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Critical Challenges: A Conversation on Complicity and Civility in Legal Academia

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INTRODUCTION

Perhaps no dispute within the academy is more divisive than one accompanying the denial of tenure to a colleague. Such controversies call into question the nature of professional competence and judgment, of our roles as scholars, teachers, and colleagues, and of the future of the institution. Moreover, like other events in the academy, such disagreements occur in a field populated by racial, gender, sexual, class, and other identities.⁴ Academic freedom and freedom of speech are often implicated⁵ and issues of process and fairness, apart from the merits of claims, can become paramount.⁶ Thus, for those in the legal academy who consider themselves critical, progressive, and feminist—and are considered by others to be so—controversial tenure decisions embrace our wider concerns relating to equality, free speech, and justice.

This conversation among the three of us was prompted by our reactions during a tenure dispute at the City University of New York School of Law (CUNY) where we are tenured professors. As critical theorists who, despite our different backgrounds, racial identities, sexual identities, and career paths that led to law teaching, share a lifelong commitment to social justice struggles throughout the world, we could not help but be involved in the ensuing, and often rancorous, dialogue amongst the law school community. We analyzed the rhetoric as it reflected issues of race, gender, class, hierarchy, and communication. Yet we were struck by the fact that we found our private conversations revolved around questions of victimization

and rhetoric, and were most vociferous in their devotion to class, complicity, and, most striking for us, civility.

Certainly, the nature of the tenure process calls for confidentiality. Just as we were constantly torn between the need to have an open dialogue about the issues that loomed so large and the need to respect the process as it unfolded during the actual controversy, we have confronted the continuing need for confidentiality as we engaged in the process of writing this piece and making the choice to publish it. We have attempted to honor the practice of academic confidentiality, intended to protect all the parties involved—the person denied tenure as well as the persons who made the decision—even as we have decided that an analysis of the situation is vital. Our conclusion that publication of such a conversation is necessary is prompted by our fruitless search during the time of these events for readings that might illuminate our situation. As scholars, we turned toward scholarship to assist us in understanding and theorizing the circumstances in which we and our community found ourselves. Disappointed, we each retreated into the specific theorizing with which we were familiar, some of which we discuss below. However, our goal here is to provide an opening for other members of the legal academic community, including scholars, students, and staff, to discuss these matters in public and in print, rather than in a whispered and confidential *tête-à-tête*.

Part of what makes our experience notable is the context of CUNY School of Law. Founded in 1983, CUNY School of Law took on a challenging institutional mission to diversify the profession both in terms of faculty selection and admission policies and to develop a legal pedagogy that featured attention to clinical approaches as well as and the ethical dimensions of lawyering.⁷ At the same time, CUNY School of Law had to survive and grow within a legal profession that itself was undergoing internal and external scrutiny and debates.⁸ In the past twenty years, the demographics of legal academia, as well as the law student population have changed, reflecting greater representation of women, people of color, and

openly gay and lesbian students and faculty, although faculty diversity remains problematic.⁹ Yet, from its beginning, the CUNY School of Law faculty was a diverse one.¹⁰ CUNY has also contributed to the diversity of legal academia at large, since over the years, a number of our colleagues have taken other positions and have often established lawyering or clinical programs drawing upon approaches pioneered at CUNY. In addition to the faculty, our student body and other members of the community are likewise very diverse.¹¹

As professors at CUNY, we are reflective of this diversity. We are women, teaching at a law school in which the majority of tenured faculty are female. One of us is Black/African, one is Chinese/American and one is Anglo-American. Two of us are heterosexual while one is a lesbian. Interestingly, we are all first generation professionals, and indeed the first in our families to attend college. Thus, while we may be atypical law professors and CUNY is certainly a unique law school, we know from private and public sources that our experiences are not singular.¹² We have also realized that our exceptional circumstances provide a grounding for an intervention in the broad debates about professional competency, particular identities, and the contours of progressive change in the legal academy.

In the legal academy as elsewhere, much public debate surrounding divisive issues can be dominated by voices that silence any possibility of engaging publicly as a community in a responsible way. In any call for inclusion and for diversity of voices, we believe it is critical that there is respect for voices that raise different and often troubling issues. During the dispute at CUNY, we found ourselves increasingly confronted, and somewhat incapacitated, by a range of conceptual and political manipulations. These manipulations challenged our best efforts to honor our responsibilities to our students, to the institution, to all our colleagues, and to values we believe in such as honesty, professional confidentiality, integrity, fairness, and social justice. At several junctures, we prepared public statements, either singly or together, which we decided not to

release. Struggling with the choice to speak or to remain silent, especially as we were being threatened with lawsuits,¹³ was often debilitating.

We found that much of the public rhetoric circulated reflected uncritical assumptions about victimhood, about what was at stake for the institution, about the role of race, class, and gender, about the meanings to be attributed to silences, about professional and ethical expectations, and about professor/student relationships. In this cauldron of emotions it was difficult to engage with the community about all of these questions. What began as a tenure dispute became a symbol for the ubiquitous racism, economic exploitation and sexism of American society, and for the continuous marginalization of dissenters. Simple questions became impossible. The inquiry was no longer about the individual candidate's performance. More disturbingly, it was not about systems and procedures in place to evaluate individuals seeking tenure, or the process of developing facts in such a process, or even whether the conclusion was particularized or an indication of systemic unfairness. Amidst the internal debates, the Law School also received letters and communications from well-meaning outsiders, many of whom lacked information, and many of whom made simplistic assumptions about our own positions based upon a superficial assessment of identity politics.

The following conversation reflects our attempts to confront these disturbing issues. We decided to engage publicly in this conversation because we believe more is at stake than an individual tenure decision and its divisive impact on one institution. At a time when the legal academy must do more than simply espouse diversity and social justice commitments given the incessant attacks on progressive law and education, it is crucial that critical legal scholars and teachers are vigilant against a misuse and self-interested appropriation of race, gender, class, and sexuality rhetoric. We believe strongly that the purpose of our efforts must be more than the creation of mere personal intellectual or professional capital, and we cannot contribute to creating an elite, even if diverse, class of colleagues. We

recognize the dangerous potential for misreading and misusing our conversation by readers hostile to the values and social justice goals we hold dear. It is a risk we are prepared to take because the harms of not speaking as honestly and responsibly as we can at this time, are much greater.¹⁴

ASSUMING THE MANTLE OF VICTIMHOOD

PA: A rhetoric of victimhood has been pronounced during the controversies we are considering and my point of departure is a consideration of why and how particular individuals adopt the status of victim. I'm hoping this consideration will move beyond the notion of political manipulation—that is too crass—and I believe there is a socio-psychological dimension to this question. In other words, at what subliminal level, beyond the mere manipulation of particular situations, does an individual begin to adopt and own the status of victim?

