIL RIGHTS DAYS (1980) to explain civil rights movement and limits of liberal legalism in American Legal History class; use of an Alice Walker essay to explain rationale of compensation for wrongful death in torts class); D. Friedrichs, Narrative Jurisprudence and Other Heresies: Legal Education at the Margin 16-27 (Mar. 1988) (unpublished manuscript on file with author) (use of narrative forms, including biographies and autobiographies of legal practitioners and scholars, in teaching interdisciplinary law and society class). Professors who teach in nonstandard fashion sometimes evoke strong reactions of rejection from their students. *See, e.g.*, Bell, *The Price and Pain of Racial Perspective*, Stan. L. Sch. J., May 9, 1986, at 3, col. 1.

8. By "outgroup" I mean any group whose consciousness is other than that of the dominant one. *Cf.* Walker, *Choice: A Tribute to Dr. Martin Luther King, Jr.*, in IN SEARCH OF OUR MOTHERS' GARDENS 142 (1983); *Affirmative Action*, *supra* note 7, at 1 n.2 (term "outsiders" used to include those who are not white males and who are historically underrepresented in law schools); *The Imperial Scholar*, *supra* note 6, at 566 (nonwhites' exclusion from inner circles of civil rights scholarship). *See generally* M.-L. VON FRANZ, PROBLEMS OF THE FEMININE IN FAIRYTALES (1976).

9. Des Pres, *supra* note 1; *see* T. PETERSON, HAM & JAPHETH: THE MYTHIC WORLD OF WHITES IN THE ANTEBELLUM SOUTH 5 (1978); *see also* J. ZIPES, FAIRYTALES AND THE ART OF SUBVERSION (1985); A. GRAMSCI, SELECTIONS FROM THE PRISON NOTEBOOKS (Q. Hoare & G.N. Smith trans./eds. 1971); Lévi-Strauss, *The Structural Study of Myth*, 66 J. AM. FOLKLORE 428 (1955).

The stories of outgroups aim to subvert that ingroup reality. In civil rights, for example, many in the majority hold that any inequality between blacks and whites is due either to cultural lag, or inadequate enforcement of currently existing beneficial laws — both of which are easily correctable. For many minority persons, the principal instrument of their subordination is neither of these.[10] Rather, it is the prevailing *mindset* by means of which members of the dominant group justify the world as it is, that is, with whites on top and browns and blacks at the bottom.[11]

Stories, parables, chronicles, and narratives are powerful means for destroying mindset — the bundle of presuppositions, received wisdoms, and shared understandings against a background of which legal and political discourse takes place.[12] These matters are rarely focused on. They are like eyeglasses we have worn a long time. They are nearly invisible; we use them to scan and interpret the world and only rarely examine them for themselves.[13] Ideology — the received wisdom — makes current social arrangements seem fair and natural. Those in power sleep well at night — their conduct does not seem to

10. *See, e.g.*, AND WE ARE NOT SAVED, *supra* note 2; D. BELL, RACE, RACISM, AND AMERICAN LAW (1981) [hereinafter RACE, RACISM, AND AMERICAN LAW]; Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1359 (1988); *Saved?*, *supra* note 3; *Alchemical Notes*, *supra* note 4.

11. *See, e.g.*, T. PETERSON, *supra* note 9; Bonsignore, *In Parables: Teaching About Law Through Parables*, 12 LEGAL STUD. F. (forthcoming); Des Pres, *supra* note 1; Freeman, *Legitimating Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine*, 62 MINN. L. REV. 1049 (1978) [hereinafter *A Critical Review*]; Lawrence, *The Id, The Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987); Williams, *Taking Rights Aggressively: The Perils and Promise of Critical Legal Theory for Peoples of Color*, 5 LAW & INEQUALITY 103 (1987) [hereinafter *Taking Rights*] (role of "Euromyths" in sustaining white domination); *see also* A. LORDE, SISTER OUTSIDER (1984); Kennedy, *Legal Education as Training for Hierarchy*, in THE POLITICS OF LAW 40 (D. Kairys ed. 1981); Steele, *I'm Black, You're White, Who's Innocent?*, HARPER'S, June 1988, at 45 (innocence-giving myths and accounts enable whites to be comfortable with things as they are).

12. *See* AND WE ARE NOT SAVED, *supra* note 2, at 5-7; W. BENNETT & M. FELDMAN, RECONSTRUCTING REALITY IN THE COURTROOM 5 (1981) ("Stories are systematic means of storing, bringing up to date, rearranging, comparing, testing, and interpreting available information about social behavior"); *The Master's Tools Will Never Dismantle the Master's House*, in A. LORDE, *supra* note 11, at 110; Cover, *supra* note 1, at 4-5; *Saved?*, *supra* note 3; Delgado & Leskovac, *supra* note 3; Sherwin, *A Matter of Voice and Plot: Belief and Suspicion in Storytelling*, 87 MICH. L. REV. 543, 550-52 (1988) (on the need to balance rhetoricians' search for belief and community against deconstructionists' suspicion); *see also* J. GARDNER, *supra* note 5, at 88; Tagliabue, *Police Draw the Curtain, but the Farce Still Plays*, N.Y. Times, June 14, 1988, at A4, col. 3.

13. *See generally* M. BALL, LYING DOWN TOGETHER: LAW, METAPHOR, AND THEOLOGY 135 (1985); H. GADAMER, TRUTH AND METHOD (1975); Bender, *A Lawyer's Primer on Feminist Theory and Tort*, 38 J. LEGAL EDUC. 3, 13 (1988); *Saved?*, *supra* note 3, at 929; Delgado & Leskovac, *supra* note 3, at 1039; Peller, *The Metaphysics of American Law*, 73 CALIF. L. REV. 1151 (1985); White, *The Value of Narrativity in the Representation of Reality*, in ON NARRATIVE, *supra* note 1, at 23.

them like oppression.[14]

The cure is storytelling (or as I shall sometimes call it, counterstorytelling). As Derrick Bell, Bruno Bettelheim, and others show, stories can shatter complacency and challenge the status quo.[15] Stories told by underdogs are frequently ironic or satiric;[16] a root word for "humor" is humus — bringing low, down to earth.[17] Along with the tradition of storytelling in black culture[18] there exists the Spanish tradition of the picaresque novel or story, which tells of humble folk piquing the pompous or powerful and bringing them down to more human levels.[19]

Most who write about storytelling focus on its community-building functions: stories build consensus, a common culture of shared understandings, and deeper, more vital ethics. Counterstories, which challenge the received wisdom, do that as well. They can open new windows into reality, showing us that there are possibilities for life other than the ones we live. They enrich imagination and teach that

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14. *See supra* note 8 (consciousness as the defining characteristic of "outgroups"); *The Imperial Scholar, supra* note 6; *Saved?, supra* note 3, at 926, 931; Delgado & Leskovac, *supra* note 3, at 1050-54, 1058. *See generally* Lévi-Strauss, *supra* note 9, at 428-29 (supporting the idea that myths are used by social groups to overcome contradiction —to feel comfortable with a reality that would otherwise be difficult to explain).

15. *See* B. BETTELHEIM, THE USES OF ENCHANTMENT (1975); Kundera, *The Novel and Europe,* N.Y. REV. BOOKS, July 19, 1984, at 15 (stories enable us to go beyond conventional interpretation; good storytellers subvert and deepen culture); Steele, *supra* note 11, at 45; Stone, *The Reason for Stories: Toward a Moral Fiction,* HARPER'S, June 1988, at 71 (stories essential to sense of self; fiction expands range of human possibilities); *see also supra* note 12.

16. *See, e.g., infra* section I.D (the savage satire of Al-Hammar X); *infra* section I.E (the more subtle use of irony by the author of the anonymous leaflet); *see also* LAY MY BURDEN DOWN: A FOLK HISTORY OF SLAVERY 1-2 (B. Botkin ed. 1945); PUTTIN' ON OLE MASSA: THE SLAVE NARRATIVES OF HENRY BIBB, WILLIAM WELLS BROWN, AND SOLOMON NORTHRUP 33, 46 (G. Osofsky ed. 1969) [hereinafter PUTTIN' ON OLE MASSA]; Arnez & Anthony, *Contemporary Negro Humor as Social Satire,* 29 PHYLON 339 (1968); Bell, *The Final Report: Harvard's Affirmative Action Allegory,* 87 MICH. L. REV. 2382 (1989); Marshall, *Reflections on the Bicentennial of the United States Constitution,* 101 HARV. L. REV. 1 (1987); Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations,* 22 HARV. C.R.-C.L. L. REV. 323, 335-37 (1987) [hereinafter *Looking to the Bottom*]; Warren & Ellison, *A Dialogue,* REPORTER, Mar. 25, 1965, at 42; *Taking Rights, supra* note 11.

17. J. SHIPLEY, THE ORIGINS OF ENGLISH WORDS 441 (1984) (humor derives from *ugu,* a word for wetness; related to humus — earth or earthly sources of wetness); *see also* THE OXFORD DICTIONARY OF ENGLISH ETYMOLOGY 452 (C. Onions ed. 1966).

18. *See* THE BOOK OF NEGRO FOLKLORE (L. Hughes & A. Bontemps eds. 1958); THE NEGRO AND HIS FOLKLORE IN NINETEENTH CENTURY PERIODICALS (B. Jackson ed. 1967); Greene, *A Short Commentary on the Chronicles,* 3 HARV. BLACKLETTER J. 60, 62 (1986); *see also* L. PARRISH, SLAVE SONGS OF THE GEORGIA SEA ISLANDS (1942).

