Transcending the Debate on Legal Narrative

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What does the literary character of Derrick Bell’s fictional narratives tell us about how they should be interpreted? In his chronicle, The Space Traders, for instance, Bell relates the tale of alien visitors to the United States who promise the country wealth if it will trade the nation’s blacks. The country votes decisively for the trade. In The Racial Preference Licensing Act, Bell’s story recounts the decision by a fictional President to permit employers and property owners to buy a license that would allow them to discriminate on the basis of color and race. License fees would be used to support businesses, homeowners, and students in the black community. What do these stories mean? Should they be read literally, as though the

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2See id. at 159-60.

3See id. at 192.

4Id. at 47-64. For further discussion of this narrative, see infra text accompanying notes 148-90.

5See id. at 47-48.

6See id. at 48-49.
country would indeed vote in favor of the aliens’ trade or the establishment of a racial
preferencing license would in fact more efficaciously resolve racial unrest? What does the status
of these stories as “fictions” indicate about their claims—if any—to truth?

Questions of this kind have arisen in the context of a larger debate about the employment
of narrative in law and legal scholarship. The charge against the use of narrative—in either
fictional or nonfictional accounts—is that “stories can distort legal debate, particularly if those
stories are atypical, inaccurate, or incomplete.”7 Stories must be evaluated, the claim goes, on
the basis of objective standards of knowledge and reason.8 This Article seeks to transcend the
existing debate. My argument is that the valuable function of legal narratives can be understood
only when we appreciate their literary character. In particular, the Article contends that
narratives such as Bell’s should be read as parables. I analogize the literary nature of Bell’s
narratives to the use of parable in the Christian Bible’s New Testament,9 a subject that has

7Daniel A. Farber & Suzanna Sherry, Beyond All Reason: The Radical Assault on Truth in America 39 (1997) [hereinafter Farber & Sherry, Beyond All Reason].

8See, e.g., id. at 7.

9Particularly because of the contentiousness of contemporary debate on religious issues, let me offer three caveats regarding my recourse to New Testament parable. First, the goal is to examine the literary character of the parable. I set aside any question, whether favorable or antagonistic, of the New Testament’s truth. Second, invocation of New Testament scholarship is not intended to disparage insight from other religious traditions. For example, recent study of New Testament parables has located them as not divided from but “regularly tied inseparably” to
received significant attention from New Testament scholars. The point is not to equate the status of Bell’s work with that of the New Testament parable but to attend the similarities in literary

the larger context of contemporaneous Jewish parable literature. See, e.g., Craig L. Blomberg, *The Parables of Jesus: Current Trends and Needs in Research*, in *Studying the Historical Jesus: Evaluations of the State of Current Research* 231, 234 (Bruce Chilton & Craig A. Evans eds., 1994) [hereinafter Blomberg, *The Parables of Jesus*] (citing the work of Claus Westermann). Further, interpretation of the Hebrew Bible (what Christians call the Old Testament) by Jewish scholars has also attempted to recover more broadly the modality of manifestation, the theme I pursue in the more restricted context of New Testament parable scholarship. See, e.g., James L. Kugel, *The Great Poems of the Bible* 35-36 (1999) [hereinafter KUGEL, *THE GREAT POEMS OF THE BIBLE*]. Third, my reliance on New Testament scholarship is not intended as a rejoinder on the side of Christianity to criticism by Farber and Sherry that “radical multiculturalists,” including Bell, are anti-Semitic. See, e.g., Farber & Sherry, Beyond All Reason, *New Republic*, Oct. 13, 1997 (review of Farber & Sherry, Beyond All Reason, *supra* note 7, at 4, 25-26, 58-59 (criticizing Bell). See generally id. at 52-71 (chapter entitled Is the Critique of Merit Anti-Semitic?). (I set aside the question whether Bell is in fact a radical multiculturalist, which I think he is not.) As already suggested, my invocation of the New Testament parable is for literary purposes, and Farber and Sherry’s charge that radical multiculturalism is anti-Semitic is rejected by other scholars, including those otherwise sympathetic to these authors. See Richard A. Posner, *Beyond All Reason, New Republic*, Oct. 13, 1997 (review of Farber & Sherry, Beyond All Reason, *supra* note 7, at 40, 42) (“I do not think that the critical race theorists are anti-Semites.”).
style. Just as the New Testament parables should be read on the basis of the criteria of manifestation—the manifestation of new knowledge and insight—rather than on the basis of adequation—adequation to existing norms and knowledge—so, I argue, should Bell’s narratives. New Testament parables and Bell’s parables both reorient, and they do so by disorienting.

Part I analyzes recent New Testament scholarship on the parables and describes how the parables are understood as vehicles of manifestation. Significant here is differentiation of a parable from an allegory. Part II demonstrates how Bell’s narratives are properly understood as parables. Bell’s narratives should be comprehended as manifesting something new, something not appropriately assessed on the basis of their message’s adequation to customary norms or understandings. Part III develops the larger insights of parable scholarship for narrative legal theory in general. Part IV concludes by justifying the Article’s defense of narrative within a larger debate raised by Richard Delgado over whether an argument for racial change needs to promote a more material and less idealistic—less narrative-oriented—basis for change.

10 Because the Article is concerned with the descriptive characterization of how parable is employed both in Bell and the New Testament, let me expand on the prior footnote and emphasize that the Article it is not concerned with arguing whether in fact Bell’s stories or the New Testament’s in fact reveal “truth.” The contention is rather that only by understanding the literary nature of the message can the reader then be in the position to raise the question of truth.

11 See infra text accompanying notes 103-6, contrasting the criteria of manifestation and adequation.

12 See infra text accompanying notes 98-102, claiming that parables reorient by disorienting.
I. New Testament Scholarship on the Parable

The initial presupposition of the New Testament scholarship I shall describe is that its text is not literally the words of God but the product of human—even if divinely inspired—hands. The books of Matthew, Mark, and Luke (the Synoptic Gospels) relate the story of Jesus’s life and ministry, but they were written at least forty years after Jesus’s crucifixion. Because of this historical distance, scholars have tried to differentiate gospel material that may more accurately record statements made by Jesus himself from others inserted by the gospel writers and the early Christian communities. The parables have particularly been subject to this analysis because, as Norman Perrin writes, “the parables are perhaps the most characteristic form of the speech of Jesus himself.” Interpretive inquiry into the parables has proceeded in four steps: textual criticism; historical criticism; literary criticism; and the act of interpretation itself.

A. Textual Criticism

Textual criticism establishes the “the text to be interpreted.” With modern texts, this is


14Id. at 8.

15Id. at 7.


17See id. at 9.

18Id. at 2.
normally not an issue needing much attention, but where texts have undergone “a considerable history of transmission, and of interpretation in the process of transmission” or where divergent manuscripts exist, textual criticism acts to determine the text. In the parables, material can be added either internal to the parable or as an added conclusion after it that will potentially change the parable’s meaning. Let me take as an example from the book of Luke the parable of the Good Samaritan, an example both prominent in the literature and one whose interpretation we shall pursue throughout. A common reading of this parable would include the following verses:

[29] But [a lawyer], desiring to justify himself, said to Jesus, “And who is my neighbor? [30] Jesus replied, “A man was going down from Jerusalem to Jericho, and he fell among robbers, who stripped him and beat him, and departed, leaving him half-dead. [31] Now by chance a priest was going down that road; and when he saw him he passed by on the other side. [32] So likewise a Levite, when he came to the place and saw him, passed by on the other side. [33] But a Samaritan, as he journeyed, came to where he was; and when he saw him, he had

19 Id. In other work, Perrin describes the task here as one of “redaction criticism,” a separation of what has been added by the redactor (author/editor) of a Gospel volume from what more arguably was said by Jesus himself. See Norman Perrin, What is Redaction Criticism? (1969). The interpretive task of textual criticism is descriptive. A larger normative inquiry would arise about which books should be included in the Bible.