As a first step I consulted Webster's dictionary to elicit a definition of victim: "...one that is acted upon and unusually adversely affected by a force or agent as (1) one that is injured, destroyed, or sacrificed under any of various conditions (*e.g.* of cancer, auto crash); (2) one that is subjected to oppression, hardship or mistreatment (frequent, or severe political attacks)."¹⁵ This definition suggests an element of powerlessness, of loss of control. It is about external factors bearing down upon one's condition in which volition has been abandoned.

RR: But aren't these dictionary definitions reductionist? I have the skepticism about victimhood and martyrdom as absolute realities that anyone who has read Foucault would have.¹⁶ A rudimentary reading of Foucault convinces one that the binary opposition between absolute power and absolute powerlessness is absolute bunk. Yet absolutes aside, the questions remain regarding differentials in power, which are real and concrete. But I think Foucault should make us wary of the claim of

victimhood and martyrdom as a position of lack of power, for the adoption of those labels and categories, is, in fact, a power play.

SKH: The difficulty with definitions—any definitions—is the tendency towards not only reductionism, but also their limits in addressing a fluid complex reality. Each of us experiences powerlessness, and each of us experiences power in shifting ways depending upon the context, time, and other multiple factors. One challenge presented is how to recognize the adoption of labels, say “victims” for example, as a power play which has negative manipulative resonance for me, or as an exercise of power that accepts responsibility for the choices and the outcomes.

In addition to Foucault’s work, another example that comes to mind is Rey Chow, who makes the intellectual lineage link between the Maoists and Charlotte Brontë’s *Jane Eyre*; for both, the means to moral power “is a specific representational position—the position of powerlessness.”¹⁷ This connection of a high moral ground or legitimacy with powerlessness also has implications for the arguments of “outsiders” and inclusion claims based upon legitimacy deriving from one’s class, race, gender, sexual orientation, or other identity marker.

PA: Yet implicit in our existential reality is the idea of absence of choice; ordinarily people do not choose to be victims.

RR: And shouldn’t we be choosing not to be victims? I keep thinking of the line from one of Margaret Atwood’s early novels, “above all, refuse to be a victim.”¹⁸

PA: Yes, but the vicissitudes of life determine victimhood. What then motivates a person to voluntarily assume such a mantle? In other words, what motivates an internal projection of victimhood as opposed to its external catalyst?

Psychologists probably have a multitude of explanations....

RR: Wait—I’m sure they do, but a psychological exploration of victimhood is unsettling to me. When I was diagnosed with a rare and usually fatal cancer, I delved into many “alternatives,” including the

psychological literature. What I found was an incessant refrain about persons relishing the role of being the victim for the attention it would bring. At the time, I thought this was ludicrous. Attention in the form of painful medical procedures was attention I could do without! Yet I continued to think about this notion and began to see it around me, in very disturbing ways. I have had occasion to wonder whether for some people there is a psychological stake in seeing one's self as a martyr, released from responsibility for one's actions, romanticized and pure, and compellingly the center of attention.

PA: Psychology aside, for me one particular axiom holds: victimhood confers on the victim a certain moral leverage. This is most apparent in a discussion, for example, of attempts to overturn past discrimination of certain groups who have been historically discriminated against. The individual member of that group represents the antithesis of the moral wrongdoer, the discriminator. She is cloaked in a certain morality implicit in the victimhood.

This is appropriate. For example, any reference to the history of slavery cannot avoid the immorality of enslaving an individual.¹⁹ We can explore this theme indefinitely because American history, indeed human history, is littered with immoral acts that perpetrators inflict upon victims. But I want to distinguish this situation; that is, the infliction of harm that results in victimhood, from the situation in which an individual chooses to adopt the status.

NARRATIVE STRATEGIES

PA: But how does one who chooses to adopt victim status successfully portray it? How does the victim's narrative unfold? The victim constructs a worldview that posits herself as the "other," in a minority as it were, and in an essentially antagonistic relationship with the majority. The narrative is a fairly simplistic one of good and bad, harnessing theoretical devices to complete the narrative. She is constantly

in a dialectical tension with the majority. In this postulation, the victim's lack of control over process and substance is preeminent. No accommodation is made for her ability to shape her destiny. She denies her control.

SKH: But I think the effectiveness of such a narrative lies not only in its simple appeal as a battle between good and evil. A narrative plays well depending upon the ways it resonates with the listener's own narrative about her life or the way the world should be. The CUNY community is made up of individuals who have in one way or another struggled against discrimination or oppression, and many of us are from working class, or minority backgrounds. For *this* community, a narrative about racism or sexism touches many of us where we live. The troubling aspect of the success of a simplistic race or gender narrative and rhetoric is that the faculty are mostly lawyers, and the students are lawyers in training. How can we produce effective public interest lawyers if we allow ourselves or our students to uncritically accept asserted facts, assume motivations, or ignore the complexity of realities and difficulty of choices and decisions?

RR: Yes, and I have been struck by the way in which narrative in this instance had the power to override certain facts. Several years ago, I engaged with the critiques of "outsider narratives" from the lesbian narrative perspective,²⁰ and part of what I was theorizing was that narrativity was becoming a troubled practice. Using the work of Sue-Ellen Case, it seemed to me quite possible that postmodernism meant the end of coherent narrative, given the rise of what she names "screen/visual culture"—as opposed to print culture—and its characteristic allowance of multiple arrangements of data into non-sequential and non-linear non-narratives.²¹ If narrativity means beginning-middle-end as classically defined by Aristotle, then we seemed to be departing from this structure with digital programs, hypertexts, and seemingly never-ending computer "games."

So the power of the narrative in this instance to affect certain people, even when those people would express contradictory information based upon their own perceptions and experiences, and even when their conclusion was contrary to their own expressed self-interest, was a testament to modernism. Or perhaps a testament to pre-modernism, in its mythic and pre-rationalist sense.

INTELLECTUAL OPPRESSION

SKH: Yes, but we are forgetting that the victimhood of which we are in the context of a tenure decision, that is, an academic and intellectual context. Consider Chow's critique of power dynamics and self-positioning(s) of Third World intellectuals, especially those working in Asian studies:

We need to remember as intellectuals that the battles we fight are battles of words...What academic intellectuals must confront is thus not their 'victimization' by society at large (or their victimization-in-solidarity-with-the-oppressed), but the power, wealth, and privilege that ironically accumulate from their 'oppositional' viewpoint, and the widening gap between the professed contents of their words and the upward mobility they gain from such words.²²

That is, although identifying with the "powerless," one is actually speaking with power and is exercising power.

PA: And we exercise power in a variety of contexts as law professors—evaluating our students, mentoring and guiding them in their chosen career paths, developing our expertise, and often deriving enormous material and non-material benefits as a consequence. Peer evaluation, inside or outside our own institutions, also involves an exercise of power.

SKH: Chow cites examples of intellectuals who reference various self-markers of victimization or ties to victims as a way to highlight one's "own sense of alterity and political righteousness."²³ Her examples remind me of one of our colleague's complaints that CUNY oppresses him in its

becoming “bureaucratic” and more and more structured. Yet holding classes on time or having to be on campus more than two days a week does not seem to me like oppression.