19. *See, e.g.,* M. CERVANTES, DON QUIXOTE OF LA MANCHA (W. Starkie trans./ed. 1954) (1605). For ironic perspectives on modern Chicano culture, see R. RODRIGUEZ, HUNGER OF MEMORY (1980); López, *The Idea of a Constitution in the Chicano Tradition,* 37 J. LEGAL EDUC. 162, (1987); Rodriguez, *The Fear of Losing a Culture,* TIME, July 11, 1988, at 84. *Cf. The Imperial Scholar, supra* note 6 (ironic examination of the dearth of minority scholarship in the civil rights field); Tagliabue, *supra* note 12 (Polish street theater group uses humor and irony to expose Communism's flaws).

by combining elements from the story and current reality, we may construct a new world richer than either alone.[20] Counterstories can quicken and engage conscience. Their graphic quality can stir imagination in ways in which more conventional discourse cannot.[21]

But stories and counterstories can serve an equally important destructive function. They can show that what we believe is ridiculous, self-serving, or cruel. They can show us the way out of the trap of unjustified exclusion. They can help us understand when it is time to reallocate power. They are the other half — the destructive half — of the creative dialectic.

Stories and counterstories, to be effective, must be or must appear to be noncoercive. They invite the reader to suspend judgment, listen for their point or message, and then decide what measure of truth they contain.[22] They are insinuative, not frontal; they offer a respite from the linear, coercive discourse that characterizes much legal writing.

This essay examines the use of stories in the struggle for racial reform. Part I shows how we construct social reality by devising and passing on stories — interpretive structures by which we impose order on experience and it on us. To illustrate how stories structure reality, I choose a single race-tinged event and tell it in the form of five stories or narratives. Each account is followed by analysis, showing what the story includes and leaves out and how it perpetuates one version of social reality rather than another. Part II deals with counterstories,

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20. The process of *creating* that new world will not always be pleasant or easy, but sometimes full of challenge and tension. *See Saved?, supra* note 3, at 927 n.20, 947; *Alchemical Notes, supra* note 4, at 406-09; D. Friedrichs, *supra* note 7, at 4 ("[Stories] challenge taken-for-granted hierarchies both by exposing . . . the cruel consequences of such hierarchies, and by imaginatively promoting alternative accounts of how humans might live . . . ."); *see also* D. HOFSTADTER, GÖDEL, ESCHER, BACH: AN ETERNAL GOLDEN BRAID 28 (1980); Rycroft, *The Sixth Sense* (Book Review), N.Y. Rev. Books, Mar. 13, 1986, at 11. *See generally* M. BALL *supra* note 13; J.B. WHITE, THE LEGAL IMAGINATION (1973) [hereinafter THE LEGAL IMAGINATION]; J.B. WHITE, WHEN WORDS LOSE THEIR MEANING (1984) [hereinafter WHEN WORDS].

21. *See* Stone, *supra* note 15, at 71, 75; West, *Economic Man and Literary Woman: One Contrast,* 39 MERCER L. REV. 867, 875 (1988) [hereinafter *Economic Man*]; *Jurisprudence as Narrative supra,* note 1, at 145-46 ("When we discuss what is, we rely quite rightly upon description and analysis. But when we discuss what is possible, what we desire and what we dread, we quite naturally turn to stories . . . ."); Friedrichs, *supra* note 7, at 13. *Cf.* Gabel, *Phenomenology of Rights-Consciousness and the Pact of the Withdrawn Selves,* 62 TEXAS L. REV. 1563 (1984); Tushnet, *An Essay on Rights,* 62 TEXAS L. REV. 1363, 1382-84 (1984). *See generally* J. GARDNER, ON MORAL FICTION 5, 15-16 (1978); G. ELIOT, *The Natural History of German Life,* in ESSAYS OF GEORGE ELIOT 266 (T. Pinney ed. 1963).

22. For discussion of this "willing suspension of disbelief," see Friedrichs, *supra* note 7, at 7 (narrative form useful for conveying "heretical notions" because less "abrasively didactic" than other forms; readers willingly expose themselves to narrative accounts of outgroup figures). But note Bell's warning: Moses, Jesus, Plato, and Socrates all used stories to explain or challenge law and politics. Even so, the minority storyteller must balance tale telling with solid legal analysis, so as not to seem "too general and too devoid of legal theory for some of [his or her] academic friends." *The Civil Rights Chronicles, supra* note 2, at 82.

competing versions that can be used to challenge a stock story and prepare the way for a new one. Section II.A lays out in greater detail the case for counter-storytelling by outgroups. Section II.B addresses the questions, Why should members of the dominant group listen to the stories told by outgroups? How can they — members of the in-group — benefit?

I. STORYTELLING AND COUNTER-STORYTELLING

The same object, as everyone knows, can be described in many ways.[23] A rectangular red object on my living room floor may be a nuisance if I stub my toe on it in the dark, a doorstop if I use it for that purpose, further evidence of my lackadaisical housekeeping to my visiting mother, a toy to my young daughter, or simply a brick left over from my patio restoration project. There is no single true, or all-encompassing description. The same holds true of events. Watching an individual perform strenuous repetitive movements, we might say that he or she is exercising, discharging nervous energy, seeing to his or her health under doctor's orders, or suffering a seizure or convulsion. Often, we will not be able to ascertain the single best description or interpretation of what we have seen. We participate in creating what we see in the very act of describing it.[24]

Social and moral realities, the subject of this essay, are just as indeterminate and subject to interpretation as single objects or events, if not more so. For example, what is the "correct" answer to the question, The American Indians are — (A) a colonized people; (B) tragic victims of technological progress; (C) subjects of a suffocating, misdirected federal beneficence; (D) a minority stubbornly resistant to assimilation; or (E) ——; or (F) ———?

My premise is that much of social reality is constructed. We decide what is, and, almost simultaneously, what ought to be. Narrative habits, patterns of seeing, shape what we see and that to which we aspire.[25] These patterns of perception become habitual, tempting us to

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23. *See* J. DERRIDA, OF GRAMMATOLOGY (1976) (words alter — do violence to — events or experiences); *A Map that "Changes the World,"* San Francisco Chron., Oct. 14, 1988, at A3, col. 1 (National Geographic adopted new "more realistic" world map that depicted United States smaller than previous map, Soviet Union and oceans larger; experts quoted as saying that no map is a "true representation of the world." "[A]n Eskimo cartographer . . . might do something different."); *see also* Tagliabue, *supra* note 12.

24. *See, e.g.*, R. AKUTAGAWA, *In a Grove*, in RASHOMON AND OTHER STORIES 19 (T. Kojima trans. 1970); R. LEONCAVALLO, I PAGLIACCI (1892) (in the *Prologue*, hunchbacked clown Tonio explains that stories are real, perhaps the most real thing of all, turning *commedia dell'arte* — "it's only a play, we're just acting" — on its head).

25. *See* J.B. WHITE, HERACLES' BOW 175 (1985) [hereinafter HERACLES' BOW]; Stone, *supra* note 15; *see also* Cole, *Thoughts from the Land of And*, 39 MERCER L. REV. 907, 921-25

believe that the way things are is inevitable, or the best that can be in an imperfect world.[26] Alternative visions of reality are not explored, or, if they are, rejected as extreme or implausible.

In the area of racial reform the majority story would go something like this:

> Early in our history there was slavery, which was a terrible thing. Blacks were brought to this country from Africa in chains and made to work in the fields. Some were viciously mistreated, which was, of course, an unforgivable wrong; others were treated kindly. Slavery ended with the Civil War, although many blacks remained poor, uneducated, and outside the cultural mainstream. As the country's racial sensitivity to blacks' plight increased, the vestiges of slavery were gradually eliminated by federal statutes and case law. Today, blacks have many civil rights and are protected from discrimination in such areas as housing, public education, employment, and voting. The gap between blacks and whites is steadily closing, although it may take some time for it to close completely. At the same time, it is important not to go too far in providing special benefits for blacks. Doing so induces dependency and welfare mentality. It can also cause a backlash among innocent white victims of reverse discrimination. Most Americans are fair-minded individuals who harbor little racial prejudice. The few who do can be punished when they act on those beliefs.

Yet, coexisting with that rather comforting tale is another story of black subordination in America, a history "gory, brutal, filled with more murder, mutilation, rape, and brutality than most of us can imagine or easily comprehend."[27] This other history continues into the present, implicating individuals still alive.[28] It includes infant death rates among blacks nearly double those of whites, unemployment rates among black males nearly triple those of whites, and a gap between the races in income, wealth, and life expectancy that is the same as it

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(1988) (discussing theories that language determines the physical world, rather than the opposite); White, *Thinking About Our Language*, 96 YALE L.J. 1960, 1971 (1987) [hereinafter *Thinking About Our Language*] (describing the dangers of reification). *See generally* N. GOODMAN, WAYS OF WORLDMAKING (1978); E. CASSIRER, LANGUAGE AND MYTH (1946).

I say "shape," not "create" or "determine," because I believe there is a degree of intersubjectivity in the stories we tell. *See infra* sections I.A-.E, recounting an event in the form of five stories. Every well-told story is virtually an archetype — it rings true in light of the hearer's stock of preexisting stories. But stories may *expand* that empathic range if artfully crafted and told; that is their main virtue. *See infra* Part II.

26. *See* Gordon, *New Developments in Legal Theory*, in THE POLITICS OF LAW, *supra* note 11, at 281, 286-87 (ascribing this seeming inevitability to unthinking adoption of belief systems); Kairys, *Introduction* to THE POLITICS OF LAW, *supra* note 11, at 3-4.

27. AND WE ARE NOT SAVED, *supra* note 2, at 217. *See generally* RACE, RACISM, AND AMERICAN LAW, *supra* note 10, at 1-58 (chapter entitled Slavery and American Law); D. GLASGOW, THE BLACK UNDERCLASS (1980) (examining the roots and ongoing causes of the black underclass).

