RESPONSES

TELLING A BLACK LEGAL STORY: PRIVILEGE, AUTHENTICITY, "BLUNDERS," AND TRANSFORMATION IN OUTSIDER NARRATIVES

Jerome McCristal Culp, Jr.*

I. INTRODUCTION

ONE of the methods that I and a number of other legal scholars have used to question the status quo in law and society is to tell stories from our autobiographies or those of our communities. Autobiography plays a valuable role in our scholarship and in our teaching. This was the central point that I developed in Autobiography and Legal Scholarship and Teaching: Finding the Me in the Legal Academy,1 the first essay in the essay section of the Virginia Law Review five years ago.2 It is a point that many seem to have a difficult time grasping or, more likely, admitting.3 To use autobiography as part of one’s

---

* Professor of Law, Duke University School of Law. I would like to thank Patricia Williams, Kate Bartlett, Richard Delgado, and David Lange for helpful comments, and Dan Thurber for excellent research assistance.
2 It is also a central point of an essay I wrote a year later. See Jerome McCristal Culp, Jr., You Can Take Them to Water but You Can’t Make Them Drink: Black Legal Scholarship and White Legal Scholars, 1992 U. Ill. L. Rev. 1021 [hereinafter You Can Take Them to Water].
scholarship and teaching is to move into a hotly contested area of debate in the academy. The contest, significantly, is between those who support the status quo and those who oppose it.

The use of autobiography and other narrative forms is growing as a means to alter the contours of public debate. This is not an accident. The technological changes of the last part of this century have altered how we learn and process facts. Storytelling by the nightly news and by television talk shows has become a more important part of the landscape; people who seek to alter public policy have to use more and varied means to tell their personal stories than in the past. When gay and lesbian activists sought to create support in Congress for measures to fight employment discrimination against homosexuals, they did so by having gay and lesbian Americans tell their stories of personal experience with sexual orientation discrimination. These activists realized that personal stories about discrimination were more

---


In comparing me unfavorably to Patricia Williams, Professor Francis Mootz writes: "There is an important difference between telling a story and describing one's reaction to the recounted events as part of an effort to foster a more productive exchange, as opposed to expressing anger at those with whom one is speaking on account of their wrongheaded commitments." See Francis J. Mootz, III, Legal Classics: After Deconstructing the Legal Canon, 72 N.C. L. Rev. 977, 999 n.69 (1994). Professor Mootz assumes wrongly that the only audience worth speaking to is the white majority professorate. In the article he criticizes I partially mean to speak to the white majority, but I also wanted to speak to a conference of minority scholars. In speaking to that conference I wanted to encourage those scholars to use their anger to do analysis. A number of minority scholars have told me over the years that this point has moved them to do scholarship. Not everything can or should be directed at the white majority.

---

transformation—at least in this part of the debate—than objective, empirical means of measuring discrimination.\textsuperscript{5}

A complicated forest of issues arises when we examine the role of autobiography in political transformation. What is the object of a narrative? There are three possibilities. One object can be to educate. This goal was at the heart of the slave narratives of African Americans, among the first American autobiographies. The second object can be to prevent discussion. This was the object of Clarence Thomas’ story as told by the Bush White House and then-Judge Thomas before the Senate Judiciary Committee. The function of Thomas’ personal narrative was to silence criticism of his views by replacing discussion of those views with his biography. The third object can be to force public discussion to focus on a particular set of stories. This is the object of gay and lesbian leaders in having stories of discrimination told by victims of that discrimination. They seek to place victims’ stories at the heart of the debate about employment discrimination and sexual orientation.

Stories and autobiographies, in turn, can work either to support or to alter the dominant stories being used to describe and construct reality. Stories including autobiographies can educate, but one person’s education is another’s miseducation; as a result, stories can be used to support the racial, economic, or social status quo that exists. In his concurrence in \textit{Adarand Constructors v. Pena},\textsuperscript{6} Justice Thomas tells a story that silences discussion and miseducates. He argues that to claim there is a difference between racial classifications that create caste and racial classifications that eliminate caste is to engage in racial (read white)

\textsuperscript{5} However, at the heart of the question about who should testify was the notion of story and autobiography. In addition, even in other, more traditional areas of civil rights, traditional scholarship that shows that our status quo claims fails is not always transformative. See references by Richard Epstein to Ian Ayres excellent work on the existence of discrimination in the car-buying market. Richard A. Epstein, Forbidden Grounds: The Case Against Employment Discrimination Laws 47-48, 51-54 (1992) (examining Ian Ayres’ study of discrimination in the retail automobile market, Fair Driving: Gender and Race Discrimination in Retail Car Negotiations, 104 Harv. L. Rev. 817 (1991), and concluding that Ayres’ strong traditional evidence of discrimination does not invalidate his arguments that markets will take care of discrimination). In essence, Professor Epstein tells a story about markets and discrimination and substitutes that for facts.

\textsuperscript{6} 115 S. Ct. 2097 (1995).
paternalism. Justice Thomas uses his black voice to make a claim that miseducates us about the basis for affirmative action, and that tries to personalize the harm in a way that does not invite or in some ways permit debate. Affirmative action was created not out of racial paternalism but as a reaction to a call for change in the status quo. Justice Thomas does not mention his autobiography directly, but implicitly uses a black identity based in his autobiography.

Justice Thomas's concurrence illustrates the fact that storytelling including autobiography can be counterproductive or even repressive. A slave narrative that told “free blacks,” slaves, and white Americans that slavery was good, that the black slave should be thankful for having been brought to America, and that she should appreciate her condition would still be a slave narrative, but it would be repressive. Use of the narrative form does not require a particular result, as the Thomas nomination and Justice Thomas' concurrence in Adarand demonstrate, but it is clear that the form of the story matters.