RR: Sharon, we can’t be saying that we really don’t believe that intellectuals can be victims? I don’t believe we are saying that, or we would be denying the realities of the U.S. “Red Scares,” the Chinese Cultural revolution, Pol Pot’s regime in Cambodia, and the apartheid government in South Africa’s use of the security apparatus to stifle dissent on campus. And yet, I do think that it is a terrible injustice when our rhetoric makes impoverishment, imprisonment, and death commensurate with something like a denial of tenure.

SKH: There is incommensurability of different injustices. Of course, I agree that intellectuals have certainly been subjected to terrible repression and abuses, especially in the examples you gave. Perhaps we need a sense of proportionality demanded by humility, responsibility, and reality.

Situated inside of an academic institution in the U.S., for example, how can one draw comparisons between the Holocaust, a hunger strike, and an individual tenure decision, asserting in fact the “right” to a lifetime job framed as a fight for the “soul” of an institution? While we can recognize the sincerity of choices made, we also need to open up the frame and ask, can one do this without profoundly dishonoring those millions who died in the Nazi camps, or who are starving inside Chinese prisons or labor camps today, or the hundreds of millions around the world who are suffering daily from severe poverty, disease, and wars?

PA: Sharon, I absolutely agree. But sometimes I fear that perspective is jettisoned in the attempt to relate this particular injustice or instance of oppression to the ones you just mentioned. In addition, involving idealistic students whose hunger to instantly change the world provides a recipe for significant distortions.

SKH: However, I think there are theoretical and political complexities presented by and to an institution such as CUNY—that is, our mission is to

produce lawyers who will serve underrepresented communities. In many cases, our students are individuals from these communities. As public interest lawyers, our goals are to protect and empower individuals and communities who have been victimized, excluded, or exploited.

PA: What then is our responsibility as people who care about victims? In its most rudimentary form, our lifelong commitments have been about caring for victims.²⁴ How do we allow the space for victims to unravel their narratives, while at the same time allowing ourselves a certain vigilance to protect victimhood from being obfuscated by opportunism?

SKH: I think of working with our clients in the Immigrant and Refugee Rights Clinic, and the challenge for our students to gain the trust of asylum clients who have suffered horrific abuses, and how hard it is for students to learn how to pull the story out and yet allow space for the story to emerge. An important lesson from that process is how important is it for the client to be empowered by the process and not simply winning an asylum application. Another important lesson is the need to critically examine the whole factual basis for a story because in the end, it's not in a client's interest to ignore "inconvenient" facts or parts of the story. Furthermore, although the narrative of a client's past victimization may be used opportunistically to support a legal claim, the goal is not to engender a life-long embrace of victimhood. I suspect what you were referring to, Penny, is another opportunistic use of a self-victimization narrative, that is, its use by an intellectual or an academic, or someone who *is* privileged and powerful.

AUTHENTICITY AND CLASS

RR: The problem of narrative that Chow addresses is troubling. I'm specifically troubled by the way in which narratives are "authenticated" by background and experience. For example, it was very difficult to resist the impulse to trot out my own impoverished background to give credence to my position. I resisted because I believe that such a rhetorical move has

inauthenticity at its heart. I struggled very hard to escape that background and I don't think that its use to legitimate my present positions is warranted. Nevertheless, it is difficult not to have an emotional reaction, somewhat akin to being assaulted, when I am presumed to have come from a more privileged position than someone I view as incredibly privileged, someone whose childhood I can only imagine and envy.

And I can't help but notice that the three of us, despite incredible dissimilarities in geography, race, and context, nevertheless share this experience.

PA: Yes, I grew up in apartheid South Africa, classified as a Coloured in a poor working-class community. I have endeavored my whole life to escape the box I was born into. I do not mean that I am trying to shed my identity. To the contrary, I am very proud of it. What I have attempted to discard are limited expectations, a parochial vision, and the mirror of "whiteness." What cachet could I possibly expect from constant reference to a past that I have spent my life overcoming. For authenticity?

Is that not chicanery?

SKH: I know what you mean about people making assumptions about our backgrounds. I find this dynamic that Ruthann experiences as an assault, and I experience it as erasure; it is present in different ways depending upon the setting. When I went back to visit my father's village in China, all the Homs—it was a patrilocal village—assumed that I was enormously wealthy and could give enough money to build the new village school. The fact that I am teaching at a poor, state-funded public law school; that I am a single parent having to support a child bound for college (and other family members); that I live in an expensive urban area; and the fact that for most of my childhood, we lived in the back of a small Chinese hand laundry, were realities all too foreign to even imagine. Yet, when I am in the U.S. at law or academic meetings or conferences, I often feel the weight of a poor immigrant and working class background around my neck, a sign of my economic outsidership easily read—I imagine—by others.

PA: I have similar experiences going back to South Africa—this hybrid existence as it were. But this is surely the dilemma of the migrant, a constant linking to a past—both physically and emotionally—and the realities of the present. The past, present, and future create a certain alchemy of identity and geography which in some ways typifies the migrant’s existence.

RR: Class—by which I mean poverty—however, is what is elided, except for when it appears as a romanticized version of the past, or when, as I said, it is trotted out for the sake of authenticity. We of lower class origins who have “succeeded” by becoming professionals—not merely professors, but law professors—are testaments to the American myth of upward mobility. Illogically co-existing with this is the rhetoric that we are all equal.²⁵ Yet it often seems to me that there is a certain “class consciousness,” as essentialist as this sounds, that is not erased. It is this consciousness that determines certain judgments about “privilege” that I continue to make.

SKH: Within CUNY, we are approached for all kinds of financial support for various causes and activities, and the assumption is that we can all afford to support everything and anything without reference to the internal economic hierarchies or, in fact, what our lives and other responsibilities are. Yet the bottom-line is that I also try to remind myself how privileged *I am*. My parents worked seven days a week at hard jobs in restaurants or our laundry for most of their lives. Most of the people outside of academia, and the support staff within academia, work five or more days a week. Law professors have a high degree of autonomy in their choices about work and some choose to work considerably less or devote their energies to matters of their own choosing. Even if I can’t afford to underwrite the building of a new school in China, my life and economic status is a lot easier and more privileged than most. Still, I find it very troubling each time I am confronted by the unexamined assumptions of

entitlement and unearned privilege that individuals from privileged lives often exhibit.

ON DIGNITY

PA: I want to add another concept to the discourse around victimhood, a concept that is sometimes lost in the cacophony of emotions as some individuals try to establish credibility, authenticity, or license to center their experiences. The concept I'm thinking of is dignity. I immediately thought about this in response to Ruthann's concern about not wanting to excavate her own history for the purposes of authenticity. I sense what motivates you, Ruthann, is dignity. That is certainly what propels me not to expose myself and my past.

Although dignity is a paramount reason, another one is the recognition that my experience is not unique. In other words, there are so many people who have excelled against the greatest odds, and for whom struggle is a mode of being. They often individually and collectively refuse to succumb to grandiose reflections about the trajectory of their lives, and where they now find themselves. I am here not trying to aggrandize my personal history, but merely to acknowledge this particular issue.