28. *See Saved?*, *supra* note 3, at 938.

was fifteen years ago, if not greater.[29] It includes despair, crime, and drug addiction in black neighborhoods, and college and university enrollment figures for blacks that are dropping for the first time in decades.[30] It dares to call our most prized legal doctrines and protections shams — devices enacted with great fanfare, only to be ignored, obstructed, or cut back as soon as the celebrations die down.[31]

How can there be such divergent stories? Why do they not combine? Is it simply that members of the dominant group see the same glass as half full, blacks as half empty? I believe there is more than this at work; there is a war between stories. They contend for, tug at, our minds. To see how the dialectic of competition and rejection works — to see the reality-creating potential of stories and the normative implications of adopting one story rather than another — consider the following series of accounts, each describing the same event.

A. *A Standard Event and a Stock Story That Explains It*

The following series of stories revolves around the same event: A black lawyer interviews for a teaching position at a major law school (school *X*), and is rejected. Any other race-tinged event could have served equally well for purposes of illustration. This particular event was chosen because it occurs on familiar ground — most readers of this essay are past or present members of a law school community who have heard about or participated in events like the one described.

The Stock Story

Setting. A professor and student are talking in the professor's office. Both are white. The professor, Blas Vernier, is tenured, in mid-career, and well regarded by his colleagues and students. The student, Judith Rogers, is a member of the student advisory appointments committee.

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29. *See* CENTER ON BUDGET AND POLICY PRIORITIES, FALLING BEHIND: A REPORT ON HOW BLACKS HAVE FARED UNDER THE REAGAN POLICIES 4 (1984); J. SMITH & F. WELCH, CLOSING THE GAP: FORTY YEARS OF ECONOMIC PROGRESS FOR BLACKS xxiv-xxv, 81, 101-11 (1986) (Rand report finding increase in black families headed by a female, in percentage receiving AFDC, and in number of black males unemployed or no longer looking for jobs); *id.* at 105, 108-09 (gap between blacks and whites same as it was a generation ago); *Saved?, supra* note 3, at 931-32 (discussing statistics); McLeod, *Report Says Poverty Increasing for Hispanics Living in U.S.*, San Francisco Chron., Nov. 4, 1988, at A-4, col. 4 (family income for black and Hispanic families, adjusted for inflation, decreased during past decade; poverty increased; gap between blacks and whites widened).

30. *See Saved?, supra* note 3, at 931-32; *Black Males Increasingly Rare in College,* Washington Post, Jan. 16, 1989, at A7, col. 1.

31. *See* AND WE ARE NOT SAVED, *supra* note 2; *Saved?, supra* note 3, at 924; *A Critical Review, supra* note 11, at 1051, 1097, 1118.

Rogers: Professor Vernier, what happened with the black candidate, John Henry? I heard he was voted down at the faculty meeting yesterday. The students on my committee liked him a lot.

Vernier: It was a difficult decision, Judith. We discussed him for over two hours. I can't tell you the final vote, of course, but it wasn't particularly close. Even some of my colleagues who were initially for his appointment voted against him when the full record came out.

Rogers: But we have no minority professors at all, except for Professor Chen, who is untenured, and Professor Tompkins, who teaches Trial Practice on loan from the district attorney's office once a year.

Vernier: Don't forget Mary Foster, the Assistant Dean.

Rogers: But she doesn't teach, just handles admissions and the placement office.

Vernier: And does those things very well. But back to John Henry. I understand your disappointment. Henry was a strong candidate, one of the stronger blacks we've interviewed recently. But ultimately he didn't measure up. We didn't think he wanted to teach for the right reasons. He was vague and diffuse about his research interests. All he could say was that he wanted to write about equality and civil rights, but so far as we could tell, he had nothing new to say about those areas. What's more, we had some problems with his teaching interests. He wanted to teach peripheral courses, in areas where we already have enough people. And we had the sense that he wouldn't be really rigorous in those areas, either.

Rogers: But we need courses in employment discrimination and civil rights. And he's had a long career with the NAACP Legal Defense Fund and really seemed to know his stuff.

Vernier: It's true we could stand to add a course or two of that nature, although as you know our main needs are in Commercial Law and Corporations, and Henry doesn't teach either. But I think our need is not as acute as you say. Many of the topics you're interested in are covered in the second half of the Constitutional Law course taught by Professor White, who has a national reputation for his work in civil liberties and freedom of speech.

Rogers: But Henry could have taught those topics from a black perspective. And he would have been a wonderful role model for our minority students.

Vernier: Those things are true, and we gave them considerable weight. But when it came right down to it, we felt we couldn't take that great a risk. Henry wasn't on the law review at school, as you are, Judith, and has never written a line in a legal journal. Some of us

doubted he ever would. And then, what would happen five years from now when he came up for tenure? It wouldn't be fair to place him in an environment like this. He'd just have to pick up his career and start over if he didn't produce.

Rogers: With all due respect, Professor, that's paternalistic. I think Henry should have been given the chance. He might have surprised us.

Vernier: So I thought, too, until I heard my colleagues' discussion, which I'm afraid, given the demands of confidentiality, I can't share with you. Just let me say that we examined his case long and hard and I am convinced, fairly. The decision, while painful, was correct.

Rogers: So another year is going to go by without a minority candidate or professor?

Vernier: These things take time. I was on the appointments committee last year, chaired it in fact. And I can tell you we would love nothing better than to find a qualified black. Every year, we call the Supreme Court to check on current clerks, telephone our colleagues at other leading law schools, and place ads in black newspapers and journals. But the pool is so small. And the few good ones have many opportunities. We can't pay nearly as much as private practice, you know.

[*Rogers, who would like to be a legal services attorney, but is attracted to the higher salaries of corporate practice, nods glumly.*]

Vernier: It may be that we'll have to wait another few years, until the current crop of black and minority law students graduates and gets some experience. We have some excellent prospects, including some members of your very class.

Rogers: [*Thinks: I've heard that one before, but says*] Well, thanks, Professor. I know the students will be disappointed. But maybe when the committee considers visiting professors later in the season it will be able to find a professor of color who meets its standards and fits our needs.

Vernier: We'll try our best. Although you should know that some of us believe that merely shuffling the few minorities in teaching from one school to another does nothing to expand the pool. And once they get here, it's hard to say no if they express a desire to stay on.

Rogers: [*Thinks: That's a lot like tenure. How ironic; there are certain of your colleagues we would love to get rid of, too. But says*] Well, thanks, Professor. I've got to get to class. I still wish the vote had come out otherwise. Our student committee is preparing a list of

minority candidates that we would like to see considered. Maybe you'll find one or more of them worthy of teaching here.

Vernier: Judith, believe me, there is nothing that would please me more.

* * *

In the above dialogue, Professor Vernier's account represents the stock story — the one the institution collectively forms and tells about itself.[32] This story picks and chooses from among the available facts to present a picture of what happened: an account that justifies the world as it is. It emphasizes the school's benevolent motivation ("look how hard we're trying") and good faith.[33] It stresses stability and the avoidance of risks. It measures the black candidate through the prism of preexisting, well-agreed-upon criteria of conventional scholarship and teaching.[34] Given those standards, it purports to be scrupulously meritocratic and fair; Henry would have been hired had he measured up. No one raises the possibility that the merit criteria employed in judging Henry are themselves debatable, *chosen* — not inevitable. No one, least of all Vernier, calls attention to the way in which merit functions to conceal the contingent connection between institutional power and the things rated.

There is also little consideration of the possibility that Henry's presence on the faculty might have altered the institution's character, helped introduce a different prism and different criteria for selecting future candidates.[35] The account is highly procedural — it emphasizes that Henry got a full, careful hearing — rather than substantive: a black was rejected.[36] It emphasizes certain "facts" without examin-

32. Compare this stock story with the larger one, of which it is a part, *supra* text accompanying note 27. *Cf.* THE LEGAL IMAGINATION, *supra* note 20, at 299-304 (discussing ways institutions talk about people).

33. *See Saved?, supra* note 3, at 936 (discussing Supreme Court decisions that require intent and tight chains of causation for discrimination to be actionable).

34. Feminists have argued that the law is essentially a male instrument and that male-normed criteria of excellence operate to injure women in tenure and promotion decisions and on law school examinations. *See, e.g.,* Menkel-Meadow, *Portia in a Different Voice: Speculations on a Women's Lawyering Process,* 1 BERK. WOMEN'S L.J. 39, 44 (1985); Polan, *Toward a Theory of Law and Patriarchy,* in THE POLITICS OF LAW, *supra* note 11, at 299; Taub & Schneider, *Perspectives on Women's Subordination and the Role of Law,* in THE POLITICS OF LAW, *supra* note 11, at 117.

35. That is to say, the faculty would be a different collectivity with the addition of an articulate and outspoken black, unless of course his voice was silenced by peer pressure or hostility. Compare Heisenberg's Principle of Uncertainty, discussed in G. ZUKAV, THE DANCING WU LI MASTERS: AN OVERVIEW OF THE NEW PHYSICS 133-36 (1979).