20 Perrin, Jesus and the Language of the Kingdom, supra note 16, at 101-02.

21 See, e.g., id. at 162 (discussing this parable as his “sample parable”); Thematic Session: The Parable of the Good Samaritan, 2 Semeia 1-131 (1974).
compassion, [34] and went to him and bound up his wounds, pouring on oil and wine; then he set him on his own beast and brought him to an inn, and took care of him. [35] And the next day he took out two denarii [coins] and gave them to the innkeeper, saying, ‘Take care of him; and whatever more you spend, I will repay you when I come back.’ [36] Which of these three, do you think, proved neighbor to the man who fell among the robbers?” [37] He said, “The one who showed mercy on him.” And Jesus said to him, “Go and do likewise.”

Textual criticism argues that the opening verse (29) and the final verse (37) do not belong to the original context of the parable. The opening verse provides a transition from prior verses separable from the parable, so it is not original to the parable itself. The final verse is added to create a parallelism with non-original verses preceding the parable, so it is not original either. While the parable as it appears in Luke with its surrounding passages is an “exemplary story” about the nature of neighborliness, isolation of the original text, when conjoined with historical


24 See id. at 59-60. Subsequent commentary raises the question whether verse 36 belongs to the original parable. The interrogatory question posed about who was the good neighbor is argued to be extraneous to the distinctive context of the parable as story in verses 30-35. See Perrin, Jesus and the Language of the Kingdom, supra note 16, at 171 (citing commentary by Dan Via).

25 See id. at 102.
and literary interpretation of this passage, leads as we shall see to a strikingly different interpretation of the parable.26

B. Historical Criticism

Historical criticism challenges the view that the Bible can simply be picked up and read with its meaning readily decipherable.27 Instead, the task is much more complex. Writes Perrin:

We need to be able to understand the language in which the text is written, the nature of the text itself as a historical and literary artifact, the circumstances in which and for which it was written. We need, further, to understand as far as we can the intent of the author in writing the text, and the meaning understood by those for whom the text was written.28

26 See infra Parts I.B & C.

27 James Kugel states the common assumption, which he will then go on to dispute: “We like to think that the Bible, or any other text, means ‘just what it says.’ And we act on that assumption: we simply open up a book—including the Bible—and try to make sense of it on our own.” JAMES L. KUGEL, THE BIBLE AS IT WAS xv (1997) [hereinafter KUGEL, THE BIBLE AS IT WAS]. Kugel’s particular reference is to the Hebrew Bible, but as the text will go on to discuss, interpretation of the New Testament is equally complicated. This is a problem perhaps especially for Protestant readers of the Bible, for whom priority is granted to word over tradition and to “the freedom which each individual has of direct access through the Bible to God’s disclosure of himself.” JOHN DILLENBERGER & CLAUDE WELCH, PROTESTANT CHRISTIANITY 52-53, 47 n.17 (1954) [hereinafter DILLENBERGER & WELCH, PROTESTANT CHRISTIANITY].

In the language of legal scholarship, it seems that the quest is for the “original intent” of a biblical passage. As foreshadowed in the discussion of textual criticism, the problem of extracting the meaning of Jesus’s saying is that the words we have available are the product of transmission and interpretation by the Gospel authors/editors and the early Christian communities. To make the issue more stark, Jesus delivered the parables orally; their current locution is entirely the product of texts written later by others. It is one thing, then, for textual criticism to try to separate the parables of Jesus from the authors of the Synoptic Gospels; it is something else for historical criticism to try to distinguish, internal to the parable, what was Jesus’s rather than the editor’s message. A further complication is that we do not read any biblical text naively; our reading is informed by the tradition of interpretation. Nevertheless, 

29 See, e.g., ANTONIN SCALIA, A MATTER OF INTERPRETATION 38 (1997) (differentiating original intent—the drafters’ subjective intent—from his preferred method of original meaning—how the language of the text was originally understood). It is provocative to contrast Justice Scalia’s emphasis on legal original meaning—“[i]t is the law that governs, not the intent of the lawgiver,” id. at 17—with the emphasis in New Testament interpretation on original intent, on the spirit (in the many senses of that word) lying behind Jesus’s use of particular language. It is also enlightening to realize that, as we shall see, the originalist move in New Testament interpretation claims to capture in Jesus’s sayings a more unsettling interpretation that contests traditional readings while by contrast the recourse to originalism in legal analysis is stereotypically viewed as more conservative in orientation.


31 See, e.g., Paul Ricoeur, Experience and Language in Religious Discourse, in
tools such as comparison of differing accounts in the Gospels\textsuperscript{32} and assessment of the relationship between Jesus’s parables and other contemporaneous Jewish parables\textsuperscript{33} (mashal)\textsuperscript{34} have provided some clarity. Further, historical inquiry into the existing culture of the biblical period has proved illuminating also.

For our purposes, the last is especially instructive when we return to our example of the parable of the Good Samaritan. Recall that in that parable three actors separately came upon the man who had been beaten and left for dead: a priest, a Levite, and a Samaritan.\textsuperscript{35} The first two walked by, while the last stopped and offered aid.\textsuperscript{36} Thus stated, the parable seems to offer an instructional story of what it means to act as a neighbor. Historical criticism, though, goes much further and asks what would the appearance of a Samaritan mean to Jesus’s Jewish audience. To these Jews a Samaritan was not some faceless, interchangeable placeholder but, quite the

\textsuperscript{32}See, \textit{e.g.}, PERRIN, \textsc{The New Testament}, \textit{supra} note 13, at 8-10.

\textsuperscript{33}See, \textit{e.g.}, Blomberg, \textit{The Parables of Jesus}, \textit{supra} note 9, at 234 (citing this scholarship).

\textsuperscript{34}See, \textit{e.g.}, DAVID STERN, \textsc{Parables in Midrash: Narrative and Exegesis in Rabbinic Literature} 10 (1991) [hereinafter STERN, \textsc{Parables in Midrash}] (noting the traditional translation of mashal as parable).

\textsuperscript{35}\textit{Luke} 10:30-33.

\textsuperscript{36}\textit{Luke} 10:31-35.
contrary, “a hated enemy, a half-breed, a perverter of true religion.” A Samaritan was a “socio-religious outcast.” To ask a Jew to conceive of a Samaritan as a neighbor was to ask for the conjunction of two terms that needed to be held apart. Only when we comprehend the original, historical significance of the Samaritan can we become open to the real import of this parable. To arrive at this interpretation, though, we need to complete textual and historical criticism by literary criticism.

C. Literary Criticism

Literary criticism asks us to take as a serious and independent subject of inquiry the nature of the literary form in which a message such as the parable is conveyed. More particularly, the claim is that the literary structure in fact informs the message, both as to content and to the way in which the message is conveyed. The thought content is not “indifferent to its literary vehicle.” The interpretive possibilities offered by literary criticism are new because

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37 ROBERT W. FUNK, LANGUAGE, HERMENEUTIC, AND WORD OF GOD 211 (1966) [hereinafter FUNK, LANGUAGE]. Funk adds that “[a]ccording to rabbinic teaching, an Israelite was not to accept alms or a work of love from a non-Jew, since Israel’s redemption is thereby delayed.” Id. at 212 n.61 (citations omitted). See also Robert W. Funk, The Good Samaritan as Metaphor, 2 SEMEIA 74, 78-79 (1974) (claiming that for Jews the Samaritan was a “mortal enemy”) [hereinafter Funk, The Good Samaritan as Metaphor].