Another reason is a profound belief—which is often sorely tested—that honesty and the truth will prevail. Franz Fanon, Nelson Mandela, and Steve Biko have all written about one of the key components of colonialism, the stripping of the dignity of individuals and communities through a variety of subtle and not so subtle mechanisms.²⁶ The location of the “other”—now referred to as the subaltern²⁷—is about the fundamental denial of dignity. I use these writers to reference the experience of racially colonized people and I am centering racism as a dignity stripping process. But analogies exist with sexism and homophobia. I choose therefore not to compromise my dignity in order to establish credibility or authenticity. I recognize that it is a risky proposition.

Philip Roth explores this theme in his novel, *The Human Stain*.²⁸ There the protagonist's insistence, quite validly, on his "being right" after spurious allegations of racism, costs him dearly. But I think dignity should not be a casualty of political opportunism.

RR: Penny, we shared that Philip Roth novel and I have to admit that I wondered if I would have been so impressed with it had I read it at a different time. Roth is far from one of my favorite writers, but the novel resonated with so much of what I was experiencing. But, I wonder if you could say a bit more about "dignity" as a positive concept, especially in the work you referenced. The obvious analogue in sexuality politics is "pride," but it has always seemed to me to be an undertheorized concept in queer theory. I also have some suspicions about it—does it mask "endurance" of one's lot rather than an action for change?

PA: I understand and agree with you that the concept of "dignity" connotes notions of stoicism, a sentiment that does not necessarily generate attempts to change the status quo. I think, however, that one can be stoic but still willing to engage in transformative actions. I was thinking of dignity in another sense though. And it is one that I have picked up increasingly with reference to human rights. The Constitutional Court used this concept to articulate its reasons for outlawing the death penalty in South Africa. It referred to this idea as an African concept, *Ubuntu*, which translates into human-ness or humanity. It is a traditional African concept that explains a deep-rooted empathy, one-ness, and love of one's kin and community. The idea is probably akin to what Westerners refer to as fundamental or inalienable—the idea of fundamental or inalienable human rights. Increasingly, the discourse on human rights in Africa is focusing on the notion of dignity. For example, before the Constitutional Court in South Africa handed down its *Grootboom* decision²⁹—delineating a right to adequate housing—the President of the Court gave a very moving lecture in which he referred to the persistent denial of the dignity of South Africans by the inequitable economic relations still prevalent there.³⁰ I therefore

understand the concept of dignity to carry with it a deep-seated notion of fairness, which may be born from a sense of individual or shared struggle, and which sets the parameters for engagement with others.

SKH: In Cantonese, we have a similar phrase, “to be a person.” The worst thing one can say about another, is that she does not know how to be a person, suggesting someone who is so out of touch with what a human being should be about, someone who lacks compassion and dignity. But of course in some ways, this being human is culturally situated in ideas such as family, the community, loyalty, and friendship. At Human Rights in China (HRIC)³¹ we often use the word dignity in the context of our goals to protect the dignity of political prisoners, the majority of Chinese people, migrants, poor, rural populations, and ethnic minorities who are denied basic rights and means for economic and spiritual survival.

I especially like Penny’s use of the phrase “dignity as a casualty of political opportunism.” I think honesty, critical debate, and possibilities for change are also casualties when group interactions or discourses are stifled by individual or group political opportunism. The question also arises as to when it is a tactic or move “opportunism” versus just being plain effective? Opportunism has a negative valence that we might make more explicit. Dignity, pride, and endurance are part of the racial story about Chinese specifically, and Asians more generally, as immigrants. They have the capacity for hard work, suffering, and endurance—all of which are interrelated. Whether dignity “masks” suffering or rage, or whether dignity is one response to drawing lines of personal integrity and space, here is where I refuse to reveal anymore in this cacophony of voices; this is in part a question of cultural and shifting cultural values and frames.

PA: Although I mention the centering of dignity in South Africa’s constitutional jurisprudence, the concept is so multi-layered and so complex—as you point out Sharon—that I wonder at the wisdom of attempting to unravel or deconstruct its meaning.

SKH: Chow offers a provocative reading of Zhang Yimou's film *To Live*. *To Live* is a film where everything is endured—famines, deaths of your children, political chaos, social destruction, a cultural revolution where everyone was complicit in someone's betrayal, and silencing where speaking had to be within the approved rhetoric. Chow describes the ending of the film where one of the characters fades off into the darkness—possibly to live or to commit suicide—to refuse to live and to refuse to endure like Chinese people have always done. This refusal to endure is ultimately a radical act, the only dignified claim one can have in the face of oppressive nationalistic state claims and demands that you endure.

Pride seems related to, and different from, dignity. Although like dignity, it can be a source of living with a sense of integrity and self-worth, and like dignity, it has another face—one that is not so positive. But pride, ethnic pride for example, can easily move into—or be manipulated into—a dangerous nationalism. One thinks of Germany in World War II, or China's ability to manipulate massive Chinese sentiment against the U.S. and the west. Both are examples of how ethnic pride can be manipulated by political opportunists in power to shift attention away from domestic unrest. Why do I call this opportunism? Because it is done for the sole purpose of maintaining one's position of power.

PA: That is one of the reasons I often balk at assertions of identity. In this "free market," "race neutral," privatized world, we have been left with few effective tools to combat the many forms of subjugation and discrimination that significant proportions of individuals and groups still encounter in this country. And so assertion of identity as a response is apposite. But I am often left with a lingering discomfort about its long-term efficacy.³²

SKH: In my current work at HRIC,³³ the word "victim" is used a lot. For example, the term was used in the context of the Tiananmen Mothers Campaign where the mothers of missing children killed in 1989 demanded an accounting from the Beijing government. In addition, the prisoners of

conscience who suffer beatings, torture, and other physical and mental abuses were termed “victims.” Further, there are millions of desperately poor, rural and migrant Chinese “victims” of clear government policies that discriminate in terms of housing, education, and employment and condemn them to a lifetime of poverty. However, these “victims” have organized, spoken out and demanded answers. I am struck by the very different ways each dissident comes to terms with and lives with his or her past. Some have used their past persecution or imprisonment to obtain opportunities for personal advancement and access—say comfortably settling in some elite academic institution. But who is to say whether this is “opportunism,” an effective use of one’s own past victimhood, or a cosmic accounting? Yet there are those who work quietly and concretely, helping others still inside, who talk about their years inside the prisons without drama, without a sense of self-pity or victimization—it is humbling. Like Fanon, Mandela, and many others, they suffered and endured, they spoke out, and they also kept their silences and their dignity.

ARTICULATE SILENCES?