Of course, storytelling, even autobiography, is not necessarily the most powerful means of political transformation. When people are really powerful they force people to learn new stories through political repression (the communist rulers of China during the cultural revolution) or successful coaptation (the United States in Eastern Europe after the collapse of communism). Storytelling is less powerful than some other political processes, but it is also often a part of such processes. The movement to

---

7 Id. at 2119 (Thomas, J., concurring).
8 The story told about General Colin Powell is similar to the story that Justice Thomas has told about his life. General Powell's most significant qualification for president is his ability to claim a Horatio Alger story. See, e.g., Howard Fineman, Powell on the March, Newsweek, Sept. 11, 1995, at 26-31 (discussing Powell's autobiography, My American Journey (1995)). This "success" story is an old presidential myth that goes back at least to Andrew Jackson. See, e.g., Robert V. Remini, The Life of Andrew Jackson 1-13 (1988). In General Powell's case, his black Horatio Alger story could be told either to protect the status quo or destroy it, depending on whether after winning election General Powell would support or change the status quo.
9 I will concede for the sake of argument that one could contend that such a story is not repressive, but this argument seems at its base to assume no ability to make value judgments. Of course, some narratives contain claims like the ones described, but those claims are the product of stories told by whites or through the language of white supremacy. See, e.g., Dinesh D'Souza, The End of Racism (1995).
end slavery adopted and used story as the heart of its effort to end the "peculiar institution." The slave narratives played an important role in making the North oppose the institution of slavery. Other stories including novels played a similar role by adopting and essentializing the stories of these slave narratives. This is why Abraham Lincoln could say about Harriet Beecher Stowe, "There is the little woman who started the big war." We know that storytelling can influence the world because we argue over who gets to tell "our story."

How do the stories being told by legal academics like Richard Delgado, Robin West, Patricia Williams and me fit into these categories? I believe the answer is simple. We have sought to educate with our stories and to alter the status quo. This is at the heart of my Autobiography and Legal Scholarship article and much of the work of my colleagues criticized by Professor Coughlin. When Patricia Williams tells the story of first year law examinations, she is attempting to educate law professors and students who do not hear the harm the stories in those examinations cause certain first year students. Her story engages the reader in a debate. Unfortunately, for many traditional law professors it is a debate they would rather not join. Similarly, my article on autobiography is about educating my students, black and nonblack, about the black stories that exist about the law but that are left out by much of traditional legal scholarship and teaching. Through narrative, story, and autobiography we have tried to use our experiences to alter the stories that are told about society and the stories that are the center of public debate.

11 As Richard Delgado points out, his extensive bibliography contains little that can be considered autobiography. See Richard Delgado, Coughlin's Complaint: How to Disparage Outsider Writing, One Year Later, 82 Va. L. Rev. 95, 103-04 (1996). He has, however, been an important storyteller. See Richard Delgado, The Rodrigo Chronicles (1995).
12 See Culp, Autobiography and Legal Scholarship, supra note 1, at 543.
15 See Culp, Autobiography and Legal Scholarship, supra note 1.
II. HORATIO ALGER AS BLACK LAW PROFESSOR

These scholars, like many white Americans, insist on being in control of their relations with black people. We see this in scholarship which makes the words of black people irrelevant. When majority scholars are in master mode they cannot hear the words of scholars of color; hence, they are in control of the discourse.  

What this colleague convinced me of is that my story is easier on the ears of white scholars precisely because it comes across as unthreatening and therefore as understandable. This is ultimately discouraging because it says that precisely when we are most able to evoke truth within our stories as people of color it will be difficult for people to hear them.  

Jerome McCrystal Culp, Jr.

Professor Anne Coughlin has examined the articles that I have written that touch on autobiography in my scholarship. She suggests that I have misunderstood my own story, and she has reinterpreted it for me and the audiences I have written to about my life. My life, she tells me, instead of being revolutionary should (and will) be seen as a kind of "Horatio Alger" story, normal and standard American fare. Indeed, Professor Coughlin indicted my story for failing to provide a clear institutional and theoretical framework for change. In short, my life is too middle class and too standard—too like that of many white Americans—to provide a vehicle for altering the standard liberal model.

Professor Coughlin’s account of my life fails in part because she does not listen to the stories I have been telling. She insists on controlling how my stories ought to be understood and does so by engaging in a tortured interpretation of my history and

---

17 Culp, You Can Take Them to Water, supra note 2, at 1026.
18 Coughlin, supra note 13.
19 See id. at 1292.
20 See id. at 1292-94.
narratives. By my account, I have talked about my autobiography in seven articles, of which Professor Coughlin refers to six.\textsuperscript{21} Total references to the facts of my life amount to less than ten printed pages, even if you include the references to the lives of my parents, siblings and relatives. Of course, as I suggested in Autobiography and Legal Scholarship, all of my work by definition has to reflect my life and my past.\textsuperscript{22} This includes the work that I have done on law and economics and on economics and torts. A fuller picture of my life and work would belie much of what Professor Coughlin asserts. In my scholarship, I have used small stories about my experiences, and I have talked about the nature of the stories that I tell my students.\textsuperscript{23}

This is also true of the other people criticized by Professor Coughlin in her article. None of us has attempted to write a full autobiography.\textsuperscript{24} Most of us have used autobiographical moments

\textsuperscript{21} Id. at 1236 n.17 (citing Culp, Autobiography and Legal Scholarship, supra note 1); id. at 1241 n.31 (citing Culp, You Can Take Them to Water, supra note 2); id. at 1246 nn. 46-47 (citing respectively Jerome McCristal Culp, Jr., Voice, Perspective, Truth, and Justice: Race and the Mountain in the Legal Academy, 38 Loy. L. Rev. 61 (1992) [hereinafter Voice, Perspective] and Jerome McCristal Culp, Jr., Toward a Black Legal Scholarship: Race and Original Understandings, 1991 Duke L.J. 39 [hereinafter Black Legal Scholarship]); id. at 1297 n.264 (citing Culp, Water Buffalo and Diversity, supra note 16); id. at 1301 n. 279 (citing Jerome McCristal Culp, Jr., Notes from California: Rodney King and the Race Question, 1993 Denv. U. L. Rev. 199). The article she does not cite was published shortly before her article was published by the Virginia Law Review. Jerome McCristal Culp, Jr., An Open Letter From One Black Scholar to Justice Ruth Bader Ginsburg: Or, How Not to Become Justice Sandra Day O’Connor, 1 Duke J. Gender L. & Pol. 21 (1994) [hereinafter Culp, An Open Letter].