38 CROSSAN, IN PARABLE, supra note 23, at 64. See also id. (“For Jews have no dealings with Samaritans.”) (quoting John 4:9).

39 PAUL RICOEUR, ESSAYS ON BIBLICAL INTERPRETATION 91 (Lewis S. Mudge ed., 1980) [hereinafter RICOEUR, ESSAYS ON BIBLICAL INTERPRETATION].
they can be discerned only through literary analysis; they are valid because they arise from the very “nature and natural force of the literary form and language of the texts.” For my purposes, literary criticism forms the most significant advance in biblical interpretation, and, I shall also argue, it comprises the most important source of insight for comprehension of the character of Bell’s narratives. Essential to interpretation of both Jesus’s parables and Bell’s texts is that they be comprehended fundamentally as in fact parables and not allegories.

1. Allegories

The charge of the New Testament scholarship on which I rely is that Jesus’s parables have too often been interpreted, including by the authors of the Synoptic Gospels, as allegories, not parables. Allegorical commentary could be inserted in the biblical text, for instance, either within or after the parable, or later commentary would interpret Jesus’s sayings in allegorical form. As an example of allegory in the biblical text, consider the commentary following the parable of the Sower. The parable talks of seed falling on the path, on rocky ground, among thorns, or in good soil. But to this message the gospel writer adds several more verses allegorizing the parable: The sower is sowing the word of God. The birds that eat the seed on the path are like Satan taking away the word. The ones on rocky ground hearing the word do not have strong enough roots, so in times of affliction fall away. Those hearing the word among the thorns allow other desires to choke out the word, while those on good soil who hear the word


41 See id. at 8.

42 Mark 4:3-8.
have seeds that will bear fruit.\textsuperscript{43} Similarly with a modest account of the Good Samaritan parable. With the appended editorial commentary, especially the last phrase, “Go and do likewise,” the parable tells us how to be a neighbor; it becomes “an allegory of charitable action.”\textsuperscript{44} The Good Samaritan parable has also been allegorized by subsequent interpreters. For example, under the more detailed reading by Augustine, the fourth century theologian, the traveler was Adam, the thieves were the devil and his cohorts, the priest and Levite portrayed the ministry of the Old Testament, the Samaritan was Jesus, and so on.\textsuperscript{45}

So what is the point? Whether the message be large—the actions of God—or more modest—how to be a neighbor—allegory has an educative, didactic, informative function.\textsuperscript{46} It proceeds on the basis of a double meaning.\textsuperscript{47} There is an overt meaning—the story told—and then

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\textsuperscript{43}Mark 4:14-20. For discussion of this parable, see, e.g., CROSSAN, In Parables, supra note 23, at 39-44, 50-51.

\textsuperscript{44}PAUL RICOEUR, THE PHILOSOPHY OF PAUL RICOEUR 241 (Charles E. Reagan & David Stewart eds., 1978) [hereinafter RICOEUR, THE PHILOSOPHY OF PAUL RICOEUR] (disagreeing with this approach).

\textsuperscript{45}PERRIN, JESUS AND THE LANGUAGE OF THE KINGDOM, supra note 16, at 94 (so summarizing) (citation omitted).

\textsuperscript{46}See, e.g., ROBERT SCHOLES & ROBERT KELLOGG, THE NATURE OF NARRATIVE 107 (1966) [hereinafter SCHOLES & KELLOGG, THE NATURE OF NARRATIVE] (referring to allegory as “the kind of didactic narrative which emphasizes the illustrative meaning of its characters, setting, and action”).

\textsuperscript{47}Paul Ricoeur, The Nuptial Metaphor, in ANDRE LACOCQUE & PAUL RICOEUR,
a meaning underneath that needs to be decoded. The overt meaning is a vehicle for the
description of the covert meaning. When this covert meaning is uncovered, when the overt
meaning is translated into the covert meaning, then the overt text can be discarded. It has done
its work, and the covert meaning can stand by itself. Under an allegorical reading, the parable
of the Sower is about the vagaries of belief; faith will grow or not depending on its soil. In
the allegorical accounts of the Good Samaritan parable, either, in Augustine’s terms, the parable
provides a story about the care provided by Jesus (as opposed to those of the Old Testament), or,
in the more modest account, it tells how to be a neighbor. Once the underlying message is
discerned, its wrapping is no longer of any intrinsic worth. Once the message is understood, the
allegory can be discarded.

48 See, e.g., Perrin, Jesus and the Language of the Kingdom, supra note 16, at 6, 92.

49 See, e.g., Paul Ricoeur, The Symbolism of Evil 163 (Emerson Buchanan trans.,
into a text that can be understood by itself . . . .”).

50 See, e.g., Crossan, In Parables, supra note 23, at 44.

51 Later we shall examine how allegorical elements may operate within a story that
remains fundamentally parabolic. See infra Part I.C.4. This conjunction may explain the use of
the subversive allegory in contexts such as the black church, where “allegory has remained a
[hereinafter Donahue, The Gospel in Parable]. There the overt contents of the message are
2. Parables

To explore what is different about parables, let us return to the scholarly explication of the Good Samaritan parable. Textual criticism has isolated the relevant text,\textsuperscript{52} and historical criticism has demonstrated that the Samaritan was considered an enemy of the Jew.\textsuperscript{53} The Samaritan is someone whom the victim does not expect to help and indeed does not want assistance from.\textsuperscript{54} Linguistic criticism now attends how the language of the text operates. The text asks the listener to put together for the same person two contradictory words: “Samaritan” and “neighbor.” John Dominic Crossan argues: “The whole thrust of the story demands that one say what cannot be said, what is a contradiction in terms: Good + Samaritan. . . . [W]hen good (clerics) and bad (Samaritan) become, respectively, bad and good, a world is being challenged and we are faced with polar reversal.”\textsuperscript{55} The literal conflict turns over the listener’s world and challenges its presumptions.\textsuperscript{56} The underlying force of the parable, says Crossan,

not discarded but have their own–parabolic–force. This example is obviously of interest for possible analogies to Bell’s work. See infra text accompanying notes 212-27.

\textsuperscript{52}See supra Part I.A.

\textsuperscript{53}See supra Part I.B.

\textsuperscript{54}FUNK, LANGUAGE, supra note 37, at 213.

\textsuperscript{55}CROSSAN, IN PARABLES, supra note 23, at 64.

\textsuperscript{56}This disruptive power of parable seems to be retained by a variety of more recent interpreters. See, e.g., DONAHUE, THE GOSPEL IN PARABLE, supra note 51, at 15 (“In terms of image and subject matter the parables are realistic, but in the unfolding of the parable the realism is shattered.”); Blomberg, The Parables of Jesus, supra note 9, at 232 (maintaining that the
is that just so does the Kingdom of God break abruptly into human consciousness and demand the overturn of prior values, closed options, set judgments, and established conclusions. . . . The hearer struggling with the contradictory dualism of Good/Samaritan is actually experiencing in and through this the inbreaking of the Kingdom. Not only does it happen like this, it happens in this.57

The parable is a language event.58 In and through the force of the parable’s language the listener’s experience is transformed; he or she experiences a new reality.59 The parable of the Sower operates in a generally similar fashion. Its emphasis is not fundamentally on growth but on the miracle of production occasioned by the small seed. “It is like this that the Kingdom is in advent. It is surprise and it is gift.”60 The crux, then, is that “the kingdom of God is not what the parables tell about, but what happens in parables.”61 The parable is the bearer of the reality with parables’ message “regularly subverts conventional wisdom in shocking ways”). See also id. at 252 (contrasting his conservative parable scholarship with Donahue’s more liberal scholarship).