RR: This notion of speaking out and keeping silent was, I think, at the heart of our experiences during the controversies at CUNY. As lawyers, academics, and as feminists, we privilege language. As lawyers, we focus on language and testimony in ways in which have always troubled me—I think of the evidence rule that silence is acquiescence as exemplifying this. As academics we write and publish, and as a teacher I have said on countless occasions to students when reviewing their exams, “If you don’t say it or write it, I don’t know that you know it.” And as feminists, we have been politicized by a discourse in which “breaking silence” is valorized, as the number of texts using this concept exemplifies.³⁴

Yet silence is also so important. As Adrienne Rich noted in a recent essay, silence can be “fertilizing.” Silence can be a condition of vision and imaginative space; and these silences are endangered by commerce,

appropriation, and I would add, by insincere rhetoric that forces one to dispute it.³⁵ I feel as if we are forced to incessantly chose between speaking or staying silent, and to constantly assess the risks of speaking and not speaking.

PA: And we mostly chose the latter. This raises an issue that I suspect has both cultural and gendered connotations. My own culture, that is, the one into which I was born (African/Christian/Third World) has prioritized selflessness as a cardinal virtue. Modesty and humility are therefore values to be aspired to; one need not be the loudest voice, and silence is almost always the preferred option. This virtue takes on particularly pronounced measurements in a patriarchal society. So for me, reverting back to that cultural space of (dignified) silence was comforting. And to my way of thinking, it was superior to the public servings of moral righteousness that constantly bombarded us. That feminized (feminine and feminist) part of me exists in a constant tension between feelings of absolute certainty—about my convictions—and that part of me that strives to accommodate, to conciliate, and to mediate.

SKH: When I wrote about “articulate silences,”³⁶ I was invoking the work of King-Kok Cheung, who argued that the logocentric privileging of “voice” obscures the many tongues, and that silence, too, can speak, thus colonizing the very differences we seek to recognize. I suggest that silence can also be full, rich, and the product of clear intention, not only powerlessness or fear. Yet, one student reading my book countered that, “asking a society that barely listens to the voices that are speaking to take the time to listen to the silences is asking a lot and possibly too much. It does not offer too much hope.”³⁷ After the painful experience of last year, I think it may be asking too much *now* to ask people who are shouting—often with an absolute certitude and passion of the young, the very dogmatic, or self-righteous—and it may be certainly too much to ask of someone who thinks his or her own professional survival is at stake. But I wonder if we

will lose our very civility if we do not at least ask each other not only to speak, but also to listen.

PA: So where does all of this take us? What political lessons do we draw from this experience in which morality, and maybe even our own kind of political savvy, were neutralized by what I can only call pious self-interest? Our values and our perceptions were turned upside down for political expediency, and our political and legal acumen—and indeed our integrity—were constantly challenged. How does that affect our continuous conversation about the different axes of identity(ies) that we constantly grapple with? For me, this episode served to reinforce an uneasy sense that class continues to be separated from discussions of political identity, thereby precluding an exhaustive analysis of the issues raised.

And how will all of this be reflected in time? This episode reminded me somewhat of the article that Randall Kennedy wrote years back in which he criticized some Critical Race theorists for their parochial and essentialist approaches to law, and specifically for the proposed effect racial differences have on scholarly influence and prestige in legal academia.³⁸ There is no space here to go into the merits of his critique and the ensuing debate, but he was roundly vilified by critical race theorists and seen as a “race traitor.” And yet, those same reflections have now been raised in various contexts, without the rancor that greeted his piece.³⁹ They have arguably served to enrich the scholarly landscape for critical legal scholars.

And how do we approach community again, now that we have witnessed the fissures that erupt when racial/gendered/ideological/class injustice is served as a given? When silencing becomes such a powerful political tactic? One possible way is to commence a dialogue once the emotional detritus has settled. To be productive, this dialogue should incorporate lessons from the experience, but also an evaluation of how we articulate the concerns of race, gender, class, and ideology as a struggle that is both personal and that shapes our community. This raises a further question:

how does a small, sheltered community alter and broaden its reference points to embrace a more nuanced version of events?

RR: Sheltered? I'm not sure I agree with that. I think that part of what has happened in our community is that we haven't been sufficiently "sheltered," and we have brought with us the baggage of our public and private lives, including our work in other institutions. I think that part of the problem has been that we have been unwilling to grant a sort of "good faith" to others. Not a generalized good faith, but a more specific kind based upon a shared commitment to social justice. Certainly, we have differences about the particular parameters of that social justice vision and differences regarding tactics, but if *any* small group of us found ourselves together in a less progressive institution, we would bond together irrevocably. Perhaps this is what you meant by sheltered?

PA: Ruthann, you make an important point, but I'm not sure if I agree entirely. I think we have been sheltered by our histories, and we have developed ideological habits that end up being "conversation stoppers" or short cuts to conversations we should be engaged in at length. I'm specifically thinking of us having conversations that are shorn of the linguistic filtering that we customarily engage in, in order to strike just the right balance. By "sheltered" I mean the sense that we all believe in the same thing. I think we share some fundamental beliefs—a broad vision of social justice.

But that is far too broad, and I'm not even sure if that is accurate. In any event, as we've seen fundamental, ideological, and other shifts in this society, and substantial economic and political changes, we have not always considered the impact they have on our community. That impact is most pronounced when we discuss issues related to our intellectual endeavors and work products: curriculum, our expectations of each other or our students, merit, workloads, and related matters. And in the way we will not question—publicly, at least—the class and other differences that are so obvious, or the privileging of certain sentiments over others. By "sheltered"

I also mean the way we assume the worst—about ourselves and the institution—when, in actuality, if we engaged in some comparisons we may come to different conclusions. Maybe I am agreeing with you after all.

CONCLUDING THOUGHTS

SKH: We now have a lot on the table—victimhood, authenticity, legitimacy, dignity, race, sexuality, class, culture, ethnicity, histories—and the impulse for having a more nuanced conversation about issues of victimhood and victimization. We are not just engaging in another pro forma invocation of difference and identity regarding our original concerns about victimhood.

PA: Essentially how do we situate ourselves, our experiences, and perspectives, within the broader context of a global struggle, versus the immediate, personal, and professional “struggles” we are reluctant participants in? When are we victims, and how do we honorably appropriate victimhood?

RR: Yet I remain uncomfortable with appropriating victimhood. I would like to be able to speak from a place of empowerment with the goal of empowering others. Maybe it’s too much feminist studies. Call it pride, dignity, refusing to be a victim, or something else. But I abhor pity and do not think it is politically useful. It leads to discourses such as the “deserving poor.” As if only those who we can label as victims “deserve” assistance or a life that is not a struggle to survive on a material level.

SKH: I am motivated to say something publicly because of how often this concept and rhetoric are used and misused in public discourse. So perhaps it’s useful to reframe and ask questions that focus on the complex range of factors that a principled grappling with the claims of victims call for. Ruthann started with an example of victims as bringing to mind something one could not control—like an accident. But as we’ve talked, the range of contexts for thinking about “victims” range from group claims (e.g., reparations for racism or slavery here in the U.S. or in South Africa),

national claims (e.g., claims of former colonized states), individual claims (e.g., a denial of tenure or academic appointment) and so forth. The “injuries” claimed have ranged from emotional to intellectual to economic to historical—for example, the loss or erasure of various histories—and so forth. The rhetoric that has been used reflects various strategic purposes or goals—such as inducing guilt, raising awareness, empowering one’s self under the guise of claiming a powerless position, empowering oneself by naming, and rejecting the victim status. So I think about a matrix of factors—context, claims, injuries, strategic uses—for critical (self) assessment and to be vigilant of and against being targets of the political opportunism that silences, manipulates, and ultimately undermines the possibility of progressive action or coalitions.