\textsuperscript{22} See Culp, Autobiography and Legal Scholarship, supra note 1, at 558.

\textsuperscript{23} The question of how to treat what I call autobiographical moments in comparison to autobiography has to be addressed. Cf. Leah D. Hewitt, Autobiographical Tightropes 5 (1990) (telling why author has chosen to discuss partial autobiographical works along with fuller ones).

\textsuperscript{24} There are several reasons why I have chosen not to write a full autobiography in these articles. First, a full autobiography would include material that would conflict with the points that I want to make. I am using stories from my life, not telling the full story of my life. Second, I have avoided telling stories that would be viewed as totally self-serving. I have not spoken about the slights, pains, or most of the triumphs of my life in the autobiographical moments I have used. This explains Coughlin’s conclusion that I shoveled flyash to get through Harvard Law School, a claim I did not make; I worked for a time shoveling flyash while I was a student in college. I was not writing about the full experience, but Coughlin wants to make a story out of something I have not done, and makes several mistakes in the attempt. I have chosen to use autobiographical moments to avoid the pit that Professor Coughlin suggests I have fallen into. Third, I have sought to engage the legal discourse by presenting
to make points about the law and race, gender, and class, and about sexual orientation and race, gender, and class. The distinction between Coughlin's desire to characterize us as autobiographers and our own, more limited use of autobiography undermines her assessment of why we use stories from our lives in our scholarship and of the potential that autobiography has as an agent of change.

How does Professor Coughlin come to the conclusion that my autobiography is a "Horatio Alger" story? The primary method is by reading my story out of context. In my principal pieces on autobiography I have talked about how I want my story interpreted. In Autobiography and Legal Scholarship I wrote:

My autobiographical statement—that I am the son of a poor coal miner—has informational content that has a transformative potential much greater than my curriculum vitae. Who we are matters as much as what we are and what we think. It is important to teach our students that there is a "me" in the law, as well as specific rules that are animated by our experiences.

Because black professors of law often enter law in order to create and sustain societal change, it should not surprise us that black professors of law use their autobiographies in a number of ways to illuminate their teaching and scholarship.25

Professor Coughlin says that for me to claim to hold a position of power and to have achieved something against the odds is to reproduce a story grounded in liberal individualism.26 She does

Concrete questions. This is why the most important autobiographical moment is my tort example about the old woman (discussed infra in note 28).

I have thought recently about writing an autobiographical book that would respond to the claim that the only story successful blacks can tell is a Horatio Alger story. I believe that the story I have told is one of a black person who has achieved some success with the aid of good parents, good public policy and a certain amount of luck.

Patricia Williams' book, The Rooster's Egg, is the closest thing we have to an effort on the part of any of us to do an autobiography, but even that is not in fact a full autobiography, and it was not considered by Professor Coughlin because it had just been published. Patricia J. Williams, The Rooster's Egg (1995).

25 Culp, Autobiography and Legal Scholarship, supra note 1, at 543.

26 See Coughlin, supra note 13, at 1259 ("[B]y conferring on law authority to intervene in and remedy a broader range of outsider grievances than liberal individualist ideology would seem to allow, they are producing a revolutionary vision of a human self that is dependent on external assistance for its well-being."); id. at 1284 ("Contrary to the outsiders' claim that their personalized discourse infuses law with their distinctive experiences and political perspectives, numerous historians and critics of
this by breaking my autobiographical story into two parts, one about my early life and the other about my life as law professor. Professor Coughlin distorts the first part of my story and ignores the autobiographical aspects of the second part. The only way she is able to make my story a Horatio Alger story is by taking parts from different articles and trying to piece them together as a coherent autobiography. This approach does not work because the stories I tell have particular purposes and cannot be read out of context. In *Autobiography and Legal Scholarship*, for example, I only talk about three autobiographical moments outside of law school teaching. I write about being the son of a poor coal miner and about having not been admitted to Harvard College, but the most important autobiographical discussion is about my experience with an old white woman in Evanston. Professor Coughlin takes the first autobiographical moment out of context, misreads what I said about my Harvard autobiography have insisted that those who participate in autobiographical discourse speak not in a different voice, but in a common voice that reflects their membership in a culture devoted to liberal values.


38 See id. at 552. I tell the story of my encounter with an old white woman and question whether my interrogation of her by saying “Boo” or “Good morning” would amount to an assault or intentional infliction of emotional distress.

The story is valuable in exploring the criticism that by using autobiography we prevent people from being able to contest the story. This argument suggests that any effort to use a personal story silences those who are not part of the story. I think that this is an overstatement of the impact of the use of the personal. Does this story limit discussion or silence my students or make readers feel they cannot question my assumptions?

My experience teaching this hypothetical for more than 14 years suggests that this has not been the experience. Those who have written about the use of this hypothetical do not suggest that my story is privileged or silencing in the sense that it does not permit others to engage it. See, e.g., Stephanie M. Wildman, Privilege and Liberalism in Legal Education: Teaching and Learning in a Diverse Environment, 10 Berkeley Women’s L. J. 88, 94 (1995). Indeed, as one of my black students pointed out, not all students who hear the story will recognize all that I want to raise about race and the law. Some of my students will not get it, but that is precisely because I have chosen not to privilege my story or to write it from the perspective of nonengagement.

The point of the story is not that every student who hears it will hear it and understand, but that some will hear it and see some issues that they did not before. Like all methods of education, narratives are not always transformative. None of my colleagues have contended that only autobiography is transformative. All of us also use other methods and engage in other strategies.
admission, and essentially ignores the largest autobiographical discussion about my interchange with torts, law, and an old white woman.

By ignoring the context in which I have used the stories and ignoring the stories I tell about my autobiography as law professor, Professor Coughlin creates her Horatio Alger story, but it is not the story that I have written or tried to tell. Professor Coughlin must ignore the larger law school context of the autobiographical stories I have told, because if she paid attention to that context she could not possibly tell her simplistic Horatio Alger story. The pedagogical function of storytelling is the most important aspect of why I use autobiography, a point I have made previously.