36. *See The Imperial Scholar, supra* note 6, at 568 (emphasis on procedure in "imperial" scholarship). In former times, powerful whites used *substantive* myths, stories about blacks' purported actual inferiority, to justify oppression. Delgado, Bradley, Burkenroad, Chavez, Doering, Lardiere, Reeves, Smith & Windhausen, *Can Science Be Inopportune? Constitutional Validity of Governmental Restrictions on Race-IQ Research,* 31 UCLA L. REV. 128 (1983); *cf.* Buck v. Bell,

ing their truth — namely, that the pool is very small, that good minority candidates have many choices, and that the appropriate view is the long view; haste makes waste.[37]

The dominant fact about this first story, however, is its seeming neutrality. It scrupulously avoids issues of blame or responsibility. Race played no part in the candidate's rejection; indeed the school leaned over backwards to accommodate him. A white candidate with similar credentials would not have made it as far as Henry did. The story comforts and soothes.[38] And Vernier's sincerity makes him an effective apologist for his system.[39]

Vernier's story is also deeply coercive, although the coercion is disguised. Judith was aware of it but chose not to confront it directly; Vernier holds all the cards. He pressures her to go along with the institution's story by threatening her prospects at the same time that he flatters her achievements. A victim herself, she is invited to take on and share the consciousness of her oppressor. She does not accept Vernier's story, but he does slip a few doubts through cracks in her armor. The professor's story shows how forceful and repeated storytelling can perpetuate a particular view of reality. Naturally, the stock story is not the only one that can be told. By emphasizing other events and giving them slightly different interpretations, a quite different picture can be made to emerge.[40]

B. *The Same Event Told by John Henry*

Scene. John Henry has just received his rejection letter from the head of the appointments committee. The letter is quite cheerful. It tells Henry how much the faculty enjoyed meeting him and hearing his presentation on trends in civil rights litigation. It advises him that because of curricular concerns, the school's prime emphasis this year will be on filling slots in the Commercial Law and Corporations area. It concludes by encouraging Henry to remain in contact with the

274 U.S. 200 (1927) (permitting states to sterilize the "feeble-minded"). Today, racial myths take a *procedural* turn — remediation must be deliberate, a backlash by "innocent" whites must be avoided at all costs, some remedies constitute "reverse discrimination," and tight standing and causation requirements are reasonable when a black sues for redress.

37. *See supra* text accompanying note 32.

38. It may be argued that Henry's story, which follows, and the two counterstories also soothe and comfort those of the storyteller's persuasion. *See* HERACLES' BOW, *supra* note 25, at 171.

39. *See* Denvir, *Justice Brennan, Justice Rehnquist, and Free Speech*, 80 NW. U. L. REV. 285, 288-89 (1985) (liberals' sincerity key ingredient in their ability to justify their position).

40. *See Thinking About Our Language*, *supra* note 25, at 1963-64 (legal hearings designed to test different versions of language).

school and wishes him luck in his search for a teaching position. It nowhere tells him that he has been rejected.

A few days after receiving the letter, John Henry is having lunch with a junior colleague from the Fund. The colleague, who is also black, wants to teach some day and so quizzes Henry about his experiences in interviewing at school *X*.

Henry: It was, how shall I put it? Worse than I hoped but better than I feared. I'm not going to get an offer, although they of course never came right out and said so. And, from what I saw I'm not sure I would want to teach there, even if I had gotten one. If school *X* is any sample of what blacks can expect in this supposedly colorblind, erudite world of legal education, I think I prefer Howard, where, incidentally, I'm interviewing next week. I got more than a whiff of these attitudes when I went to law school almost 15 years ago, but I had dared to hope that things might have changed in the interim. They haven't.

Junior colleague: But how did they treat you? Did you give a colloquium?

Henry: You bet I gave a colloquium, and that's where it began. A good half of the faculty looked bored or puzzled and asked no questions. A quarter jumped down my throat after I had spoken maybe ten minutes, wanting to know whether I would advocate the same approach if the plaintiff were white and the defendant black. The old "neutral principles" idea,[41] thirty years later. In the question-and-answer period, several younger professors tried to rescue me; one even changed the subject and asked about my philosophy of teaching. That brought everybody to the edge of their chairs. I got the impression many of them merely wanted assurance that I would write *some* articles, even if they were mediocre. But they were *all* extremely concerned that I be a good teacher. I think many of them were looking for a mascot, not a fellow scholar — someone who would counsel and keep the students in line, not someone who could challenge his or her colleagues at their own game.

During the small-group interviews, many of them didn't even show up. The ones that did asked me about curricular matters, what courses I would like to teach, how I enjoyed going to law school at Michigan and whether I took courses from their friend, so-and-so, who teaches there. The few who asked me anything about my colloquium ignored what I had said but asked me questions based on recent law review articles, written by their friends, most of which, of course, I

41. Wechsler, *Toward Neutral Principles of Constitutional Law*, 75 HARV. L. REV. 1 (1959).

had not read. They all seemed to deal with issues of equality, but none seemed to bear much connection to my work and litigation perspective.

Several asked what my grade point average was in law school — fifteen years ago, can you believe it! — and whether I was on the law review. They had my resume in front of them, so they knew the answer to that perfectly well. The first two who asked seemed dumbfounded when I said I had been invited to join the review and even more so when I said I had declined in order to work part-time in a prison law program. After a while I just answered the question by saying no.

Don't get me wrong. They're a good law school; I could see myself teaching there. But I think they're looking for someone they will never find — a black who won't challenge them in any way, who is just like them. I tried telling them about the cases I have argued and the litigation strategies I have pioneered. Most of them couldn't have cared less. Their eyes glazed over after three minutes, or they changed the subject.

Junior colleague: John, let me ask you something flat out. You don't have to answer this if you don't want to. You know that I practiced corporate law in a large firm in Atlanta for three years before coming to the Fund. I could see myself teaching business subjects some day, in addition of course to civil rights. The school you interviewed at is advertising that they need professors of business law. Do I want to teach there?

Henry: [*Slowly*] That's a tough one. If I went there, my greatest fear is that I would be marginalized and ignored — either that or coopted into the mainstream. I doubt they would see my work in civil rights as on a level with theirs in, say, property. You might have a different experience, though, teaching corporate and business law courses. Are you serious about applying?

Junior colleague: I think so.

Henry: Okay, my man. Let me call the Asian professor I met there. His name is Chen, I think. He seemed sympathetic, and I guess he would level with us. I'll ask him what he thinks the climate would be like for someone like you. Maybe in the process I'll learn something about how I was seen and get some pointers on how to conduct myself the next time I interview at a white, elite law school — if I have to. I think Howard is quite interested in me, and frankly I'm tempted to just accept an offer there if they make one. It would simplify life a great deal.

Junior colleague: I would appreciate that. You're a good buddy. Let me know what you find out.

* * *

Henry and his younger colleague's story is, obviously, quite different from the institution's story. Their story shows, among other things, how different "neutrality" can feel from the perspective of an outsider.[42] Henry's story emphasizes certain facts, sequences, tones of voice, and body language that the stock story leaves out.[43] It infers different intentions, attitudes, and states of mind on the part of the faculty he met.[44] Although not completely condemnatory, it is not nearly so generous to the school. It implies that the supposedly color-blind hiring process is really monochromatic: School *X* hires professors of any color, so long as they are white. In Henry's story, process questions submerge; the bottom line becomes more important. The story specifically challenges the school's meritocratic premises. It questions, somewhat satirically, the school's conception of a "good" teaching prospect and asks what came first, the current faculty (with its strengths and weaknesses) or the criteria. Did the "is" give birth to the "ought"? Henry's account, although less obviously slanted than Vernier's, contains exaggerations of its own. This is perhaps natural and understandable; Henry wanted his younger colleague to think well of him. His account is self-serving. For example, he implied that many of the faculty asked him about his law school grades, when in fact only two did. And, although Henry does struggle to free himself from the process trap to which Vernier succumbed, he does not succeed entirely. He charges that his "hearing" at the law school was substantively biased by racism and inappropriate criteria. But he also charges that the hearing was afflicted by ordinary defects: For example, many of his hearers did not bother to show up — it was a mock hearing. Henry still accepts the system's dominant values, wants to play, and win, by its rules. Perhaps this explains the calmness, the tone of resignation about Henry's story. Whether this is because he

42. *See* City of Memphis v. Greene, 451 U.S. 100, 138-44 (1981) (Marshall, J., dissenting). Marshall tells a "counterstory," in which a traffic barrier erected between an affluent white and a black neighborhood is put into a different perspective from that adopted by the majority.

43. Vernier's story also patronizes Rogers; the professor treats her as some whites treat blacks. Rogers is temporarily a member of an outgroup. She has the potential to leave her student status and become like Vernier, but for now he and she are on unequal footings, an inequality Vernier exploits.

44. Henry's narrative includes the details that: some of the members of the appointments committee appeared bored; that others asked paternalistic questions; that some faculty members failed to attend their own interviews of him; that a question uppermost in the minds of most of his interviewers was whether or not he would teach competently, rather than write brilliantly; and that his Civil Rights interests were peripheral.

has internalized some of his victimizers' consciousness, has a good alternative coming up next week at Howard, or simply despairs of changing School *X* we do not know. But this situation soon changed drastically.

Following Henry's lunch with his younger colleague, Henry telephoned Chen and one other younger, bearded faculty member he met at the law school. The other professor, who is white, had visibly warmed up to Henry. He had asked him to call any time if Henry had questions. As a result of talking with these two at length, Henry learns facts that leave him seriously upset.[45] No longer resigned, Henry consults with several colleagues at the Fund about a lawsuit. After receiving an offer from Howard, Henry retains private counsel.[46] The following two stories are the result.

C. *The Legal Complaint and Judge's Order*

1. *The Complaint*

About a year after his unsuccessful interview, and ten months after speaking with Chen and the white professor, Henry files the following complaint in the superior court of College County of State *X:*

Henry v. Regents, et al. Comes now the plaintiff and alleges as follows.

[Following various jurisdictional and exhaustion-of-remedies allegations]: 8) That the defendant has intentionally engaged in an unlawful employment practice in that the defendant has discriminated against plaintiff by denying him an appointment as Professor of Law, because of his race and color; that defendant has denied plaintiff employment as Professor of Law because of his engagement in civil rights activities; that defendant has denied plaintiff employment as Professor of Law because as a black Professor teaching Civil Rights he would not "fit in"; and that the above mentioned acts of discrimination violate 42 U.S.C. section

45. Henry learned:

(i) That Professor White had delivered a vitriolic attack on his intellectual qualifications to teach law and had implied he would leave if Henry were hired;

(ii) That another faculty member had purportedly obtained telephone information from a former co-worker that Henry "had a few skeletons in his closet";

(iii) That the faculty feared that someone like Henry could cause trouble by stirring up the students ("wouldn't be a good role model even for the minorities");

(iv) That the faculty had disliked his colloquium, finding it devoid of history, economics, or theory. It struck them as the talk of "just a practicing lawyer"; it was "too much like a brief."