PA: When we initiated this conversation, I had considered silence as the most honorable option—and also the most viable. But I’ve subsequently altered my perceptions of silence as a legitimate response. I think our endeavors as members of an academic community will be disrupted if silence is elevated to the most moral option. I believe we need to be strategic about invoking silences—maybe it should be a last resort. In these difficult times in the academy and elsewhere, I fear that the alternative becomes counterproductive.

It is now two years since the events which form the basis of this conversation occurred. The community has returned to its usual preoccupations and much of the events surrounding the tenure dispute have been forgotten. We have learned some valuable lessons from the experience, mostly to do with confronting difficult political issues enmeshed with self-interested opportunism. We want to recapture the hackneyed feminist adage, “the personal is political.” In these times of shrinking resources—particularly within the educational sector—ideological polarization, political opportunism, racism, sexism, economic exploitation, and homophobia will continue, but we are more convinced

than ever that we have to be vigilant about our integrity and the integrity of the institutions that we build.

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² Professor of Law, Emerita CUNY School of Law; Executive Director, Human Rights in China.

³ Professor of Law, CUNY School of Law. The authors wish to thank CUNY students Carolyn Coffey, Jennifer Damiani, and Nicole Mandarano for their research assistance with the introductory portion of the article.

⁴ See, e.g., Pamela J. Smith, *The Tyrannies of Silence of the Untenured Professors of Color*, 33 U.C. DAVIS L. REV. 1105 (2000) (professors of color face particular tenure vulnerability and racial hostility from students and colleagues while the administration undermines their chances of earning tenure through isolation and limited funding for scholarship, conferences, and research assistants); Staff Editorial, *Never Too Old for Tenure*, HARVARD CRIMSON, Jan. 14, 2002 (university president says age is a reasonable factor to consider when awarding tenure); Alison Schneider, *University of Oregon Settles Tenure Lawsuit Over Maternity Leave*, CHRON. HIGHER EDUC., July 21, 2000, at A12. (university that denied tenure to former assistant professor because she took maternity leave agrees to pay \$495,000 and grant tenure with the condition that the employee resigns); Robin Wilson, *For Women with Tenure and Families, Moving Up the Ranks is Challenging*, CHRON. HIGHER EDUC., Nov. 9, 2001, at 11 (universities make efforts to mitigate impact of motherhood on female academics during pre-tenure years).

⁵ See, e.g., Burton M. Leiser, *Threats to Academic Freedom and Tenure*, 15 PACE L. REV. 15 (1994).

⁶ For example, two landmark constitutional procedural due process cases involve controversies regarding the continued long-term employment of professors. See *Board of Regents v. Roth*, 408 U.S. 564, 578–79 (1972) (holding that a non-tenured university professor is not entitled to procedural due process when denied re-employment because he did not have a property interest at stake); *Perry v. Sindermann*, 408 U.S. 593, 601–603 (1972) (holding that a teacher has a property interest in re-employment despite the absence of an explicit contract if there was a mutual expectation that employment would be renewed yearly).

See also Bill Murphy, *Court to Hear Law Professor's Case—TSU Tried to Fire Grover Hankins, Who Then Filed Suit*, HOUSTON CHRON., Oct. 20, 2001, at A33 (law professor sues law school for failing to follow its own policies regarding tenure; if no notification of tenure eligibility is received one year before last year of tenure eligibility then professor automatically becomes tenured); Alison Schneider, *Harvard Loses a Round in Contentious Tenure Case*, CHRON. HIGHER EDUC., Jan. 26, 2001, at 13. (Superior Court allows professor's tenure suit to progress to discovery because the committee that recommended against the professor's tenure contained no specialists in his field, as required by university guidelines); Benjamin Wallace-Wells, *Harvard Faces Suit Over Denial of Tenure Political Scientist Says Process Flawed*, BOSTON GLOBE, Mar. 4, 2000, at B5 (Harvard professor denied tenure files suit charging the review process was

flawed; most successful grounds for tenure suit is failure to follow process, not discrimination or differences of political ideology).

⁷ For discussions of CUNY School of Law, see, e.g., Ruthann Robson, *The Politics of the Possible: Personal Reflections on a Decade at the City University of New York School of Law*, 3 N.Y. CITY L. REV. 245 (2000); Joyce E. McConnell, *A Feminist's Perspective on Liberal Reform of Legal Education*, 14 HARV. WOMEN'S L. J. 77, 88–94 (1991); Vanessa Merton, *The City University of New York Law School: An Insider's Report*, 12 NOVA L. REV. 45 (1987); John M. Farago, *The Pedagogy of Community: Trust and Responsibility at CUNY Law School*, 10 NOVA L. REV. 465 (1986); Charles R. Halpern, *A New Direction in Legal Education: The CUNY Law School at Queens College*, 10 NOVA L. REV. 549 (1986); Howard Lesnick, *The Integration of Responsibility and Values: Legal Education in an Alternative Consciousness of Lawyering and Law*, 10 NOVA L. REV. 633 (1986).

⁸ For example, the AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992), known as the MacCrate Report after Robert MacCrate, Chair of the Task Force, found that law schools were deficient in the skills/values training required for J.D. holders to become competent attorneys. For a discussion of the MacCrate report in the context of legal education, see John J. Costonis, *The MacCrate Report: Of Loaves, Fishes, and the Future of American Legal Education*, 43 J. LEGAL EDUC. 157 (1993).

⁹ See, e.g., Marina Angel, *Women in Legal Education: What It's Like to be Part of a Perpetual First Wave or the Case of the Disappearing Women*, 61 TEMP. L. REV. 799, 802–03, n.21-23 (1988) (stating that women comprised 20% of all full time law faculty in 1986, while noting that these numbers are concentrated in clinical, legal writing, and professional skills positions); Pat K. Chew, *Asian Americans in the Legal Academy: An Empirical and Narrative Profile* 3 ASIAN L.J. 7, 11, 19, 37 (1996) (discussing the 61 tenure-track or tenured Asian-American faculty at U.S. law schools in 1993, but concluding that 70% of law schools have never hired an Asian-American faculty member, and that the gender differential of Asian-American entrants has changed from 72% men in 1986 to 59% men in 1993); Richard H. Chused, *The Hiring and Retention of Minorities and Women on American Law School Faculties*, 137 U. PA. L. REV. 537, 541, 552 (1988) (comparing the composition of 149 law schools in 1980–81 with data from 1986–87 and concludes that “only about two-thirds of a minority teacher per school has been added to the law school teaching ranks,” and that advancements for women in numbers are mitigated by the fact that women claim two-thirds of the legal writing positions, which yield lower pay and status); Deborah J. Merritt & Barbara F. Reskin, *The Double Minority: Empirical Evidence of a Double Standard in Law School Hiring of Minority Women*, 65 S. CAL. L. REV. 2299, 2322 (1992) (arguing that although minority women are closing the gap between themselves and minority men in the number of tenure-track positions, women enter teaching at lower ranks, teach at less prestigious schools, and are more likely to teach low-status courses); Deborah J. Merritt et al., *Family, Place and Career: the Gender Paradox in Law School Hiring*, 1993 WIS. L. REV. 395, 452–453 (1993) (arguing that family choices by women do not explain why