My question to Professor Coughlin is, what story will be told about race if we who have autobiographies remain silent and, to the extent possible, keep our autobiographies out of our scholarship and teaching? Won't that approach be more supportive of the status quo? Professor Coughlin suggests—without the support of evidence from my or any other scholar's work—that I and others believe that to exercise a black voice is to be outside mainstream American culture. I have made exactly the opposite

---

29 Professor Coughlin suggests that I charge Harvard College with racism. See Coughlin, supra note 13, at 1297 n.267. I believe a careful read will demonstrate that what I said was that I could have been admitted and that the criteria used disfavored black people like myself who did not go to prep schools and who in general did not know the right people. See Jerome McCristal Culp, Jr., Diversity, Multiculturalism, and Affirmative Action: Duke, the NAS, and Apartheid, 41 DePaul L. Rev. 1141, 1153-54 (1992). I did not say that I had some right to be admitted. Professor Coughlin would interpret this as supportive of liberal ideology. I do not think it is supportive of the interpretation of liberal ideology adopted by the most vigorous opponents of affirmative action. It is not the claim that they would make about those schools before affirmative action. They would tell a story of sweetness and light where prep school privilege and contacts do not matter. Professor Coughlin accuses me of a story that I explicitly reject in at least one article. See Jerome McCristal Culp, Jr., You Can Take Them to Water, supra note 2, at 1024 n.12. As I noted in that article people can hear different things in our articles, but the notion that to tell this story means that I am simply telling them that hard work will lead to success does an injustice to what I believe most hear when they read my articles.


31 In Professor Coughlin's view, those of us who have told stories have not been able to step outside of mainstream culture. See Coughlin, supra note 13, at 1251 ("My thesis is that autobiography does not provide a way for the self to step outside of
point in a number of my articles. I have consistently contended that black Americans are both black and American. Therefore, they have a duality of voice. Do American blacks speak with a language that is part of a common culture? Of course! This point is so central to what critical race theory and feminism have taught the academy that Professor Coughlin's failure to acknowledge it is surprising.

It seems to me that Professor Coughlin fails her own test of scholarship in examining the potentially transformative nature of my work. My story has been cited and interpreted by a number of people since I published it. Have most scholars seen my story as a Horatio Alger story? If one examines the citations to my work, the vast majority have heard the story that I told about the possibility for change with hard work and appropriate policy. Professor Coughlin does not even examine that work.

---

32 See, e.g., Culp, Black Legal Scholarship, supra note 21, at 45:
[The experiences of black law professors] simultaneously vary from and are similar to the experiences of other black Americans. In addition, we are Americans, for the most part, born and educated, and certainly experienced, in the American society. We sometimes see the world exactly as other Americans see it and sometimes not, but we always bring that dual experience that is both similar to and different from the experience of white law professors to the jobs we perform as professors.

33 See sources cited supra note 3. But see Paul D. Carrington, Buffaloos and a Straw Man, 26 Conn. L. Rev. 295 (1994) (finding my story about racism to be unfair to him and to history); Mootz, supra note 3 (criticizing my work).
to check her interpretation of my story. While her interpretation is valid as her personal view, Professor Coughlin attempts to make claims about how most people will interpret my story. For that task Professor Coughlin has to do more than simply speak almost exclusively to the small number of scholars who have profoundly misinterpreted my work and the work of other critical race theorists and feminists on these questions.\(^{34}\) It is possible to read my article and argue that it contains a message to the effect of “I made good; why can’t you?”, but as I noted earlier I have rejected that charge. Instead I use the me that is in the classroom to raise questions about how race ought to enter the law. In her work, Professor Coughlin does not deal with any aspect of my life that is used in that way. It does not fit, so she simply ignores the importance of those stories to how I use autobiography. I described the “Boo!” hypothetical in Autobiography and Legal Scholarship to try to make it clear that race matters and that it controls how we interpret the law. This story is not supportive of individualistic claims of race blindness but it does not conceive of a black person who cannot be an individual either. Again Coughlin has created a strawwoman made up of her strained vision of the project of critical race theory and of laws makeup.

Finally, Professor Coughlin uses the notion of Horatio Alger as an example of “poor boy through merit makes good.” As Coughlin and others note, that was not the import of the Horatio Alger stories when they were written at the end of the nineteenth century. Indeed, those stories were about how “poor boy through luck makes good.” The connection between merit and getting ahead were much less clear. Ironically, in trying to apply that story to African Americans, Professor Coughlin does not deal with the impact of race on our ability to be seen as a Horatio Alger figure. Professor Coughlin would read the racial aspect out of our experiences.\(^{35}\) She does not deal with the

---

\(^{34}\) It is a little odd that those of us so vividly mentioned in these pages were not given copies of Professor Coughlin’s article until after she had presented it at faculty seminars at NYU, Columbia, and Virginia.

\(^{35}\) For an example of this tendency, see Professor Coughlin’s comparison of domestic work by my female relatives with the work performed by woman in Horatio Alger’s fiction. Coughlin, supra note 13, at 1297 n.263. Professor Coughlin’s comparison does not deal with differences of time and race between the two examples.
question of whether in America any black person can truly live a Horatio Alger story. In an America where race is central to our construction of reality, does the black identity of the autobiographer change how the story is lived and perceived?