A desiccated version of Chen's account appears in the legal complaint that follows.

46. Part of Henry's change of mood was caused by his belated realization that he (like Judith Rogers) was coerced. He was coerced, during his interview, to agree to be just like his interviewers. This was something he was unwilling to do; his rejection was the direct result. He resolves to reconstruct John Henry's story. But he chooses, because of his experience as an attorney, the familiar route of a legal complaint. Unlike Al-Hammar X (whose story is told *infra* section I.D), Henry has not yet rejected dominant values. In time, he may. He is still committed to reasonableness — to telling measured, legal stories.

1981 in that they were based on race, color, and civil rights activities and orientations.

9) That the plaintiff has lost wages by reason of the illegal employment practices of defendant and has earned less money in other employment than he would have earned had he received appointment as Professor of Law at defendant institution.

Whereupon plaintiff prays that this Court find that the defendant has intentionally and illegally denied plaintiff employment because of his race, color, and civil rights activities, and because as a black man he would not "fit in"; that the Court enjoin defendant from engaging in these and similar practices; that the defendant be ordered to pay plaintiff all lost wages because of said unlawful employment practices; that the defendant pay plaintiff's reasonable attorney's fees; and that defendant be ordered to pay all costs in this action.

Phyllis M. Leventhal
Attorney for Plaintiff
Address: 49 State Building
Capitol City, State *X*

2. *The Judge's Order Dismissing the Action*

After a short period of discovery, the judge dismissed Henry's suit with a brief opinion:

The defendant's motion for summary judgment is granted.

Even viewing the evidence in the light most favorable to Plaintiff, it is clear to this Court that he cannot prevail. Plaintiff has adduced no evidence, save his own assertion that he was not hired, that he has suffered unlawful employment discrimination. Given the historic shortage of qualified minorities in the applicant pool, it is not surprising that white faces should preponderate on a law faculty. This imbalance is not irrelevant but by itself does not constitute invidious discrimination. It is of no greater or less significance than the proportion of blacks to whites on the school's athletic teams.

Even assuming that he is qualified to teach at School *X,* Plaintiff has not made out a claim that his failure to be hired there is a product of discrimination. If he could adduce even one example of obvious discrimination — for example, if he had been told that his lack of authorship disqualified him, but he could prove that some white faculty members had neither published nor perished — this would be a far different case. But there is no such smoking gun. Plaintiff believes he was blackballed as a potential "troublemaker," someone who might use his position atop the ivory tower to cry out against the university, to bite the very hand that had uplifted him. But a propensity toward disloyalty is simply one of the competing considerations in the hiring process, the weight of which our scales of justice shall not attempt to assay. There is, however, nothing intrinsically wrong with requiring a college professor to be true to his school.

Nor do we find that differential standards were applied to Plaintiff's application. It may be that the law faculty devalued his potential contri-

butions as a teacher and scholar of civil rights law. But a faculty is entitled to make judgments that one class or area of study is more urgently needed to round out the school's curriculum than another.

Moreover, this Court would be most hesitant to substitute its own standards for those of the professors who make up the faculty of *X* School of Law. The Law School is an eminent institution, one of the nation's finest. The decisions of such a body are necessarily judgmental and highly subjective. It is not an appropriate function for this Court to tell the faculty whom they should hire. That is a matter for their professional judgment, and short of manifest unfairness or illegality, this Court cannot and will not interfere. The factors that make a good law professor are many, subtle, and eminently professional in character. They are best made by those who, had he been hired, would have been Plaintiff's peers. It would ill serve the Plaintiff to force him on an unwilling institution. We find no actionable wrong. This case is dismissed.

Both the complaint and the order dismissing it are stylized versions of Henry's story. Both use existing statutory and case law as a type of "screen" that makes certain facts relevant and others not.[47] Henry's lawyer struggled to present her client's story in terms a court would accept. She failed. Unless reversed on appeal, the complaint's story will remain a renegade version of the world, officially devalued.[48]

Putting the facts in the linguistic code required by the court sterilized them. The interview was abstracted from its context, squeezed into a prescribed mold that stripped it of the features that gave it meaning for Henry. It lost its power to outrage. In a sense, even if successful the complaint would have legitimated the current social order. As Cornel West and others have warned, litigation and other seemingly revolutionary activity can serve this end.[49] Civil rights liti-

47. *See* HERACLES' BOW *supra* note 25, at 174-75; Milovanovic, *Jailhouse Lawyers and Jailhouse Lawyering,* 1988 INTL. J. SOC. (forthcoming) (describing what gets "lost in the translation" when inmate jailhouse lawyers rewrite what happened in the streets into the language of the courts — a loss of the race-, class-, and sex-based inequalities that contributed to the inmate's dilemma, as well as such features as alienation, anger, and despair); Shapiro, *In Defense of Judicial Candor,* 100 HARV. L. REV. 731 (1987) (judiciary's fidelity to facts and canons of fair argumentation less than perfect); Bannister & Milovanovic, The Necessity Defense, Substantive Justice and Oppositional Linguistic Praxis 23-24 (1988) (unpublished manuscript, on file with author) (screening function of legal rules). The screening function of formal legal standards sometimes benefits litigants of color by suppressing blatant racism and holding the participants to higher standards than they would otherwise display. Delgado, Dunn, Brown, Lee & Hubbert, *Fairness and Formality: Minimizing the Risk of Prejudice in Alternative Dispute Resolution,* 1985 WIS. L. REV. 1359 [hereinafter *Fairness and Formality*]. These advantages can cause minorities to place unrealistically high hopes on formal adjudication as a means of achieving social justice. Delgado, *ADR and the Dispossessed: Recent Books About the Deformalization Movement* (Book Review), 13 LAW & SOC. INQUIRY 145 (1988).

48. *See* Cover, *supra* note 1, at 53 ("[j]udges are people of violence," whose object is to kill competing legal traditions); *Thinking About Our Language, supra* note 25, at 1963-64 (legal proceedings designed to pit different narratives against each other).

49. *See* C. WEST, PROPHESY DELIVERANCE! AN AFRO-AMERICAN REVOLUTIONARY CHRISTIANITY 41 (1982).

gation also demeans, humbles, and victimizes the victim, draining away outrage and converting him or her into a supplicant.[50]

Stories do not pose these risks. Stories do not try to seize a part of the body of received wisdom and use it against itself, jiujitsu fashion, as litigation does. Stories attack and subvert the very "institutional logic" of the system. On the rare occasions when law-reform litigation is effective for blacks, the hard-won new "rights" are quietly stolen away by narrow interpretation, foot dragging, delay, and outright obstruction.[51] Stories' success is not so easily circumvented; a telling point is registered instantaneously and the stock story it wounds will never be the same.

John Henry's complaint was doubly unsuccessful. It was dismissed, its failure validating the dominant story, its principal opponent so far. It also gave the judge an opportunity to tell his own story — dismissive, curt, verging on insult, and give it circulation and currency.[52]

D. *Al-Hammar X's Counter-story*

None of the above stories attempts to unseat the prevailing institutional story. Henry's account comes closest; it highlights different facts and interprets those it does share with the standard account differently. His formal complaint also challenges the school's account, but it must fit itself under existing law, which it failed to do.

A few days after word of Henry's rejection reached the student body, Noel Al-Hammar X, leader of the radical Third World Coalition, delivered a speech at noon on the steps of the law school patio. The audience consisted of most of the black and brown students at the law school, several dozen white students, and a few faculty members. Chen was absent, having a class to prepare for. The Assistant Dean was present, uneasily taking mental notes in case the Dean asked her later on what she heard.

Al-Hammar's speech was scathing, denunciatory, and at times downright rude. He spoke several words that the campus newspaper reporter wondered if his paper would print. He impugned the good faith of the faculty, accused them of institutional if not garden-variety

50. Bumiller, *Victims in the Shadow of the Law: A Critique of the Model of Equal Protection,* 12 SIGNS 421 (1987).

51. *See Saved?, supra* note 3, at 396.

52. How does a judge get away with this form of discourse? The answer must lie in our "story" of judging, what judges do. That story includes the function of scolding persons who have brought complaints we disapprove of — such as Henry's — and excluding them from the universe of "reasonable" complainants: John, like all the others, is an ever-complaining minority.

racism, and pointed out in great detail the long history of the faculty as an all-white club. He said that the law school was bent on hiring only white males, "ladies" only if they were well-behaved clones of white males, and would never hire a black unless forced to do so by student pressure or the courts. He exhorted his fellow students not to rest until the law faculty took steps to address its own ethnocentricity and racism. He urged boycotting or disrupting classes, writing letters to the state legislature, withholding alumni contributions, setting up a "shadow" appointments committee, and several other measures that made the Assistant Dean wince.

Al-Hammar's talk received a great deal of attention, particularly from the faculty who were not there to hear it. Several versions of his story circulated among the faculty offices and corridors ("Did you hear what he said?"). Many of the stories-about-the-story were wildly exaggerated. Nevertheless, Al-Hammar's story is an authentic counterstory. It directly challenges — both in its words and tone — the corporate story the law school carefully worked out to explain Henry's non-appointment. It rejects many of the institution's premises, including we-try-so-hard, the-pool-is-so-small, and even mocks the school's meritocratic self-concept. "They say Henry is mediocre, has a pedestrian mind. Well, they ain't sat in none of my classes and listened to themselves. Mediocrity they got. They're experts on mediocrity." Al-Hammar denounced the faculty's excuse making, saying there were dozens of qualified black candidates, if not hundreds. "There isn't that big a pool of Chancellors, or quarterbacks," he said. "But when they need one, they find one, don't they?"