57 CROSSAN, IN PARABLES, supra note 23, at 65-66.

58 FUNK, LANGUAGE, supra note 37, at 220. See also PERRIN, JESUS AND THE LANGUAGE OF THE KINGDOM, supra note 16, at 138, 146, 178 (same).

59 See Dan O. Via, Parable and Example Story: A Literary-Structuralist Approach, 1 SEMEIA 105, 118 (1974) (“The narrative parables . . . give a new vision of everyday existence as transected by the surprising incursion of the transcendent.”).

60 CROSSAN, IN PARABLES, supra note 23, at 50.

61 PAUL RICOEUR, FIGURING THE SACRED: RELIGION, NARRATIVE, AND IMAGINATION 165 (David Pellauer trans., 1995) [hereinafter RICOEUR, FIGURING THE SACRED].
which it is concerned.\textsuperscript{62} That entails that although the language of an allegory can be discarded when its underlying message is discovered, that is not true for the parable.\textsuperscript{63}

3. Parable as Metaphoric

Characterization of the parable as \textit{metaphoric} provides the crux of the scholarly insight about the parable as a literary form\textsuperscript{64} and clarifies why parable, in contrast to allegory, is not eliminable. The most extended relevant discussion of metaphor arises in Paul Ricoeur’s magisterial tome, \textit{The Rule of Metaphor},\textsuperscript{65} so let me briefly summarize his thesis there and then turn to the assessment by Ricoeur and others of metaphor in the parable context. In his more general work, Ricoeur concentrates on the “rifts” metaphor creates in an existing order, the

\textsuperscript{62} Perrin, Jesus and the Language of the Kingdom, supra note 16, at 55-56.


\textsuperscript{64} See, e.g., Perrin, Jesus and the Language of the Kingdom, supra note 16, at 123 (arguing that “consideration of a form of language which uses comparison but which can serve as a vehicle for the disclosure of ultimacy [leads] to a consideration of the nature, function, and power of metaphor”).

\textsuperscript{65} Paul Ricoeur, The Rule of Metaphor: Multi-Disciplinary Studies of the Creation of Meaning in Language (Robert Czerny trans., 1977) [hereinafter Ricoeur, The Rule of Metaphor]. To anticipate, note the subtitle: the creation of meaning in language.

As the Article’s attention to Ricoeur begins to increase, let me clarify my bias. I studied under Ricoeur in graduate school and edited his book on ideology and utopia. See Paul Ricoeur, Lectures on Ideology and Utopia (George H. Taylor ed., 1986) [hereinafter Ricoeur, Lectures on Ideology and Utopia].
processes by which it “disturbs and displaces” order. Metaphoric predication arises when there is a “clash” in literal meaning; metaphor creates new meaning in the space where there is literal contradiction. Metaphor destroys the literal order in order to present a new order. As Ricoeur writes elsewhere, metaphor “break[s] through previous categorization and . . . establish[es] new logical boundaries on the ruins of the preceding ones.” In his work more

66 Ricoeur, The Rule of Metaphor, supra note 65, at 22.

67 Id. at 194.

68 Ricoeur, The Rule of Metaphor, supra note 65, at 22. Ricoeur’s emphasis on the metaphoric displacement of existing order should be contrasted to the work on metaphor by cognitive theorists George Lakoff and Mark Johnson. Under their approach, the target domain in metaphor simply carries over and preserves the source domain. See, e.g., George Lakoff, What is a Conceptual System?, in The Nature and Ontogenesis of Meaning 41, 49 (William F. Overton & David S. Palermos eds., 1994) (“The fact that the love is a journey mapping is a fixed part of our conceptual system explains why new and imaginative uses of the mapping can be understood instantly . . . [The] metaphorical correspondences are already part of our conceptual system.”). See generally George Lakoff & Mark Johnson, Philosophy in the Flesh: The Embodied Mind and Its Challenge to Western Thought (1999) [hereinafter Lakoff & Johnson, Philosophy in the Flesh]; Metaphors We Live By (1980). Elsewhere I analyze at greater length the contrast between Ricoeur’s model of metaphor and Lakoff and Johnson’s. See George H. Taylor, Cognitive Theory, Conscience, and Law, 6 Graven Images (forthcoming 2005).

69 Ricoeur, The Philosophy of Paul Ricoeur, supra note 44, at 131.
directly on parable, Ricoeur describes the parable as conjoining a metaphorical process with a narrative form.\textsuperscript{70} The bearer of the metaphor is the parabolic narrative as a whole in its tension with ordinary life and reality.\textsuperscript{71} The parable is “the metaphorization of a discourse.”\textsuperscript{72}

The lessons here are several. First, appreciation of the metaphoric quality of parable is an insight into its literary form. The metaphoric capacity of parable is a prominent theme in Ricoeur and other biblical scholars who take seriously literary criticism.\textsuperscript{73} Second, as a language

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\textsuperscript{70}Paul Ricoeur, \textit{Biblical Hermeneutics}, 4 \textit{SEMEIA} 27, 30 (1975) [hereinafter Ricoeur, \textit{Biblical Hermeneutics}]. He will subsequently add a third trait of parable, that its qualifier is the Kingdom of God. \textit{See id.} at 32-33.
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\textsuperscript{71}\textit{Id.} at 95. In later work, Ricoeur will also talk of the metaphoric process of the narrative-parable as arising in the relationship between the parable and the larger narrative that encompasses it about the Kingdom of God, the latter “an expression that orients the whole process of transgression.” \textsuperscript{72} \textsuperscript{RICOEUR, FIGURING THE SACRED, supra note 61, at 147.} Attention to the metaphoric role of the parable as a whole helps explain why some parables, such as the Sower, see \textit{supra} text accompanying note 42, can function metaphorically even though internally, unlike the Good Samaritan, see \textit{supra} text accompanying notes 55-57, they do not seem to present metaphoric clashes with everyday life. \textsuperscript{RICOEUR, FIGURING THE SACRED, supra note 61, at 147.}
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\begin{quote}
\textsuperscript{72}\textit{Id.} at 161 (emphasis deleted).
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\begin{quote}
\textsuperscript{73}\textit{See, e.g.,} \textit{FUNK, LANGUAGE, supra note 37, at 213 (“[In the parable of the Good Samaritan] [t]he ‘logic’ of everydayness is broken upon the ‘logic’ of the parable. It is the juxtaposition of the two logics that turns the Samaritan, and hence the parable, into a}
\end{quote}
event, the parable as metaphor is productive.\(^\text{74}\) It is “creative of meaning,”\(^\text{75}\) it says “something new about reality,”\(^\text{76}\) it is “revelatory.”\(^\text{77}\) Third, because the parable lives and is productive in its metaphoric moment, in three senses it cannot be reduced to the terms of prior, literal meaning. On the one hand, it is a language event: it has force, it transforms. Further, as creative of meaning, it says something new in a way that transforms prior categories.\(^\text{78}\) Finally, as metaphoric, parable “induces a vision of that which cannot be conveyed by prosaic or discursive speech.”\(^\text{79}\) It is “untranslatable.”\(^\text{80}\) While an allegory points to its underlying meaning and can

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\(^\text{74}\) See RICOEUR, THE PHILOSOPHY OF PAUL RICOEUR, supra note 44, at 245 (“The poetic power of the Parable is the power of the Event. . . . Poetic means creative.”).

\(^\text{75}\) FUNK, LANGUAGE, supra note 37, at 137.

\(^\text{76}\) Ricoeur, Biblical Hermeneutics, supra note 70, at 80.

\(^\text{77}\) PERRIN, JESUS AND THE LANGUAGE OF THE KINGDOM, supra note 16, at 129 (“[T]he idea of the parable as revelatory image remains central.”).