III. SLAVE NARRATIVES, "BLUNDELS" AND AUTOBIOGRAPHY

A scholar's inattention to the history of the autobiographical conventions and literary types with and within which she is working may lead her to make, at the least, ambiguous interpretational claims that in turn generate questionable theoretical positions.36

* * *

The autobiographical performance of Jerome Culp is an especially concise illustration of the manner in which unreflective storytelling subverts the outsiders' desire to represent a more authentic version of their experiences than that embedded in law. . . . Culp's story is a poignant one—and, surely it attests to a happy transformation in his social and material fortunes—but the story does not perform the work that he intends.37

Anne M. Coughlin

In addition to advancing a mistaken view of my autobiography, Professor Coughlin questions my scholarly competence and that of other scholars of color and feminists. The charge is that we do not know how to use literary tools or methods. To support her charge, she uses two sentences and a footnote I wrote regarding Frederick Douglass' autobiography as an example of a black person claiming a voice.38 Professor Coughlin claims

36 Coughlin, supra note 13, at 1262.
37 Id. at 1292.
38 See id. at 1263. The text and footnote read as follows:
The work that begins this forward-looking approach to autobiography by black intellectuals is the autobiography of Frederick Douglass, who felt compelled to include the words "written by himself" in the subtitle of his first autobiography. Douglass, like Wheatley, wanted to claim a legitimacy that black people in that era could not claim.
that Frederick Douglass did not desire to speak with a "black
voice" but simply to become a part of the general intellectual
discourse, and that he was simply denominating his work as
autobiography by using the words "written by himself." Coughlin
contends that "[a]t that time, any author who desired
to signal that his text was (what we now call) an autobiography
would have 'felt compelled,' as Culp puts it, to use some descript-
ive phrase or word to so indicate." Of course the point is that
most did not use "written by himself" and this usage was much
more likely to be used in the slave narratives particularly after
Douglass' first autobiography.

Coughlin's view of Frederick Douglass is simply ahistorical
and inconsistent with what we know of the rationales for his
work. Her interpretation of the rationale for Douglass' title is
also wrong. It is wrong from the perspective of the most influ-
ential historians on the subject, it is wrong from the perspective
of the most important literary theorists on the question, and
finally, it is wrong if you read the context of Douglass' words
and the words of those who introduced his autobiography.

It is clear that Douglass was writing his autobiography against
the background of slave narratives. Many of these slave narra-
tives were written in the first person. Some were thought to
have been written by whites, and others were assumed to be a
fictionalization of the lives of black people. When Frederick
Douglass includes the words "written by himself" in the title, he
understood the history of those other narratives, and that not all
who wrote autobiographies included "written by himself or her-
sel."

Professor Coughlin suggests that Douglass was "simply"

\[\ldots\]

\[\ldots\] It is likely that Douglass included the words "written by himself" in the
subtitle to signal to others that his narrative was in fact self-written. In this
regard, Douglass' narrative was unusual, because most slave autobiographies
were ghostwritten by abolitionist writers.

Culp, Autobiography and Legal Scholarship, supra note 1, at 541-42 & n.10.
39 See Coughlin, supra note 13, at 1267-68.
40 Id. at 1265.
41 See Benjamin Quarles, Introduction to Frederick Douglass, Narrative of the Life
of Frederick Douglass An American Slave: Written by Himself xvi (Benjamin Quarles
42 See Charles T. Davis & Henry Louis Gates, Jr., The Slave's Narrative 319-27
(1985). A brief glance at the titles in this bibliography will demonstrate that "written
using a typical way of denoting autobiography by his use of the words "written by himself" in this first title. A careful review of the slave narratives that preceded his suggests, however, that it was an arrogant and relatively distinctive statement to simply say "written by himself" and not to include other words, such as "reviewed," "edited by," or "as told to others."

Frederick Douglass used the words "written by himself" to claim a legitimacy that many people at the time doubted. In the preface to the 1968 edition of Benjamin Quarles's biography of Frederick Douglass, James M. McPherson, a leading Southern historian and Professor of History at Princeton University, described the creation of Douglass' narrative this way:

As [Douglass] grew in mental stature he began to discuss the slavery issue in more depth. Abolitionists who believed that Douglass' chief value to the cause was as a direct, living representative of slavery feared that the growing intellectual content of his speeches would impair his credibility as a former slave. They advised him to stick to the simple facts "and we will take care of the philosophy." Their fears were well founded. Audiences began to doubt that this articulate, well-read young Negro who spoke with little trace of a southern accent had ever been a slave. To avoid the danger of recapture, Douglass refused in his lectures to give details of names and places connected with his slave background, and this refusal increased the skepticism of audiences. To put an end to all doubts Douglass wrote a detailed autobiography in 1845 and published it under the title *Narrative of Frederick Douglass.*

This view of the rationale for Douglass writing his autobiography is shared by leading literary theorists as well. Arna Bontemps, one of the leading literary experts on black narratives, wrote about Douglass' first autobiography: "Written to convince the boys at Harvard and others who had called him an imposter or said that otherwise he demonstrated that slavery could not

---

by himself" was a powerful part of slave narratives but that distinctions were made between writing and dictating and between memoirs and other descriptions. This view of voice was not limited to men. See Frances Smith Foster, *Written by Herself: Literary Production by African American Women, 1746-1892* (1993).

43 See Coughlin, supra note 13, at 1265-67.

44 See supra note 42.

45 James M. McPherson, Preface to Benjamin Quarles, Frederick Douglass vii (1968).
have been so bad if it could produce such outstanding figures as himself . . .”

Similarly, Douglass’ use of a black voice has been widely recognized. The first edition of Frederick Douglass’ autobiography included a preface by William Lloyd Garrison, the leading white abolitionist, that called Douglass one of the most important advocates of the slave population. Garrison’s Preface supports the argument that Douglass intended to exercise a black voice and consciously used a black voice. More poignantly, the first edition of Douglass’ autobiography began with a letter from Wendell Phillips, a leading abolitionist clergyman. Phillips started his letter, appropriately, with a story:

You remember the old fable of “The Man and the Lion,”
where the lion complained that he should not be so misrepresented “when the lions wrote history.”
I am glad the time has come when the “lions write history.”
We have been left long enough to gather the character of slavery from the involuntary evidence of the masters.

The heart of Phillips’ tale was that voice and perspective matter in how the facts are presented and what facts are presented. Phillips was arguing that Douglass’ autobiography was a voice for the lions, the African-American slaves, and that his voice and perspective would alter how people looked at slavery.