women cluster in low status legal teaching positions); Deborah J. Merritt & Barbara F. Reskin, *Sex, Race, and Credentials: the Truth about Affirmative Action in Law Faculty Hiring*, 97 COLUM. L. REV. 199, 230 n.102 (1997) (of the almost 1,100 professors who began tenure-track jobs at accredited law schools between 1986 and 1991, about 30.3% were white women, 9% were minority men, and 7.6% were minority women—73.7% of the minority women were African-American, 16.7% were Latina or Latino, 7.9% were Asian American, and 1.8% were Native American—the remaining 53.1% consists of white men); Michael A. Olivas, *The Education of Latino Lawyers: an Essay on Crop Cultivation*, 14 CHICANO-LATINO L. REV. 117, 128–29 (1994) (citing figures from the Equal Employment Opportunity Commission which reveal that Latinos comprise 1.5% of all faculty and just 1.1% of all tenured faculty).

¹⁰ According to Professor McConnell, in 1987, of 40 full time faculty, including non-tenure track faculty, 16 were women, and 10 were persons of color. See McConnell, *supra* note 7, at 125 (appendix). The statistics completed for the 2002 ABA site visit reflect that of 30 tenure and tenure track faculty members, 17 are women, and 9 are persons of color.

¹¹ See U.S. NEWS & WORLD REPORT, BEST GRADUATE SCHOOLS 64 (2003) (ranking CUNY as having the most racially and ethnically diverse student body among all ABA accredited law schools, except for the historically black institutions).

¹² For an interesting analysis on the trajectory of the lives of female attorneys and professors, see DEAR SISTERS, DEAR DAUGHTERS: WORDS OF WISDOM FROM MULTICULTURAL WOMEN ATTORNEYS WHO'VE BEEN THERE AND DONE THAT 96 (Karen Clanton ed., 2000).

¹³ As Professor James Fishman has noted, “unfavorable tenure decisions are more likely than not to wind up in court. ... In the law school context, litigation is probably therapeutic for the disappointed candidate. After all, if a disappointed law faculty member does not sue, who would?” James J. Fishman, *Tenure and Its Discontents: the Worst Form of Employment Relationship Save All of the Others*, 21 PACE L. REV. 159, 187. Fishman’s insight is illustrated by a series of reported cases in which a former university law professor, represented himself in a tenure dispute against State University of New York at Buffalo. In *Blum v. Schlegel*, 830 F.Supp. 712 (W.D.N.Y. 1993), the court considered the magistrate’s report and recommendation regarding Blum’s motion for a preliminary injunction requiring his retention on faculty, in addition to Blum’s objections to the report and recommendation, and denied Blum’s application. Blum appealed the above decision in *Blum v. Schlegel*, 18 F.3d 1005 (2nd Cir. 1994). The court of appeals held that because he had failed to establish a likelihood of prevailing on the merits of his claims, he was not entitled to preliminary injunctive relief and affirmed the denial. *Id.* at 1016. Litigating the merits, Blum moved to compel production of documents from tenure review files of another law professor in *Blum v. Schlegel*, 150 F.R.D. 38, 38 (W.D.N.Y. 1993). In response to Blum’s motion, the tenured professor moved to intervene to protect her confidentiality in the documents, and, with the defendants, moved for a protective order. *Id.* Blum claimed that he was denied fair consideration for tenure because he had exercised his free speech rights and taken controversial positions on several issues. He wished to use his former colleague’s tenure review files to prove a theory that the professor had originally received a negative

recommendation and was granted tenure in exchange for not recommending Blum for tenure. *Id.* at 40. Blum also sought to show disparate treatment in the tenure consideration process by comparing his credentials with other tenured professors. *Id.* The court pointed out that Blum had withdrawn from the tenure consideration process before being reviewed, so his file could not be fairly compared with those of tenured professors. *Id.* The court further said that under discovery rules, the documents requested were irrelevant to Blum's claims and that disclosing them would cause an undue burden on the tenured professor. *Id.* at 41. Therefore, Blum's motion was denied and the defendants' and intervenor's motions for a protective order to prohibit Blum from disseminating the documents were granted. *Id.* at 42.

Despite the protective order preventing Blum from sharing the content of the professor's tenure review files, Blum proceeded to circulate information from the files in a memorandum. *Blum v. Schlegel*, 1996 WL 925921, at *1 (W.D.N.Y. 1996). The district court sanctioned Blum with dismissal of his complaint for his egregious abuse of the judicial process. *Id.* at *13. Originally, during discovery in July of 1993, the defendants and intervenor filed motions for contempt and/or sanctions against Blum and the magistrate judge filed an order and certification of contempt, charging Blum with violating a protective order against revealing the intervenor's tenure file and for disrespectful conduct toward judicial authority. *Id.* at *1. Blum's actions included writing undignified and discourteous letters to influence the magistrate judge's future decisions. *Id.* After the contempt finding, Blum continued to insult judges and opposing attorneys in court and in letters, court papers, memoranda and briefs filled with professional, personal, and ethnic insults. *Id.* at *2-5. He also accused all those involved with the case of participating in a "conspiracy" against him, in part because he was Jewish. *Id.* at *4-5. This behavior warranted the district court's dismissal of his case with prejudice, based on its inherent power to sanction bad-faith conduct. *Id.* at *13.

Blum appealed the district court's sanction in *Blum v. Schlegel*, 108 F.3d 1369 (2nd Cir. 1997). The court of appeals affirmed the dismissal, stating that the district court did not abuse its discretion in finding a violation of the protective order, or in determining the appropriate sanction. As part of the action challenging his termination, Blum also served a subpoena on a law student newspaper reporter, Daniel Harris. *Blum v. Schlegel* 150 F.R.D. 42, 43 (W.D.N.Y. 1993). Blum sought the reporter's tape recording of an interview with an associate dean of the school about his lawsuit, claiming it was evidence that the law school decided to terminate him instead of grant him tenure because of his controversial position on certain topics. *Id.* at 44. The law student moved to quash the subpoena, which the court granted, despite the fact that the student was not a professional journalist. *Id.* at 45.