\(^\text{78}\) See, e.g., Ricoeur, Biblical Hermeneutics, supra note 70, at 79 (discussing how in metaphor “a new signification emerges . . . which has no status in established language and which exists only in the attribution of unusual predicates”).

\(^\text{79}\) FUNK, LANGUAGE, supra note 37, at 136. Since it seems that every contemporary work with any kind of religious or theological subject must make reference to Dan Brown’s The Da Vinci Code, the following reference from that book seems apt here: “Metaphors are a way to
be discarded when that meaning is found, the parable as metaphor cannot be discarded, because it is the metaphoric weight and density of the parable that conveys and bears its meaning.

4. Allegories Within Parables?

If those scholars who have documented the productive, meaning-full character of parable should be lauded for their insights in literary criticism, do they themselves deserve critique for their rejection of allegory as also potentially productive and meaning-full? Think, for example, of one of the parables whose interpretation we have followed, that of the Sower, where seed is sown on diversely fertile ground. The case for its parabolic interpretation remains strong: the miracle of the gift of the seed and its growth acts a symbol of the Kingdom of God. Nevertheless, should we dismiss that the parable’s presentation of the varying ground on which

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80 Ricoeur, Biblical Hermeneutics, supra note 70, at 80 (speaking of metaphor).

81 See supra text accompanying notes 46-51.

82 See PERRIN, JESUS AND THE LANGUAGE OF THE KINGDOM, supra note 16, at 135 (discussing how in the parable the Kingdom of God “confronts us through the power of metaphor . . . to be the bearer of reality, to induce vision”).

83 Recall the standard division established by these scholars: “The modern interpretation of these parables [of Jesus] begins with the recognition of a literary point: they are parables and not allegories.” Id. at 6.

84 Mark 4:3-8.

85 See CROSSAN, IN PARABLES, supra note 23, at 51.
the seed is sown—on the path, on rocky ground, among thorns, and in good soil—represent allegorically the differing kinds of responsiveness of hearers to Jesus’s message? More recently, scholars, including scholars such as Crossan and Ricoeur who articulated the divide, have argued that the separation between allegory and parable may not be as great as once thought. The debate about the relationship between allegory and parable remains contentious, but for our purposes I want to restrict attention to one element. There seems increased

86 Mark 4:4-8.

87 See, e.g., Blomberg, The Parables of Jesus, supra note 9, at 247 (raising the question and citing to scholarly discussion of the issue).


90 Compare Gowler, supra note 89, at 6 (“[M]odern parable scholarship would never completely resuscitate the allegorical method.”) with Jones, supra note 89, at 79 (“Allegory in itself no longer provides a means of distinguishing authentic Jesus material from inauthentic.”).
agreement that allegory may have been used by Jesus in his own presentation of the parables.\footnote{See, e.g., DONAHUE, THE GOSPEL IN PARABLE, supra note 51, at 12 (“[T]he adamant rejection [of allegory] is not fair to [New Testament] parables or to the manner in which they can be represented. Many of the images in the parables, such as king, vineyard, and servant, have overtones from their biblical heritage which suggest that in these cases the individual elements may in fact stand for something else, such as God, Israel, or the prophets.”).}

What needs emphasis, though, is that this newer understanding does nothing to diminish the larger insight of biblical literary criticism on the parables. Unlike the traditional allegory, which directs attention elsewhere to an underlying meaning and then can be itself discarded,\footnote{See supra text accompanying notes 46-51.} the language event of the parable produces its meaning. The parables remain metaphoric, they remain productive, they convey and create new meaning, they are non-reducible.\footnote{See supra text accompanying notes 74-80 .}

5. Parable as Manifestation

How may we summarize the literary critical insight into the \textit{productive} capacity of the metaphoric language event that is parable? Here I take the parables as exemplary of how Ricoeur defines religious texts more generally. Religious texts are \textit{poetic}:\footnote{See RICOEUR, FIGURING THE SACRED, supra note 61, at 43.} they have the power of “breaking through” and “opening.”\footnote{RICOEUR, ESSAYS ON BIBLICAL INTERPRETATION, supra note 39, at 104.} They “ruptur[e] the ordinary.”\footnote{RICOEUR, FIGURING THE SACRED, supra note 61, at 60.} Two essential points

91See, e.g., DONAHUE, THE GOSPEL IN PARABLE, supra note 51, at 12 (“[T]he adamant rejection [of allegory] is not fair to [New Testament] parables or to the manner in which they can be represented. Many of the images in the parables, such as king, vineyard, and servant, have overtones from their biblical heritage which suggest that in these cases the individual elements may in fact stand for something else, such as God, Israel, or the prophets.”).

92See supra text accompanying notes 46-51.

93See supra text accompanying notes 74-80 .

94See RICOEUR, FIGURING THE SACRED, supra note 61, at 43.

95RICOEUR, ESSAYS ON BIBLICAL INTERPRETATION, supra note 39, at 104.

96RICOEUR, FIGURING THE SACRED, supra note 61, at 60. (“The paradoxical universe of the parable . . . is a ‘burst’ or an ‘exploded’ universe.” \textit{Id.}) Perrin writes of how parable
must be drawn—points I will argue are also essential in understanding the import of Derrick Bell’s work. 97 First, in rupturing the ordinary, parables *disorient*. 98 They provoke a tension with the ordinary. They ask us to confront the assumed contradiction between Samaritan and neighbor 99 and so challenge us to reassess literal terms we had assumed and taken for granted. But parables “disorient only in order to *reorient* us.” 100 Through the productive power of the metaphoric parable, we “discover another way of seeing.” 101 So the first essential point is that methodologically the parables proceed as “*reorientation by disorientation*.” 102

The second essential point is that the poetic function of parable vivifies “a new concept of truth as *manifestation*—and in this sense as revelation.” 103 Ricoeur writes:

\[
[T]he\ \text{poetic}\ \text{function}\ \text{incarnates}\ \text{a}\ \text{concept}\ \text{of}\ \text{truth}\ \text{that}\ \text{escapes}\ \text{the}\ \text{definition}\ \text{by}\ \text{adequation}\ \text{as}\ \text{well}\ \text{as}\ \text{the}\ \text{criteria}\ \text{of}\ \text{falsification}\ \text{and}\ \text{verification}.\ \Here\ \text{truth}\ \text{no}\ \longer\ \text{means}\ \text{verification},\ \text{but}\ \text{manifestation,}\ \text{i.e.,}\ \text{letting}\ \text{what}\ \text{shows}\ \text{itself}\ \text{be}.\ \ldots\]
\[
\text{It}\ \text{is}\ \text{in}\ \text{this}\ \text{sense}\ \text{of}\ \text{manifestation}\ \text{that}\ \text{language}\ \text{in}\ \text{its}\ \text{poetic}\ \text{function}\ \text{is}\ \text{a}\ \text{vehicle}
\]
\]

“startle[s] the imagination” and “shatter[s] . . . that everyday world.”  


97 See, e.g., infra text accompanying notes 183-86.

98 RICOEUR, THE PHILOSOPHY OF PAUL RICOEUR, supra note 44, at 244.

99 See supra text accompanying note 55.

100 RICOEUR, FIGURING THE SACRED, supra note 61, at 281.

101 Id.

102 RICOEUR, THE PHILOSOPHY OF PAUL RICOEUR, supra note 44, at 244 (emphasis added).

103 RICOEUR, ESSAYS ON BIBLICAL INTERPRETATION, supra note 39, at 98.
of revelation.\textsuperscript{104}

Parable manifests new meaning; its reorientation by disorientation brings new meaning into being. A concept of truth as manifestation is bound to be troubling, Ricoeur acknowledges, to more traditional linguistic analysis.