---

47 William Lloyd Garrison, Preface to Douglass, supra note 41, at 7.
48 In addition, Garrison wrote “Mr. Douglass has very properly chosen to write his own Narrative, in his own style, and according to the best of his ability, rather than to employ some one else. It is, therefore, entirely his own production . . . .” Id. at 9.
49 Both of Garrison’s statements support my brief interpretation of Douglass in Autobiography and Legal Scholarship. Garrison seems to be doing for Douglass what the 18 white citizens did for Phillis Wheatley giving white support for the statement, and to be arguing for the need for a black voice to speak for the African-American slave population. He also seems to be contending that Douglass can provide what I have called a black perspective that does not exist in a conversation between white Americans.
50 Phillis Wheatley was the first African American to have her poetry published in the United States. To attest to the fact that she had personally written the poetry a group of 18 white prominent citizens examined her and then attested to the authenticity of her poetry as the product of an African-American woman. See Davis & Gates, supra note 42, at 181.
51 Wendell Phillips, Letter, in Douglass, supra note 41, at 17.
Frederick Douglass, in the end of the penultimate chapter of the autobiography, described his use of voice:

I felt strongly moved to speak [at an antislavery convention]. . . . It was a severe cross, and I took it up reluctantly. The truth was, I felt myself a slave, and the idea of speaking to white people weighed me down. I spoke but a few moments, with considerable ease. From that time until now, I have been engaged in pleading the cause of my brethren—with what success, and with what devotion, I leave those acquainted with my labors to decide.50

Douglass was talking about the need to voice the concerns of African Americans in order to alter the condition of servitude that lay on most of them. This view of the importance of his voice was at the heart of Douglass' design to use his autobiography to alter the conditions of African Americans. Douglass was one of the first great American black intellectuals. As I indicated in Autobiography and Legal Scholarship, his use of his intellect to create change was facilitated by the use of his autobiography.51

In this context, Professor Coughlin's portrayal of the rationales for Frederick Douglass' autobiography does not reflect an understanding of the life of Frederick Douglass. Douglass was a leading advocate of a black voice his whole life. At one point, despite the objections of his leading white supporters (including Garrison), he started his own newspaper in order to raise issues that he thought were not included in the standard abolitionist

50 Douglass, supra note 41, at 153.
51 See Culp, Autobiography and Legal Scholarship, supra note 1, at 541-42 & n.10. See also Waldo E. Martin, Jr., The Mind of Frederick Douglass x-xi (1984):

Douglass's mind must be understood in its historical milieu. His thought can be divided into four interrelated categories. First, as a black man, Douglass presented a black, as well as humanist, perspective on America and its enduring racial quagmire. Second, his thought and life showed him constantly grappling with practical ways to eradicate injustices and to humanize institutions and social relations. Third, as a social reformer, he explored avenues to alleviate the Negro's degradation. Third, as a social reformer, he explored avenues to alleviate the Negro's degradation. Fourth, his introspective nature as well as his keen awareness of his own historical importance forced him to explore the larger significance of his life, notably his public personality. Douglass's ability to illuminate major contemporary social and intellectual currents through the prism of his own experience characterized his intellectual odyssey. As a result, his mind spoke profoundly to the dilemma of being black in nineteenth century America.
press.52 Furthermore, Douglass kept rewriting his “autobiography” to develop his voice.53 Thus, Professor Coughlin’s efforts to recast Douglass’ stories to make a theoretical point do not stand up under closer examination.

In her analysis, Professor Coughlin has fallen prey to one of the most repeated errors made by critics of critical race theory and feminism. Professor Coughlin has assumed that there is only one reason for an activity, instead of entertaining the possibility that multiple purposes may exist. Ultimately, this perspective leads Professor Coughlin implicitly to accuse critical race theorists and feminists of failing to reject every aspect of the current legal situation.54 I do not believe that Professors West, Delgado, Williams, or myself—or any other serious critical race theorist or feminist, for that matter—has ever claimed complete repudiation of the current legal system as one of our goals. Furthermore, none of us have claimed that such “radicalism” could be achieved through the writings of legal scholars, whether or not in narrative form.

In the end, Professor Coughlin’s failure to see multiplicity drives her analysis to her mistaken criticisms. She assumes that to have a black voice or perspective implies an essentialism that most of us in the critical race theory movement and most feminists have avoided. She contends that my argument that Douglass was compelled to include “written by himself” implies that he was defensive (a claim that I do not make), and argues that instead he was defiant (a claim with which I do not disagree).55 But most African Americans I know would believe that it is possible for Douglass to be both defiant and defensive. Such duality56 is a well-documented part of the African-American

52 See Quarles, supra note 45, at 80-81.
53 See Martin, supra note 51, at 272-73 (in writing his three autobiographies, Douglass delineated his self-image, “recasting and invigorating it in the heroic mold”).
54 See Coughlin, supra note 13, at 1298-1300; id. at 1292 (quoted supra at text accompanying note 37).
55 See Coughlin, supra note 13, at 1265-66.
56 Another duality that Coughlin misses is that something done by a privileged white male may have a different meaning than something done by an exslave. Coughlin argues that Douglass must have just been copying Ben Franklin. See id. at 1267 & n.139. That assumption, while plausible, does not deal with the point I made. Given the tenor of the times in which Douglass wrote, and the prevalent assumptions of the intellectual and spiritual inferiority of African Americans, Douglass’ writing raised
experience. Professor Coughlin accuses me of missing the import of my story and Douglass of telling a standard American story because the story that Douglass and I have told does not step outside of the American culture. But none of the four of us critiqued by Professor Coughlin have assumed that it is possible for black people, women, gays and lesbians, or poor people to step outside of culture. I have made the opposite point a number of times. People who have a different perspective do not become not-American or able to step totally outside of culture. Because Douglass was speaking to white Americans in his autobiography, and I sometimes speak to nonblack Americans in my scholarship, does not mean that Douglass or I do not speak with a black voice or perspective.