Al-Hammar also deviates stylistically, as a storyteller, from John Henry. He rebels against the "reasonable discourse" of law. He is angry, and anger is out of bounds in legal discourse, even as a response to discrimination. John Henry was unsuccessful in getting others to listen. So was Al-Hammar, but for a different reason. His counterstory overwhelmed the audience. More than just a narrative, it was a call to action, a call to join him in destroying the current story. But his audience was not ready to act. Too many of his listeners felt challenged or coerced; their defenses went up. The campus newspaper the next day published a garbled version, saying that he had urged the law faculty to relax its standards in order to provide minority students with role models. This prompted three letters to the editor asking how an unqualified black professor could be a good role model for anyone, black or white.

Moreover, the audience Al-Hammar intended to affect, namely the faculty, was even more unmoved by his counterstory. It attacked

them too frontally. They were quick to dismiss him as an extremist, a demagogue, a hothead — someone to be taken seriously only for the damage he might do should he attract a body of followers. Consequently, for the next week the faculty spent much time in one-on-one conversations with "responsible" student leaders, including Judith Rogers.

By the end of the week, a consensus story had formed about Al-Hammar's story. That story-about-a-story held that Al-Hammar had gone too far, that there was more to the situation than Al-Hammar knew or was prepared to admit. Moreover, Al-Hammar was portrayed *not* as someone who had reached out, in pain, for sympathy and friendship. Rather, he was depicted as a "bad actor," someone with a "chip on his shoulder," someone no responsible member of the law school community should trade stories with. Nonetheless, a few progressive students and faculty members believed Al-Hammar had done the institution a favor by raising the issues and demanding that they be addressed. They were a distinct minority.

E. *The Anonymous Leaflet Counterstory*

About a month after Al-Hammar spoke, the law faculty formed a special committee for minority hiring. The committee contained practically every young liberal on the faculty, two of its three female professors, and the Assistant Dean. The Dean announced the committee's formation in a memorandum sent to the law school's ethnic student associations, the student government, and the alumni newsletter, which gave it front-page coverage. It was also posted on bulletin boards around the law school.

The memo spoke about the committee and its mission in serious, measured phrases — "social need," "national search," "renewed effort," "balancing the various considerations," "identifying members of a future pool from which we might draw." Shortly after the memo was distributed, an anonymous four-page leaflet appeared in the student lounge, on the same bulletin boards on which the Dean's memo had been posted, and in various mailboxes of faculty members and law school organizations. Its author, whether student or faculty member, was never identified.[53]

The leaflet was entitled, "Another Committee, Aren't We Wonderful?" It began with a caricature of the Dean's memo, mocking its measured language and high-flown tone. Then, beginning in the mid-

53. Like all the stories, the leaflet is purely fictional; perhaps it was born as an "internal memo," stimulated by Al-Hammar's speech, in the minds of many progressive listeners at the same time.

dle of the page the memo told, in conversational terms, the following story:

'And so, friends and neighbors (the leaflet continued), how is it that the good law schools go about looking for new faculty members? Here is how it works. The appointments committee starts out the year with a model new faculty member in mind. This mythic creature went to a leading law school, graduated first or second in his or her class, clerked for the Supreme Court, and wrote the leading note in the law review on some topic dealing with the federal courts. This individual is brilliant, personable, humane, and has just the right amount of practice experience with the right firm.

Schools begin with this paragon in mind and energetically beat the bushes, beginning in September, in search of him or her. At this stage, they believe themselves genuinely and sincerely colorblind. If they find such a mythic figure who is black or Hispanic or gay or lesbian, they will hire this person in a flash. They will of course do the same if the person is white.

By February, however, the school has not hired many mythic figures. Some that they interviewed turned them down. Now, it's late in the year and they have to get someone to teach Trusts and Estates. Although there are none left on their list who are Supreme Court clerks, etc., they can easily find several who are a notch or two below that — who went to good schools, but not Harvard, or who went to Harvard, yet were not first or second in their classes. Still, they know, with a degree verging on certainty, that this person is smart and can do the job. They know this from personal acquaintance with this individual, or they hear it from someone they know and trust. Joe says Bill is really smart, a good lawyer, and will be terrific in the classroom.

So they hire this person because, although he or she is not a mythic figure, functionally equivalent guarantees — namely first- or second-hand experience — assure them that this person will be a good teacher and scholar. And so it generally turns out—the new professor does just fine.

'Persons hired in this fashion are almost always white, male, and straight. The reason: We rarely know blacks, Hispanics, women, and gays. Moreover, when we hire the white male, the known but less-than-mythic quantity, late in February, *it does not seem to us like we are making an exception.* Yet we are. We are employing a form of affirmative action — bending the stated rules so as to hire the person we want.[54]

54. *See Fairness and Formality, supra* note 47, at 1388-92 (prejudice flourishes in informal settings). I am indebted to my colleague, Mari Matsuda, for this observation.

The upshot is that whites have two chances of being hired — by meeting the formal criteria we start out with in September — that is, by being mythic figures — and also by meeting the second, informal, modified criteria we apply later to friends and acquaintances when we are in a pinch. Minorities have just one chance of being hired — the first.

To be sure, once every decade or so a law school, imbued with crusading zeal, will bend the rules and hire a minority with credentials just short of Superman or Superwoman. And, when it does so, *it will feel like an exception.* The school will congratulate itself — it has lifted up one of the downtrodden. And, it will remind the new professor repeatedly how lucky he or she is to be here in this wonderful place. It will also make sure, through subtle or not-so-subtle means, that the students know so, too.

But (the leaflet continued), there is a coda.

If, later, the minority professor hired this way unexpectedly succeeds, this will produce consternation among his or her colleagues. For, things were not intended to go that way. When he or she came aboard, the minority professor lacked those standard indicia of merit — Supreme Court clerkship, high LSAT score, prep school background — that the majority-race professors had and believe essential to scholarly success.

Yet the minority professor is succeeding all the same —publishing in good law reviews, receiving invitations to serve on important commissions, winning popularity with students. This is infuriating. Many majority-race professors are persons of relatively slender achievements — you can look up their publishing record any time you have five minutes. Their principal achievements lie in the distant past, when aided by their parents' upper class background, they did well in high school and college, and got the requisite test scores on standardized tests which test exactly the accumulated cultural capital they acquired so easily and naturally at home. Shortly after that, their careers started to stagnate. They publish an article every five years or so, often in a minor law review, after gallingly having it turned down by the very review they served on as editor twenty years ago.

So, their claim to fame lies in their early exploits, the badges they acquired up to about the age of twenty-five, at which point the edge they acquired from Mummy and Daddy began to lose effect. Now, along comes the hungry minority professor, imbued with a fierce desire to get ahead, a good intellect, and a willingness to work 70 hours a week if necessary to make up for lost time. The minority person lacks

the merit badges awarded early in life, the white professor's main source of security. So, the minority's colleagues don't like it and use perfectly predictable ways to transfer the costs of their discomfort to the misbehaving minority.

So that, my friends, is why minority professors

'(i) have a hard time getting hired; and,

'(ii) have a hard time if they are hired.

When you and I are running the world, we won't replicate this unfair system, will we? Of course not — unless, of course, it changes us in the process.

* * *

This second counterstory attacks the faculty less frontally in some respects — for example it does not focus on the fate of any particular black candidate, such as Henry, but attacks a general mindset. It employs several devices including narrative and careful observation — the latter to build credibility (the reader says, "That's right"), the former to beguile the reader and get him or her to suspend judgment.[55] (Everyone loves a story.) The last part of the story is painful; it strikes close to home. Yet the way for its acceptance has been paved by the earlier parts, which paint a plausible picture of events, so that the final part demands consideration. It generalizes and exaggerates — many majority-race professors are *not* persons of slender achievement. But such broad strokes are part of the narrator's art. The realistically drawn first part of the story, despite shading off into caricature at the end, forces readers to focus on the flaws in the good face the dean attempted to put on events. And, despite its somewhat accusatory thrust, the story, as was mentioned, debunks only a mindset, not a person. Unlike Al-Hammar X's story, it does not call the chair of the appointments committee, a much-loved senior professor, a racist. (But did Al-Hammar's story, confrontational as it was, pave the way for the generally positive reception accorded the anonymous account?)

The story invites the reader to alienate herself or himself from the events described, to enter into the mental set of the teller, whose view

55. For a discussion of narrative strategies to intrigue and beguile the reader, see THE LEGAL IMAGINATION, *supra* note 20, at 802:

> From the beginning you know where the lawyer wants to come out, and every word points that way.... But the judge is bound to keep an open mind, to keep his reader in suspense as long as he can, if he is to express fairly the process of his decision. There is a difference between an opinion that reaches a conclusion and one that is aimed there ....
>
> ... [I]f it is to express the process by which the original intention is worked out, the judicial narrative must keep the reader in a sort of suspense or open-mindedness, during which he is exposed one by one to the facts and arguments that seem important to the judge, until the reader has them all, at which point he should find himself agreeing with the judgment. Very few opinions do this ....

is different from the reader's own. The oppositional nature of the story, the manner in which it challenges and rebuffs the stock story, thus causes him or her to oscillate between poles.[56] It is insinuative: At times, the reader is seduced by the story and its logical coherence — it is a plausible counter-view of what happened; it has a degree of explanatory power.

Yet the story places the majority-race reader on the defensive. He or she alternately leaves the storyteller's perspective to return to his or her own, saying, "That's outrageous, I'm being accused of . . . ." The reader thus moves back and forth between two worlds, the storyteller's, which the reader occupies vicariously to the extent the story is well-told and rings true, and his or her own, which he or she returns to and reevaluates in light of the story's message. Can my world still stand? What parts of it remain valid? What parts of the story seem true? How can I reconcile the two worlds, and will the resulting world be a better one than the one with which I began?