Linguistic analysis is so heavily determined by the history of the principles of verification and falsification that it is very difficult for this school of thought to conceive of a concept of truth that would not be taken for granted and defined a priori as \textit{adequation}. The idea . . . that truth may mean not \textit{adequation} but \textit{manifestation} seems to be alien to the main thesis of linguistic analysis. . . .\textsuperscript{105}

Theories of adequation and verification assume the propriety of testing insights by their congruence to established norms and truths. They do not appear to allow for the manifestation of new truths, new revelations. For manifestation may confront, disrupt, and displace old truths in order to bring new ones to light. “[M]etaphor,” writes Ricoeur, “not only shatters the previous structures of our language, but also the previous structures of what we call reality. . . . With metaphor we experience the metamorphosis of both language and reality.”\textsuperscript{106}

\textsuperscript{104}Id. at 102 (emphasis added). \textit{See also} id. at 96 (“I will seek the traits of a truth capable of being spoken of in the terms of manifestation rather than verification.”), \textit{id.} at 98 (“[L]et us allow the space of the manifestation of things to be . . . .”); \textsc{Ricoeur, Figuring the Sacred}, supra note 61, at 72 (“[T]he process of revelation is a permanent process of opening something that is closed, of making manifest something that was hidden.”).

\textsuperscript{105}Id. at 36.

\textsuperscript{106}\textsc{Ricoeur, The Philosophy of Paul Ricoeur}, supra note 44, at 132-33. Dan Stiver finds in
6. The Role of the Reader

The final element of the literary critical inquiry assesses the role played by the reader. The parable as metaphor disorients by presenting a clash with known reality: the juxtaposition of Samaritan and neighbor. At the same time the metaphor reorients by producing new meaning—the Samaritan is a neighbor—but the meaning must be grasped and completed by the reader.\textsuperscript{107} The parable is in need of interpretation.\textsuperscript{108} In part the ability of the individual to interpret depends on the audience to which a text is addressed: does it speak primarily to those who already believe or, like the parable, to the “whole people.”\textsuperscript{109} But the ability to interpret also depends on the individual’s own openness to the message. On the one hand, the reader may grasp the metaphor, but on the other may also refuse it, reject it, want to reduce it to accustomed literal terms, or not allow it to work.\textsuperscript{110} In the parable, comments Robert Funk, “the hearer is

\textsuperscript{107} Ricoeur argues this is true of all reading. See 3 PAUL RICOEUR, TIME AND NARRATIVE 159 (Kathleen Blamey & David Pellauer trans., 1988). (“It is only in reading that the dynamism of configuration completes its course.”).

\textsuperscript{108} See Ricoeur, Biblical Hermeneutics, supra note 70, at 133.

\textsuperscript{109} Id. at 132-33 (distinguishing the openness of the parable from eschatological discourse—treatment of the final days—which principally addresses “the relatively closed audience of believers already initiated into this mode of discourse”).

\textsuperscript{110} See, e.g., MARY ANN TOLBERT, PERSPECTIVES ON THE PARABLES 43 (1979)
confronted with a situation in relation to which he must decide how to comport himself: is he willing to allow himself to be the victim, to smile at the affront to the priest and Levite, to be served by an enemy? The parable invites, nay, compels him to make some response. And it is this response that is decisive for him.”\textsuperscript{111} The response is not foreordained by the operation of the parable itself. The contingency of listener response is well reflected in the parable of the Sower: no matter what the quality of the seed, the quality of the ground in which it is sown will make a difference in how well it flourishes.\textsuperscript{112}

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\textsuperscript{111}Funk, Language, supra note 37, at 214.
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\textsuperscript{112}See Mark 4:3-8. As we close discussion of literary criticism of the parables, let me briefly summarize some of the theological debate occasioned by the literary critical enterprise. Since, for purposes of the Article, I am less concerned with theological questions than with the possible adoption more generally of any interpretive insights gained here, my attention to the theological debate will be only suggestive. To the extent the debate is germane for questions of more general interpretive analysis, I will return to those issues at a later point. See infra note
\end{flushright}
Literary criticism first participates in the debate over the role played by the reader of or listener to Jesus’s sayings and the Gospel more generally. As evident from the parable of the Sower, see supra, the debate here is a longstanding one over whether an individual’s belief turns on individual decision (i.e., the receptivity of his or her soil) or on the gift of divine grace or both. Consider a traditional Protestant account: “Luther and Calvin affirmed that faith is both a gift and a decision. Without the gift, the decision is not related to the experience of God’s forgiving love. Yet the experience of God’s mercy, and the affirmation that God has led one to this experience, do not vitiate decision.” Dillemberger & Welch, Protestant Christianity, supra note 27, at 31.

Second and more importantly, the literary critical approach is itself subject to debate because in its emphasis on the alleged productive of the parable as metaphor, it appears to conflate the operation of language with the operation of divine grace. As one commentator notes, “The impression arises that at times salvation comes from metaphor alone!” Donahue, The Gospel in Parable, supra note 51, at 104. Hans Frei provocatively criticizes that the literary critical approach in fact renders Jesus as allegorical: he represents the embodiment—and only that—of an underlying, more generally available process of the poetic production of meaning. See Hans Frei, The “Literal Reading” of Biblical Narrative in the Christian Tradition: Does It Stretch or Will It Break?, in The Bible and the Narrative Tradition 36, 48 (1986) [hereinafter Frei, The “Literal Reading” of Biblical Narrative]. For a defense of Ricoeur, see, e.g., Stiver, Theology After Ricoeur, supra note 106, at 245 (differentiating Ricoeur’s philosophy from his theology).
D. The Act of Interpretation

Textual criticism, historical criticism, and literary criticism all subserve the final stage in the analytic process: the act of interpretation itself.\textsuperscript{113} Here my concern is less the act of interpretation by the believer–already adverted to briefly just above\textsuperscript{114}–than by a scholarly undertaking that employs the rigors of critical analysis (which is perhaps undertaken by believers but perhaps also not). I am also interested in a more self-critical assessment of how the interpretive process proceeds. In this inquiry, the parable and religious discourse become subsumed within more general poetic phenomena.

1. Understanding

The initial premise here is that there are legitimate modes of thought and experience other than those that have predominated in the lineage of Western philosophy.\textsuperscript{115} And these

\begin{itemize}
  \item \textsuperscript{113}Perrin, Jesus and the Language of the Kingdom, supra note 16, at 9.
  \item \textsuperscript{114}See supra text accompanying note 110.
  \item \textsuperscript{115}See Lacocque & Ricoeur, Thinking Biblically, supra note 47, at xvi. As Ricoeur elsewhere discusses, elements of Western philosophy may in fact not be immune to these alternatives. He observes that Kant invokes a power of the imagination “to present” (\textit{Darstellung}) those ideas of reason for which we have no concept. By means of such representation, the imagination “occasions much thought (\textit{viel zu denken}) without however any definite thought, i.e., any concept, being capable of being adequate to it; it consequently cannot be completely compassed and made intelligible by language.”
\end{itemize}

\textit{Ricoeur, Essays on Biblical Interpretation, supra} note 39, at 116 (quoting Immanuel
alternative—poetic—forms of expression must be recovered and renewed. We hearken back to the contrast between manifestation and adequation and the need to preserve and protect a space for the former against the rule of the latter. We have, Ricoeur writes, “uncritically accept[ed] a certain concept of truth defined as adequation to real objects and as submitted to a criterion of empirical verification.” By contrast, language in its poetic function suspends “the reign of truth as adequation and the very definition of truth in terms of verification” in order to liberate a “more primitive, more originary” domain.116 James Kugel writes of a lost manner of seeing. A careful reading of the Hebrew Bible demonstrates, he says, that “a certain way of perceiving . . . has gradually closed inside of us, so that nowadays most people simply do not register, or do not have access to, what had been visible in an earlier age.”117 We must remember, though, he adds, that what was “otherwise” is “not unrelated to what exists in the fullest reality of today.”118

KANT, CRITIQUE OF JUDGMENT 157 (J.H. Bernard trans., 1966)). I am currently editing for potential publication a series of course lectures where Ricoeur devoted more systematic attention to the development in Western philosophy of attention to the imagination. See PAUL RICOEUR, LECTURES ON IMAGINATION: IMAGINATION AS A PHILOSOPHICAL PROBLEM (George H. Taylor ed., forthcoming 2006) [hereinafter RICOEUR, LECTURES ON IMAGINATION].