Professor Coughlin borrows a charge from literary critics who have examined Douglass’ first autobiography and come to the conclusion that it did not escape traditional methods and therefore was not completely authentic or completely responding to the black voice. I have pointed out the need to exercise our voices consciously, not just to the white majority but also to ourselves—law professors of color and their allies interested in creating a community opposed to oppression. I do not think you can read articles such as Water Buffalo and Diversity as being of the Horatio Alger myth or the status quo. The limitations that Douglass experienced, writing as a freed slave at a time when African Americans had little political power, do not apply as forcibly to me or the other tenured professors who have wor-

---

issues about the intersection of race and intellectual power that Coughlin simply misses. Douglass was not only writing autobiography—he was an African-American ex-slave writing autobiography.

57 See Culp, Black Legal Scholarship, supra note 21, at 45-48.
58 See Jerome McCristal Culp, Jr., Posner on Duncan Kennedy and Racial Difference: White Authority in the Legal Academy, 41 Duke L.J. 1095, 1098 (1992) [hereinafter Posner on Duncan Kennedy]; Culp, Black Legal Scholarship, supra note 21, at 45; Culp, Voice, Perspective, supra note 21, at 65-67; Culp, You Can Take Them to Water, supra note 2, at 1027-29.
59 See Coughlin, supra note 13, at 1266-68. See also Houston A. Baker, Jr., Autobiographical Acts and the Voice of the Southern Slave, in The Slave’s Narrative, supra note 42, at 249-50 (arguing that Douglass’ “conception of the preeminent form of being” was conditioned by white standards and, thus, “the roles he projects for himself in the latter part of his Narrative . . . are all in harmony with a white, Christian, abolitionist framework”).
60 Culp, Water Buffalo and Diversity, supra note 16.
ked to create their own voices. In this light, Coughlin's criticisms are misdirected as applied to current critical race writing and scholarship. Black activity from art to sports has been distorted by racial oppression—had it not been, tap dancing and the Harlem Globetrotters would not exist. This does not mean that it is not possible for black people to stop tap dancing or acting like buffoons for white America—if it did, Alvin Alley, Michael Jordan, and Toni Morrison would not exist.

Stories can alter public debate by attacking and questioning the underlying stories that we tell about public policy and the law. Stories can alter public policy by adding aspects to the stories currently being told, or by introducing questions that are not being discussed. Professor Coughlin and the writers of numerous other articles regarding the role of identity in the law would not be examining questions about autobiography if critical race scholars, queer theorists, and feminists had not raised questions about identity and ethnicity through our work. We have succeeded in raising new questions; actually changing the dominant stories that are being told may be more difficult. It seems that we have had some success. Part of the way that we altered notions of sexual harassment was through the stories of women who had been harassed. Women and their allies thus have been able to force acceptance of an interpretation of sexual harassment that would have been unthinkable when Title VII was passed in 1964.61

Have the stories I have been telling been successful in altering public debate? It depends on where you look. Judges have not cited to my work in overturning repressive interpretations of Title VII—but there are other reasons to speak.62 Some in the academy have spoken about the impact my stories have had on them.63 If we are going to be judged by results, however, it seems that there are three possible methods of analysis. Critics could attempt to assess the impact of different stories on students, critics could analyze how different stories have influenced

---

the courts or legal opinions, or critics could analyze how our stories have altered underlying stories in the law. These are difficult questions, and Professor Coughlin has not done a serious job of asking or treating any of them.

IV. CONCLUSION

Professor Coughlin’s most compelling claim is that those of us who use autobiography attempt to “privilege” our stories. She gives no citations to the work of any critical race theorist, queer theorist, feminist or critical legal studies scholar in support of this accusation. She does not explain exactly what it means to “privilege” our stories. I cannot be exactly sure what it means, but three possibilities come to mind. Professor Coughlin may mean that those of us who use our autobiographies mean to displace the stories of the common person with our own. In this view, if African Americans or women or gay people talk about themselves, the commonality of man is lost in the parochial concerns of individuals. But this commonality requires a single, unified voice, a voice defined by a white intellectual and political majority.

A second interpretation is that by telling our stories we are unfair to the stories of those who are not part of our autobiographies. This is a serious charge, but Professor Coughlin’s work suffers from a total absence of proof of this

---

64 See Coughlin, supra note 13, at 1243 (“[O]utsiders represent these experiences in a distinctive rhetoric that privileges the voice . . . as a palpable extension of the suffering self.”).

65 I should point out that I did write in Autobiography and Legal Scholarship:

I am willing to admit that I would like to privilege my story if my colleagues in legal education will admit that they tell a story in their teaching and scholarship . . . . The challenge I pose for all my colleagues and students is how to permit some of the experiences of black people into the discussion of what is law. The story I tell includes white people and black people. Unfortunately, the story most of us tell in our scholarship and teaching excludes black autobiographies.

Culp, Autobiography and Legal Scholarship, supra note 1, at 557 (emphasis added). Though I use the term “privilege,” I believe it is clear from the context of the whole quote that I do not mean privilege in any of the senses that I think Professor Coughlin does. Cf. Roy L. Brooks, 11 Harv. Blackletter J. 85, 97-98 (claiming that Patricia Williams and other critical race scholars privilege the story of blacks and women).

effect. Perhaps more importantly, I do not believe even an unsympathetic look at my work or the work of Professors Williams, Delgado, or West supports a view that we are somehow implicitly unfair to the stories of others.

Finally, Professor Coughlin may mean that those of us who use our autobiographies are able to use a tool that others cannot or choose not to use. This perspective seems to be based on the view within the academy that because "we"—traditional white scholars—do not have autobiographies that are interesting or illuminating of the issues that are discussed in the law, "you"—scholars of color—should not be able to use yours. To do so privileges your oppression, and it is unfair. This seems to me to be an issue of envy and can be dismissed on those grounds; more importantly, however, it misses some of the larger points that we have tried to teach about race and American law. All people have stories, and it is useful to hear them. Not all of these stories will be transformative, but this is true for blacks and women as well as for white Americans. There are echoes of what appear to be envy in Professor Coughlin's work—especially in the unfair and ungenerous descriptions of Professor Williams' work. Professor Coughlin's accusations regarding Professor Williams' failure to cite earlier uses of the "sausage story" is indicative of the level of the unfairness of those claims.67