Blum also brought a state court action against New York State, in particular, Attorney General Dennis C. Vacco, on theories of intentional misrepresentation, negligent misrepresentation, and libel, all based upon his tenure dispute. In *Blum v. State*, 680 N.Y.S.2d 355 (App. Div. 1998), the appellate court affirmed the court of claims' denial of Blum's motion for partial summary judgment and granted the defendant's cross motion for summary judgment dismissing the claim. Blum appealed on the claims of negligent misrepresentation and libel. *Id.* at 356. He asserted with the first claim that he was negligently led to believe, through a series of correspondence with the dean of the

school, that he would become tenured de facto without going through the traditional tenure process, based on certain SUNY regulations. *Id.* This cause of action was dismissed because the court found that the correspondence only established an agreement to postpone Blum's tenure review. *Id.* at 357. The libel claim arose because of comments made by an assistant attorney general to the Law School newspaper about Blum's lack of litigation experience in regard to his federal lawsuits. *Id.* The libel claim was dismissed because the court found that Blum was a public figure and the statements were not made with the necessary actual malice. *Id.*

¹⁴ Our intended audience is the public interest legal community, including legal educators, law students, lawyers concerned about social justice issues, feminist lawyers, and advocates committed to social justice and equity within the educational system.

¹⁵ WEBSTER'S NEW COLLEGIATE DICTIONARY 1314 (9th ed. 1983) (this definition includes other categories which are not pertinent to my discussion).

¹⁶ Foucault argues that power should be understood as a "multiplicity of force relations immanent in the sphere in which they operate and which constitute their own organization," that power "is everywhere" because it "comes from everywhere," and that power is always "local and unstable." MICHEL FOUCAULT, *THE HISTORY OF SEXUALITY: VOLUME 1*, 92-93 (Robert Hurley trans., Vintage Books ed., Random House 1990) (1976).

¹⁷ REY CHOW, *WRITING DIASPORA: TACTICS OF INTERVENTION IN CONTEMPORARY CULTURAL STUDIES* 11 (1993).

¹⁸ MARGARET ATWOOD, *SURFACING* 197 (Bantam 1996) (1972) (the last chapter of the novel begins, "This above all, refuse to be a victim. Unless I can do that I can do nothing. I have to recant, give up the old belief that I am powerless and because of it nothing I can do will ever hurt anyone. A lie which was always more disastrous than the truth would have been").

¹⁹ See generally ALAN WATSON, *SLAVE LAW IN THE AMERICAS* (1989).

²⁰ See Ruthann Robson, *Beginning From (My) Experience: The Paradoxes of Lesbian/Queer Narrativities*, 48 HASTINGS L. J. 1387 (1997).

²¹ See SUE-ELLEN CASE, *THE DOMAIN-MATRIX: PERFORMING LESBIAN AT THE END OF PRINT CULTURE* 27 (1996).

²² CHOW, *supra* note 17, at 17.

²³ *Id.* at 13.

²⁴ See, e.g., Penelope Andrews, *Violence Against Aboriginal Women in Australia: Possibilities for Redress Within the International Human Rights Framework*, 60 ALB. L. REV. 917 (1997); Penelope E. Andrews, *Striking the Rock: Confronting Gender Equality in South Africa*, 3 MICH. J. RACE & L. 307 (1998); Penelope E. Andrews, *Globalization, Human Rights and Critical Race Feminism: Voices from the Margins*, 3 J. GENDER RACE & JUST. 373 (2000).

²⁵ Illogical because if we were all equal, then there would be no positions to which one could advance by achieving upward mobility.

²⁶ See FRANTZ FANON, *THE WRETCHED OF THE EARTH* (Constance Farrington trans., Grove Press, Inc. 1968) (1961); NELSON MANDELA, *NO EASY WALK TO FREEDOM* (1973); STEVE BIKO, *I WRITE WHAT I LIKE* (1978). See also TONI MORRISON, *BELLOVED* (1999).

²⁷ See Dianne Otto, *Subalternity and International Law: The Problems of Global Community and the Incommensurability of Difference*, in LAWS OF THE POSTCOLONIAL 145 (Eve Darian-Smith & Peter Fitzpatrick eds., 1999).

²⁸ PHILLIP ROTH, *THE HUMAN STAIN* (2000).

²⁹ Gov't of the Republic of South Africa v. Grootboom 2000 (11) BCLR 1169 (CC) (Constitutional Ct., S. Afr.).

³⁰ For further discussion, see Arthur Chaskalson, *Human Dignity as a Foundational Value of Our Constitutional Order*, 16 S. AFR. J. HUM. RTS. 193 (2000).

³¹ Human Rights In China (HRIC) is an international human rights NGO founded by Chinese scientists and students in March 1989. See *Human Rights in China*, at <http://www.hrichina.org> (last visited Apr. 24, 2003).

³² I am referring here to two inter-related phenomena: the first is the judicialization of politics, namely the idea that legal mechanisms have become the primary vehicles through which to pursue and secure rights. See, e.g., Boaventura de Sousa Santos, *The GATT of Law and Democracy: (Mis)Trusting the Global Reform of Courts*, in OÑATI PAPERS 7: GLOBALIZATION AND LEGAL CULTURES 49 (Johannes Feest ed., 1999). Second, these rights are individualized in ways that preclude a collective approach to rights, which result in a failure to understand the processes of subordination and to adopt effective legal remedies to overcome them. See, e.g., Derrick Bell, *After We're Gone: Prudent Speculations on America in a Post Racial Epoch*, 34 ST. LOUIS U. L.J. 393 (1990).

³³ HRIC, *supra* note 31.

³⁴ See, e.g., JOAN AVNA & DIANA WALTZ, *CELIBATE WIVES: BREAKING THE SILENCE* (1992); *LESBIAN NUNS: BREAKING SILENCE* (Rosemary Curb & Nancy Manahan eds., Warner Books 1990); *BREAKING THE SILENCE: DOMESTIC VIOLENCE IN THE SOUTH-ASIAN COMMUNITY* (Sandhya Nankani ed., 2000); *WOMEN AGAINST VIOLENCE: BREAKING THE SILENCE—REFLECTING ON EXPERIENCE IN LATIN AMERICA AND THE CARIBBEAN* (Ana Maria Brasileiro ed., 1997).

³⁵ ADRIENNE RICH, *Arts of the Possible*, in ARTS OF THE POSSIBLE: ESSAYS AND CONVERSATIONS 146, 150 (2001).

³⁶ KING-KOK CHEUNG, *ARTICULATE SILENCES: HISAYE YAMAMOTO, MAXINE HONG KINGSTON, JOY KOGAWA* (1993); *CHINESE WOMEN TRAVERSING DIASPORA: ESSAYS, MEMOIRS, AND POETRY* 9 (Sharon K. Hom ed., 1999).

³⁷ Sharon K. Hom, *Writing through the Frame, With Reverence*, 20 B.C. THIRD WORLD L.J. 89, 95 (2000).

³⁸ See Randall L. Kennedy, *Racial Critiques of Legal Academia*, 102 HARV. L. REV. 1745 (1989).

³⁹ See, e.g., Leroy D. Clarke, *A Critique of Professor Derrick A. Bell's Thesis of the Permanence of Racism and His Strategy of Confrontation*, 73 DENV. U. L. REV. 23 (1995).