These are in large part normative questions, which lead to the final two issues I want to explore. Why *should* members of outgroups tell stories? And, why *should* others listen?

II. WHY OUTGROUPS SHOULD TELL STORIES AND WHY OTHERS SHOULD LISTEN

Subordinated groups have always told stories.[57] Black slaves told, in song, letters, and verse, about their own pain and oppression.[58]

56. *E.g.*, HERACLES' BOW, *supra* note 25, at 94, 174; Note, *Figuring the Law: Holism and Tropological Influence in Legal Interpretation*, 97 YALE L.J. 823, 843 (1988). On the theory that the force of narrative may be independent of the narrator, see THE LEGAL IMAGINATION, *supra* note 20, at 865-66 (possibility that whenever a story is told, it may take on a life of its own, escaping the writer's control and becoming an unshakable presence for the auditor). For a summary of major theories of persuasion, see J. SPROULE, ARGUMENT: LANGUAGE AND ITS INFLUENCE 260-68 (1980). Sproule identifies three types of theories: Rhetorical Theories, Cognitive Consistency Theories, and Interpersonal Theories. Rhetorical Theories can be traced back to the Greek sophists, are typified by Aristotle's *Rhetoric*, are generally based on observations of public communication rather than on experimentation, and assume arguments should be studied not only for their effects, but for their ethics. Cognitive Consistency Theories (among the best-known of which is L. FESTINGER, A THEORY OF COGNITIVE DISSONANCE (1957)) are experimental and statistical and grounded on the tendency of the individual to move toward a coherent system of images by eliminating, reducing, or incorporating discordant new ideas. Interpersonal Theories consider the informal influences people have on each other. For example, the Balance Theory developed by Fritz Heider and Theodore Newcomb in the decade after World War II predicts that two persons who initially disagree over an issue will move toward harmony that may result in a unilateral change of mind, a purposeful ignoring or misinterpreting of each others' attitudes, or a changed relationship in which the disagreement becomes "consistent with dislike."

57. All groups do. *See supra* text accompanying notes 8-9; sources cited *supra* note 16; Steele, *supra* note 11, at 47-48; *cf.* Cover, *supra* note 1, at 49-50 (on the "interpretation of texts of resistance"); Tagliabue, *supra* note 12 (street theater used to expose Communism's flaws).

58. Dorinson & Boskin, *Racial and Ethnic Humor*, in HUMOR IN AMERICA 172 (L. Mintz

They described the terrible wrongs they had experienced at the hands of whites, and mocked (behind whites' backs) the veneer of gentility whites purchased at the cost of the slaves' suffering.[59] Mexican-Americans in the Southwest composed *corridos* (ballads) and stories, passed on from generation to generation, of abuse at the hands of gringo justice, the Texas Rangers, and ruthless lawyers and developers who cheated them out of their lands.[60] Native American literature, both oral and written, deals with all these themes as well.[61] Feminist consciousness-raising consists, in part, of the sharing of stories, of tales from personal experience, on the basis of which the group constructs a shared reality about women's status vis-à-vis men.[62]

This proliferation of counterstories is not an accident or coincidence. Oppressed groups have known instinctively that stories are an essential tool to their own survival and liberation. Members of outgroups can use stories in two basic ways: first, as means of psychic self-preservation;[63] and, second, as means of lessening their own subordination.[64] These two means correspond to the two perspectives from which a story can be viewed — that of the teller, and that of the

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ed. 1988); *see Looking to the Bottom, supra* note 16, at 347 n.105; *see also* sources cited *supra* notes 16 & 18.

59. *See* L. LEVINE, BLACK CULTURE AND BLACK CONSCIOUSNESS: AFRO-AMERICAN FOLK THOUGHT FROM SLAVERY TO FREEDOM 105 (1977) (trickster tales), 121-33 ("fooling master" tales), 298-320 ("black humor" to confront obliquely their oppressor, including jokes that mock hypocrisy, segregation, and integration); PUTTIN' ON OLE MASSA, *supra* note 16; Dorinson & Boskin, *supra* note 58, at 173; *see also* other sources cited *supra* note 16.

60. *E.g.*, A. LUCERO-WHITE LEA, LITERARY FOLKLORE OF THE HISPANIC SOUTHWEST (1953); Campa, *Sayings and Riddles in New Mexico*, U.N.M. BULL., Sept. 5, 1937, at 3.

61. *E.g.*, A GATHERING OF SPIRIT: WRITING AND ART BY NORTH AMERICAN INDIAN WOMEN (B. Brant ed. 1984); R. ORTIZ, THE GREAT SIOUX NATION: SITTING IN JUDGMENT ON AMERICA (1977); Deloria, *Indian Humor*, in LITERATURE OF THE AMERICAN INDIANS 152-69 (A. Chapman ed. 1975); Williams, *The Algebra of Federal Indian Law: The Hard Trail of Decolonizing and Americanizing the White Man's Indian Jurisprudence*, 1986 WIS. L. REV. 219.

62. *See* FEMINIST THEORY: A CRITIQUE OF IDEOLOGY (N. Keohane, M. Rosaldo & B. Gelpi eds. 1982); A. LORDE, *supra* note 11; MacKinnon, *Theory, supra* note 6; MacKinnon, *Jurisprudence, supra* note 6; *see also* Colker, *Feminism, Sexuality, and Self: A Preliminary Inquiry into the Politics of Authenticity* (Book Review), 68 B.U. L. REV. 217, 241-48 (1988) (critiquing various aspects of feminist consciousness-raising); Polan, *supra* note 34.

63. *See* AND WE ARE NOT SAVED, *supra* note 2, at 215-21 (Chronicle of the Slave Scrolls); *see also* Al-Hammar's story, *supra* section I.D, which seems to have been told as much as a mental health imperative as in hopes of swaying the audience.

64. *See supra* notes 15-19 and accompanying text; Steele, *supra* note 11, at 47-49 (racial myths center about idea of innocence). Will whites listen to blacks' and other outgroups' stories — or simply "tune them out" or reinterpret them? *See* sources cited *infra* note 79. Some may do the latter, but others will not. (i) As was observed earlier, stories are often entertaining and not particularly threatening, *see supra* notes 51-52 and accompanying text; (ii) Stories benefit the majority-race listener, by enriching his or her reality, *see infra* section II.B; (iii) Often it will be the majority-race individual who initiates the encounter, tells the first story ("What do you think of John Henry's not getting hired? I'm sure it wasn't discrimination, aren't you?") in which case he or she is obliged by the norms of social etiquette to listen to the black's counterstory.

listener. The storyteller gains psychically, the listener morally and epistemologically.

A. *How Storytelling Benefits Members of Outgroups*

The member of an outgroup gains, first, psychic self-preservation. A principal cause of the demoralization of marginalized groups is self-condemnation. They internalize the images that society thrusts on them — they believe that their lowly position is their own fault.[65]

The therapy is to tell stories. By becoming acquainted with the facts of their own historic oppression — with the violence, murder, deceit, co-optation, and connivance that have caused their desperate estate — members of outgroups gain healing.[66]

The story need not lead to a violent act; Frantz Fanon was wrong in writing that it is only through exacting blood from the oppressor that colonized people gain liberation.[67] Rather, the story need only lead to a realization of how one came to be oppressed and subjugated. Then, one can stop perpetrating (mental) violence on oneself.[68]

So, stories — stories about oppression, about victimization, about one's own brutalization — far from deepening the despair of the oppressed, lead to healing, liberation, mental health.[69] They also promote group solidarity. Storytelling emboldens the hearer, who may have had the same thoughts and experiences the storyteller describes, but hesitated to give them voice. Having heard another express them, he or she realizes, I am not alone.[70]

Yet, stories help oppressed groups in a second way — through their effect on the oppressor. Most oppression, as was mentioned earlier, does not seem like oppression to those perpetrating it.[71] It is ra-

65. John Henry's state before talking with Chen was close to this. *See supra* note 60; F. FANON, THE WRETCHED OF THE EARTH (1968); Delgado, *Words That Wound: A Tort Action for Racial Insults, Epithets, and Name-Calling,* 17 HARV. C.R.-C.L. L. REV. 135 (1984); Williams, *The Obliging Shell: An Informal Essay on Formal Equal Opportunity,* 87 MICH. L. REV. 2128 (1989); *see also* A. GRAMSCI, *supra* note 9; Gordon, *supra* note 26, at 284-86; Steele, *supra* note 11, at 48.

66. *See* sources cited *supra* note 62; Wiecek, *Preface to the Historical Race Relations Symposium,* 17 RUTGERS L. REV. 407, 412 (1986).

67. F. FANON, *supra* note 65.

68. *See* AND WE ARE NOT SAVED, *supra* note 2, at 215-21 (Chronicle of the Slave Scrolls).

69. *Id.*

70. For example, recall John Henry's lunch conversation with his younger colleague, *supra* text accompanying notes 41-42. *See also* E. NOELLE-NEUMANN, THE SPIRAL OF SILENCE (1984); Crenshaw, *supra* note 10, at 1336 (blacks' greatest resource the ability to speak and share experience of racism, to "name our reality"), 1349 (warning of danger of absorbing wrong stories, wrong reality).