116RICOEUR, ESSAYS ON BIBLICAL INTERPRETATION, supra note 39, at 101.


118JAMES L. KUGEL, THE GOD OF OLD: INSIDE THE LOST WORLD OF THE BIBLE 199 (2003) [hereinafter KUGEL, THE GOD OF OLD]. See also KUGEL, THE GREAT POEMS OF THE BIBLE, supra note 9, at 36 (arguing that biblical texts not only bear witness to a different way of seeing but “perhaps invite us, with the use of some spiritual imagination, to try to enter into it,
Kugel, Ricoeur, and others try to recapture the kind of seeing available in myth. The task is to become open to the poetic manifestation. This task is perhaps best captured in the metaphor not of seeing but of listening or hearing—of attending to and opening oneself to what is expressed. “This hearing which understands,” Ricoeur writes, “is the crux of our problem.” To listen is first to attempt to understand, not to critique; it is to offer oneself to “the possible mode of being-open our eyes, and look”).

119 See, e.g., KUGEL, THE GOD OF OLD, supra note 118, at 15-18; PAUL RICOEUR, THE CONFLICT OF INTERPRETATIONS 284 (1969) [hereinafter RICOEUR, THE CONFLICT OF INTERPRETATIONS] (“Something is discovered, unconcealed, which, without myth, would have remained covered, concealed.”); id. at 300 (discussing the power of myth “to open and uncover”). In a fictional account, the world of Greek myth is wonderfully and lyrically evoked in ROBERTO CALASSO, THE MARRIAGE OF CADMUS AND HARMONY (Tim Parks trans., 1993). See, e.g., id. at 280 (“For centuries people have spoken of the Greek myths as of something to be rediscovered, reawoken. The truth is it is the myths that are still out there waiting to wake us and be seen by us, like a tree waiting to greet our newly opened eyes.”).

120 RICOEUR, THE CONFLICT OF INTERPRETATIONS, supra note 119, at 450. See also KUGEL, THE GOD OF OLD, supra note 118, at 200 (“[T]hese texts have always been there, ready to do the talking, if only we are ready to listen.”); HANS-GEORG GADAMER, TRUTH AND METHOD 462 (2d, rev’d ed., Joel Weinsheimer & Donald G. Marshall trans., 1992) [hereinafter GADAMER, TRUTH AND METHOD] (“[T]he primacy of hearing is the basis of the hermeneutical phenomenon . . . .”); id. at 465 (“The hermeneutical experience also has its own rigor: that of uninterrupted listening.”).
in-the-world which the text opens up and discloses.” 121 Understanding is the opposite of self-projection; it rather allows “the work and its world [to] enlarge the horizon of my own self-understanding.” 122 As Ricoeur writes specifically of the parables, we need to permit the work’s “poetic power [to] display itself within us.” 123

2. Interpretation

To allow the poetic its power to display is to think on the basis of the poetic display, on the basis of what the metaphor, parable, or symbol gives, the transformative meaning it creates. 124 Recognition here must be retained that in order to be true to the poetic meaning, it cannot be reduced; it meaning is not transparent but opaque, rich, thick, and inexhaustible. 125


122 RICOEUR, THE PHILOSOPHY OF PAUL RICOEUR, supra note 44, at 145.

123 Id. at 245.

124 In an early formulation, Ricoeur argues that the symbol “gives rise to” thought. See, e.g., RICOEUR, CONFLICT OF INTERPRETATIONS, supra note 119, at 299; RICOEUR, THE SYMBOLISM OF EVIL, supra note 49, at 348 (same).

125 See, e.g., RICOEUR, CONFLICT OF INTERPRETATIONS, supra note 119, at 290 (differentiating signs which are transparent from symbolic signs, which are opaque and have an “inexhaustible depth”). See also JAMES FODOR, CHRISTIAN HERMENEUTICS: PAUL RICOEUR AND THE REFIGURING OF THEOLOGY 239 (1995) (discussing how for Ricoeur retaining the power of biblical narratives “means diligently and tirelessly resisting the temptation to exchange the rich tapestry of originary discourse for a set of cold abstractions and lifeless concepts”).

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the same time, the poetic gift must be interpreted. 126 Analytic tools must be brought to bear to try to sort out and decipher what the poetic means. Ricoeur has described this movement from the figurative to the conceptual as an inherent dynamism. 127 In other work, Ricoeur advocates an approach to interpretation conceived as functioning at the intersection between “two domains, metaphorical and speculative. . . . On one side, interpretation seeks the clarity of the concept; on the other, it hopes to preserve the dynamism of meaning that the concept holds and pins down.” 128

How does this tension between symbol and thought or the metaphoric and the speculative operate? Ricoeur’s answer is unabashed. The relationship is circular: “We must understand in order to believe, but we must believe in order to understand.” 129 We must believe in order to understand: the interpreter will never come near to what a text says unless he or she lives “in the

126 See, e.g., Ricoeur, Biblical Hermeneutics, supra note 70, at 35 (maintaining that religious language “implies a tension between ‘image’ and ‘meaning’ which calls for interpretation. Nowhere is religious discourse freed of a minimal attempt to interpret it.”).

127 See id. at 133.

128 Ricoeur, The Rule of Metaphor, supra note 65, at 303. In preserving this dynamism, he therefore rejects “destruction of the metaphorical by the conceptual.” Id. “Between the concept which kills the symbols and pure conceptual silence, there must be room for a conceptual language which preserves the tensive character of symbolic language.” Ricoeur, Biblical Hermeneutics, supra note 70, at 36.

129 Ricoeur, The Symbolism of Evil, supra note 49, at 351; Ricoeur, Conflict of Interpretations, supra note 119, at 298 (same).
aura of the meaning that is sought.” 130 The interpreter need not necessarily “‘believe-with,’”’ share the faith of the home community or the individual author, but “reading and interpretation through imagination and sympathy [are] the minimum condition for access to the meaning of the[] texts.” 131 In two senses we must also understand in order to believe. We must decipher the poetic meaning by interpretation, 132 and we must apply interpretive tools—such as textual criticism, historical criticism, and literary criticism—so that we may hear again, 133 so that we may hear what the text is trying to say.

Does the interpretive circle permit critique? Yes. The circle is not viciously circular—tautologous, simply self-confirming—but alive and dynamic. 134 More broadly, Ricoeur differentiates the elements of understanding as comprised of both understanding—the sympathetic regard for meaning—and explanation—analytic inquiry. 135 Understanding is mediated by explanation. 136 Return to the example just noted of the employment of textual criticism,

130 Id.; RICOEUR, THE SYMBOLISM OF EVIL, supra note 49, at 351 (same).

131 LAOCOCQUE & RICOEUR, THINKING BIBLICALLY, supra note 47, at xvii.

132 See supra text accompanying note 125.

133 RICOEUR, THE SYMBOLISM OF EVIL, supra note 49, at 351.

134 See id. at 351; RICOEUR, CONFLICT OF INTERPRETATIONS, supra note 119, at 298 (same).


136 See RICOEUR, HERMENEUTICS AND THE HUMAN SCIENCES, supra note 121, at 220. I have explored this interrelation at greater length elsewhere. See George H. Taylor, Critical
historical criticism, and literary criticism in interpretation of the parables. The goal is understanding, but the analysis is also critical: it challenges and undermines the sufficiency of allegorical interpretation of the parables.\textsuperscript{137} When Ricoeur claims that interpretation functions at the intersection of domains on the one hand seeking “the clarity of the concept” and on the other hoping “preserve the dynamism of meaning,”\textsuperscript{138} that is the intersection of explanation and understanding.