Half a generation ago, Professor Delgado accused the white male establishment of arrogance and efforts to ignore the scholarship of law professors of color.68 Perhaps that half-generation has helped us understand that arrogance as part of a larger response by the significantly white male establishment. Psychology teaches us that individuals go through standard patterns of dealing with loss, bereavement, pain, and depression. These patterns are generally denial, anger, bargaining, depression, and acceptance.69 The traditional white male establishment seems to me to be going through the classic forms of bereavement—in this

---

67 See Coughlin, supra note 13, at 1289.


case over the demise of their hegemony. The initial response to the work of critical race theorists was a form of denial. Scholars of color were not cited and other scholars were simply ignored.\textsuperscript{70} The white male establishment denied the possibility of an alternative to the existing condition of the legal discourse.\textsuperscript{71}

We seem to have reached the second stage of this process for some scholars. A number of traditional scholars have resorted to anger. Professor Jim Chen has accused critical race theorists of being anti-assimilationist.\textsuperscript{72} Professors Dan Farber and Suzanna Sherry have angrily accused critical race theorists of confusing our message and not justifying our right to speak for the bottom of the social and economic strata.\textsuperscript{73} Farber and Sherry also have suggested in a recent article in the \textit{California Law Review} that critical race theorists who question aspects of merit of being anti-Semitic and anti-Asian.\textsuperscript{74} Professor Sherry, in particular, has expressed anger at the claim that race may matter in the law in any important way, especially when compared to sexism.\textsuperscript{75} All of these articles ultimately reflect the stage of anger.

\textsuperscript{70} See Delgado, \textit{The Imperial Scholar}, supra note 68, at 561-66.
\textsuperscript{71} See Richard A. Posner, Duncan Kennedy on Affirmative Action, 1990 Duke L.J. 1157, 1161 (blacks unlikely to create a scholarship that is unique because not all blacks are culturally black). But see Culp, Posner on Duncan Kennedy, supra note 58, at 1104-05 & n.30 (Posner's failure to credit adequately the work of scholars of color is a form of white racism).
\textsuperscript{72} See Jim Chen, Unloving, 80 Iowa L. Rev. 145 (1994) (asserting that critical race theorists are opposed to a creation of the American individual independent of race and are opposed to intermarriage). Professor Chen's anger seems completely misplaced. Critical race theorists are not racial purists in their lives and none of us have opposed interracial marriage.
\textsuperscript{73} See Farber & Sherry, supra note 31, at 814-17.
\textsuperscript{74} Daniel A. Farber & Suzanna Sherry, Is the Radical Critique of Merit Anti-Semitic?, 83 Cal. L. Rev. 853 (1995). Farber and Sherry say that they have no evidence of overt anti-Semitism, but suggest that people who have criticized merit are implicitly supporting traditional anti-Semitism. I have in draft a response to this claim that criticizes the premise of this charge. See Jerome McCristal Culp, Jr., Merit, Anti-Semitism, and Law Professors, Point Guards, and Criminalists: This Dog Won't Hunt (manuscript on file with the Virginia Law Review Association).
\textsuperscript{75} See Suzanna Sherry, The Forgotten Victims, 63 U. Colo. L. Rev. 375, 375 (1992): Aleinikoff, in his eagerness to empathize with the victims of racism, completely overlooks the victims of sexism. Similarly, his description of the young black man who felt resentful when a white woman with a baby crossed the street to avoid him naturally invites a comparison: he fears for his emotional well-being, but she fears for her physical safety. I, at least, would rather be snubbed than raped.
Professor Coughlin purports to step outside that framework. She is "friendly" to our aims, and she is sympathetic to our desire for change. 76 Despite her claims of having moved into the acceptance stage regarding feminist and critical race theorists, Professor Coughlin falls prey to the anger associated with psychological change. She is so angry at Professor Williams and me that she resorts to phrases usually left on the editing room floor. She is so angry and desirous of putting us in our place that she cannot read our work with sufficient care. 77 When traditional scholars get to the point of being able to engage the work of critical race theorists, it will not be completely supportive, nor will it always be welcomed with open arms, but it will do what most traditional scholars have failed to do—it will take the work with the seriousness that is required for a useful dialogue. 78 I fear this useful dialogue is still several stages and unfortunately a number of years away for the large bulk of the traditional professoriate. I have a faith that it is possible for them to get there,

---

76 See Coughlin, supra note 13, at 1233, 1259.

77 See, e.g., Coughlin, supra note 13, at 1280-83, 1289-90. Professor Coughlin accuses Professor Williams of using her credentials and publication record to achieve academic fame and substantial personal wealth in the legal academy. Professor Coughlin also accuses me of having attained material success and fame. See Coughlin, supra note 13, at 1292 ("Culp's story is a poignant one—and, surely, it attests to a happy transformation in his social and material fortunes—but the story does not perform the work that he intends." (emphasis added)). These charges are reminiscent of an era when African Americans were supposed to know their place. Professor Coughlin seems to believe that to be African American means being poor and unsuccessful. Professor Coughlin's charge about success essentially silences those of us who are trained to tell these stories in legal forums. It is hard to understand how permitting Professor Coughlin to achieve material success by publishing in the Virginia Law Review and visiting at the University of Virginia School of Law will increase the likelihood of changing our society for the poor and racial minorities. Indeed, Professor Coughlin seems to be saying to racial minorities, "We have material success and you can't have it." In addition, Professor Coughlin comes perilously close to accusing Professor Williams of committing plagiarism in telling her sausage story. See Coughlin, supra note 13, at 1288-89.

but the possibility remains that unlike other forms of death, the legal professoriate may prefer to resurrect the corpses of traditional legal doctrines rather than deal with the issues raised by feminism, queer theory, and critical race theory.

To the accusation in Professor Coughlin's article that I am a fellow traveler of Professors Patricia Williams, Robin West, and Richard Delgado, I plead guilty. I hope at a minimum that those colleagues are as honored by our forced association as I am. They have all painted the legal canvas with a set of stories, narratives, or autobiographies that through pure artistry, intelligence, and tenacity the legal academy has had to hear. To be included in that company is one of life's few true unalloyed compliments.