71. *Supra* note 14 and accompanying text; *see* Delgado, *The Ethereal Scholar: Does Critical Legal Studies Have What Minorities Want?,* 22 HARV. C.R.-C.L. L. REV. 301, 309-10 (1987); *see also The Imperial Scholar, supra* note 6; *A Critical Review, supra* note 11, at 1054-55.

tionalized, causing few pangs of conscience. The dominant group justifies its privileged position by means of stories, stock explanations that construct reality in ways favorable to it.[72] One such story was put forward in the Introduction to this essay — the stock story of race relations in this country.[73]

This story is drastically at odds with the way most people of color would describe their condition. Artfully designed parables, chronicles, allegories, and pungent tales like the one told in the anonymous leaflet can jar the comfortable dominant complacency that is the principal anchor dragging down any incentive for reform.[74] They can destroy — but the destruction they produce must be voluntary, a type of willing death. Because this is a white-dominated society in which the majority race controls the reins of power, racial reform must include them.[75] Their complacency — born of comforting stories — is a major stumbling block to racial progress. Counterstories can attack that complacency.

What is more, they can do so in ways that promise at least the possibility of success. Most civil rights strategies confront the obstacle of blacks' otherness.[76] The dominant group, noticing that a particular effort is waged on behalf of blacks, increases its resistance. Stories at times can overcome that otherness, hold that instinctive resistance in abeyance.[77] Stories are the oldest, most primordial meeting ground in human experience. Their allure will often provide the most effective means of overcoming otherness, of forming a new collectivity based on the shared story.[78]

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72. *See supra* notes 25-26 and accompanying text; *see also* West, *Critical Legal Studies and a Liberal Critic,* 97 YALE L.J. 757, 767 (1988); Steele, *supra* note 11 (innocence-giving myths validate things as they are).

73. *Supra* text accompanying note 27. This story is reassuring. There is little need for guilt or responsibility; we have all the case law and statutes that we need; black people have been and are making steady progress; and the few out-and-out racists that remain will be punished when they step out of line.

74. *See* sources cited *supra* note 16 (underdogs' stories often ironic or satiric); Phelps, *The Story of Law in* Huckleberry Finn, 39 MERCER L. REV. 889 (1988); Crenshaw, *supra* note 10, at 1335.

75. *See* M. BALL, *supra* note 13, at 135-36; 1 P. RICOEUR, *supra* note 1, at x-xi; Crenshaw, *supra* note 10, at 1335-37, 1359, 1366-68; *Saved?, supra* note 3, at 943.

76. Note the almost reflex rejection of Al-Hammar's story, for example. *Supra* section I.D.

77. For illustration, note the serious attention given to the anonymous leaflet by faculty and the law school community. *Supra* section I.E.

78. Stories may thus be the private-life analogue of formality in litigation and in the public sphere generally, namely, devices whose purpose and effect is to discourage and reduce prejudice. *See Fairness and Formality, supra* note 47.

B. *Why Members of the Ingroup Should Listen to Stories*

Members of outgroups should tell stories. Why should members of ingroups listen to them?

Members of the majority race should listen to stories, of all sorts, in order to enrich their own reality. Reality is not fixed, not a given.[79] Rather, we construct it through conversations, through our lives together.[80] Racial and class-based isolation prevents the hearing of diverse stories and counterstories. It diminishes the conversation through which we create reality, construct our communal lives. Deliberately exposing oneself to counterstories can avoid that impoverishment, heighten "suspicion,"[81] and can enable the listener and the teller to build a world richer than either could make alone.[82] On another occasion, the listener will be the teller, sharing a secret, a piece of information, or an angle of vision that will enrich the former teller; and so on dialectically, in a rich tapestry of conversation, of stories.[83] It is through this process that we can overcome enthnocentrism and the unthinking conviction that our way of seeing the world is the only one — that the way things are is inevitable, natural, just, and best — when it is, for some, full of pain, exclusion, and both petty and major tyranny.[84]

Listening to stories makes the adjustment to further stories easier; one acquires the ability to see the world through others' eyes.[85] It can

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79. *Saved?, supra* note 3, at 947; *see* Teachout, *Worlds Beyond Theory: Toward the Expression of an Integrative Ethic for Self and Culture* (Book Review), 83 MICH. L. REV. 849 (1985); *Thinking About Our Language, supra* note 25, at 1962.

80. *See* sources cited *supra* note 10; J. MILL, ON LIBERTY 35 (D. Spitz ed. 1975) (we should accept as true only those interpretive beliefs that we have invited *the whole world* to prove unfounded); *Saved?, supra* note 3; Shapiro, *supra* note 47. *See generally* N. DAVIS, FICTION IN THE ARCHIVES: PARDON TALES AND THEIR TELLERS IN SIXTEENTH-CENTURY FRANCE (1987).

81. *See* Sherwin, *supra* note 12 (critical rhetoric can combine culture-building, constituent-strengthening dimension of storytelling and "deconning" element).

82. *See* sources cited *supra* note 20; M. BALL, *supra* note 13, at 135; *Saved?, supra* note 3.

83. *See* sources cited *supra* note 74. Stories enable us to begin to reform thought structures by means of which we create our world — no small accomplishment. The task is akin to making a bed while still lying in it. Stories give us a glimpse of a world we have never seen, using the current stock of narratives to point the way to another better, larger, more inclusive one. *But see supra* notes 47-48 and accompanying text (poorly told stories can result in rejection, rationalization, or cognitive dissonance on part of listener and fail to have intended effect).

84. *See, e.g.,* the pain and anger in Al-Hammar's story, *supra* section I.D. Stories make belief structures visible and show that they need not be as they are. On the disjunction between majority- and minority-race life experiences and perceptions of the world, see Delgado, *Critical Legal Studies and the Realities of Race — Does the Fundamental Contradiction Have a Corollary?,* 23 HARV. C.R.-C.L. L. REV. 407, 407-08 (1988). *See also Economic Man, supra* note 21, at 873-77.

85. *See Affirmative Action, supra* note 7, at 8. Note that Al-Hammar's explosive tale of rage and disgust may have paved the way for the more ironic and appealing anonymous account. Stories can often be staged, arranged in sequence so as to heighten consciousness incrementally.

lead the way to new environments. A willing listener is generally "welcomed with open arms."[86] Listening to the stories of outgroups can avoid intellectual apartheid. Shared words can banish sameness, stiffness, and monochromaticity and reduce the felt terror of otherness when hearing new voices for the first time.[87]

If we would deepen and humanize ourselves, we must seek out storytellers different from ourselves[88] and afford them the audience they deserve. The benefit will be reciprocal.

CONCLUSION

Stories humanize us. They emphasize our differences in ways that can ultimately bring us closer together. They allow us to see how the world looks from behind someone else's spectacles. They challenge us to wipe off our own lenses and ask, "Could I have been overlooking something all along?"

Telling stories invests text with feeling, gives voice to those who were taught to hide their emotions. Hearing stories invites hearers to participate, challenging their assumptions, jarring their complacency, lifting their spirits, lowering their defenses.

Stories are useful tools for the underdog because they invite the listener to suspend judgment, listen for the story's point, and test it against his or her own version of reality. This process is essential in a pluralist society like ours, and it is a practical necessity for underdogs: All movements for change must gain the support, or at least understanding, of the dominant group, which is white.

Traditional legal writing purports to be neutral and dispassionately analytical, but too often it is not. In part, this is so because legal writ-

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The stories told in Part I represent, if not a linear progression, at least movement — something more than simple oscillation around an undefinable midline.

86. *Id.* at 16.

87. *Id.* at 12-16. There are dangers in storytelling, particularly for the first-time storyteller. The hearer of an unfamiliar counterstory may reject it, as well as the storyteller, precisely because the story unmasks hypocrisy and increases discomfort. *See Saved?, supra* note 3; *cf.* R. LAING, THE POLITICS OF EXPERIENCE 77-81 (1967) (double bind theory of schizophrenia); Bateson, Jackson, Haley & Wakeland, *Toward a Theory of Schizophrenia,* 1 BEHAV. SCI. 251 (1956) (same). *See generally* L. FESTINGER, *supra* note 56. Or, the hearer may consciously or unconsciously reinterpret the new story, in light of the hearer's own belief system and inventory of stock stories, so as to blunt, or even reverse its meaning. *See id.*; Winkler, *Scholars Nourished on the 60's Question the Impact of Their Research on Public Policy and Law,* Chron. Higher Ed., Nov. 9, 1988, at A5, col. 2 (Mary Frances Berry, professor of history and former Assistant Secretary of HEW, and other historians recounted cases where scholars' testimony to courts and Congress had an effect opposite from that intended because the decisionmaker had a different agenda, or reinterpreted scholar's account to favor the other side).

88. Note the abstract, bloodless — not to mention ineffectual — quality of John Henry's legal complaint. *Supra* subsection I.C.1. It does little to challenge, enlighten or move us, as some of the other stories do.

ers rarely focus on their own mindsets, the received wisdoms that serve as their starting points, themselves no more than stories, that lie behind their quasi-scientific string of deductions. The supposedly objective point of view often mischaracterizes, minimizes, dismisses, or derides without fully understanding opposing viewpoints. Implying that objective, correct answers can be given to legal questions also obscures the moral and political value judgments that lie at the heart of any legal inquiry.

Legal storytelling is an engine built to hurl rocks over walls of social complacency that obscure the view out from the citadel. But the rocks all have messages tied to them that the defenders cannot help but read. The messages say, let us knock down the walls, and use the blocks to pave a road we can all walk together.[89]

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89. HOW THINGS CAME OUT

The curious reader will be glad to know that:

Professor White never modified his view.

Al-Hammar X graduated in the top 15% of his class, enrolled in a famous LL.M. program, and plans to become a law professor.

Judith Rogers continued to be friendly with Professor Vernier, and actually succeeded in making him more receptive to minority candidates.

John Henry was hired at Howard, where he had a long and illustrious career.

The students at school *X* formed a committee to press for more minority and women professors. They did all the things Al-Hammar X suggested except disrupt classes. Two years later, the school hired two black women and a Hispanic male, maintaining however that this was not the result of student pressure but rather its own long-term recruiting.