In recognition of this interplay between understanding and explanation, Ricoeur argues, for example, that religious testimony itself must be subject to interpretation, to testing. Testimony comprises both manifestation and a crisis of appearance.\textsuperscript{139} Distinction must be drawn “between the false witness and the truthful one.”\textsuperscript{140} Those works and signs of manifestation are liable to judgment.\textsuperscript{141} The kind of judgment available is one of probability, not certainty. We remain within the requirements of a sphere of manifestation rather than one of adequation.\textsuperscript{142}


\textsuperscript{137}See \textit{supra} text accompanying notes 58-63.

\textsuperscript{138}\textsc{Ricoeur, Rule of Metaphor}, \textit{supra} note 65, at 303.

\textsuperscript{139}\textsc{Ricoeur, Essays on Biblical Interpretation}, \textit{supra} note 39, at 146.

\textsuperscript{140}\textit{Id.} at 112.

\textsuperscript{141}\textit{Id.} at 146.

\textsuperscript{142}See \textit{id.} at 150 (“In terms of the modality of judgment, the interpretation of testimony is only probable, but it only appears as such when compared to a scientific ideal which governs
II. Bell’s Narratives

On the basis of the analysis of parables just completed, I now turn to argue that Derrick Bell’s fictional narratives are best understood as parables. I argue for this characterization even though Bell in his own writings more frequently refers to his fictions as allegories and only one of the different requirements of thought, which reigns in only one of the centers of reflection, namely knowledge of objects.

Setting aside his textbooks, Bell has written seven other books. Four of these contain fictional narratives. See DERRICK BELL, AFROLANTICA LEGACIES (1998) [hereinafter BELL, AFROLANTICA LEGACIES]; DERRICK BELL, GOSPEL CHOIRS: PSALMS OF SURVIVAL FOR AN ALIEN LAND CALLED HOME (1996) [hereinafter BELL, GOSPEL CHOIRS]; BELL, FACES AT THE BOTTOM, supra note 1; and DERRICK BELL, AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE (1987) [hereinafter BELL, AND WE ARE NOT SAVED]. Bell’s remaining three books are nonfictional. See DERRICK BELL, SILENT COVENANTS: BROWN V. BOARD OF EDUCATION AND THE UNFULFILLED HOPES FOR RACIAL REFORM (2004) [hereinafter BELL, SILENT COVENANTS]; DERRICK BELL, ETHICAL AMBITION: LIVING A LIFE OF MEANING AND WORTH (2002) [hereinafter BELL, ETHICAL AMBITION]; DERRICK BELL, CONFRONTING AUTHORITY: REFLECTIONS OF AN ARDENT PROTESTER (1994) [hereinafter BELL, CONFRONTING AUTHORITY]. I will concentrate on representative narratives from the four books of fiction.

See, e.g., BELL, GOSPEL CHOIRS, supra note 143, at 78; BELL, FACES AT THE BOTTOM, supra note 1, at xiii, 12; BELL, AND WE ARE NOT SAVED, supra note 143, at 6; Derrick Bell, The Power of Narrative, 23 LEGAL STUD. FORUM 315, 316 (1999) [hereinafter Bell, The Power of
only rarely as parables\textsuperscript{145} or as “metaphorical tales.”\textsuperscript{146} As we shall see, some of his narratives
do include allegorical elements, but my contention is that even in these stories, the nature of their
ultimate message signifies the operation of a parable.\textsuperscript{147} As is perhaps appropriate, I undertake

\textit{Narrative}. Bell has also characterized certain individual narratives of his as allegories. \textit{See},
e.g., \textsc{Bell, Gospel Choirs, supra} note 143, at xii (describing The Citadel, \textit{id.} at 1); \textit{id.} at 117
describing \textit{The Chronicle of the Twenty-Seventh Year Syndrome, in Bell, And We Are Not Saved, supra} note 143, at 198); Bell, \textit{Faces at the Bottom, supra} note 1, at 135 (describing
A Law Professor’s Protest, \textit{id.} at 127); Bell, \textit{The Power of Narrative, supra}, at 345 (describing
\textit{The Space Traders, in Bell, Faces at the Bottom, supra} note 1, at 158); Bell, \textit{An Allegorical Critique of the United States Civil Rights Model, in Discrimination: The Limits of Law 3}
(Bob Hepple & Erika M. Szyszczak eds., 1992) (publishing a variation of \textit{The Racial Preference Licensing Act, in Bell, Faces at the Bottom, supra} note 1, at 47).

\textsuperscript{145} Bell, \textit{Gospel Choirs, supra} note 143, at 38; Bell, \textit{And We Are Not Saved, supra} note 143, at 253.

\textsuperscript{146} \textit{Id.} at 6. Later in the book, Bell’s narrators raise the suspicion that the listeners (or
readers) of his tales will view them as “merely metaphorical essays.” \textit{Id.} at 253.

\textsuperscript{147} See \textit{infra} text accompanying notes 212-27, 262. My treatment of parable in legal
scholarship appears distinctive. Recourse to parable has appeared on a number of occasions in
legal scholarship. \textit{See}, e.g., \textsc{Norval Morris, The Brothel Boy and Other Parables of the Law} (1992); E. Allan Farnsworth, \textit{Parables about Promises}, 71 \textsc{Fordham L. Rev.} 695 (2002);
Steven D. Smith, \textit{Religion, Democracy, and Autonomy: A Political Parable}, 42 \textsc{Wm. & Mary L. Rev.} 685 (2001); Patrick J. Long, \textit{The Good Samaritan and Admiralty: A Parable of a Statute
this analysis through recourse to Bell’s stories themselves and let them help unfold the nature of his literary method and message.

A. The Racial Preference Licensing Act

One of the most forceful of Bell’s tales is *The Racial Preference Licensing Act* which I referred to briefly in the introduction. In that story the President acknowledges that racial preference licensing is a serious problem. See, e.g., G. Edward White, *The Parable as Legal Scholarship*, 87 Mich. L. Rev. 1508 (1989) (reviewing Robert Burt, *Two Jewish Justices: Outcasts in the Promised Land* (1988)); Robert A. Burt, *Constitutional Law and the Teaching of the Parables*, 93 Yale L.J. 455 (1984). White criticizes Burt’s book as a parable that prioritizes the structure of an argument over evidence in support of it. See, e.g., White, supra, at 1519. Burt’s book, says White, “is a parable presented as legal scholarship.” Id. at 1526. Burt’s article explores the analogy between the degree to which the parables and the courts do and do not rely on command to ensure assent. See, e.g., Burt, supra, at 502. It is, of course, ironic that White criticizes as parabolic Burt’s book (which, as it happens, does not make reference to parable), while Burt’s article defends recourse to parable. I return to the substantive themes raised by White and Burt in Part III infra.

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148 See Bell, *Faces at the Bottom*, supra note 1, at 47-64.

149 See supra text accompanying notes 4-6.
tolerance does not exist\textsuperscript{150} and that laws that attempt to police and change individuals’ morals are difficult to enforce.\textsuperscript{151} State-enforced policies of racial integration have not been effective.\textsuperscript{152} In an effort to replace failed action on the basis of ethics with action based on the marketplace, the President signs into law the Racial Preference Licensing Act.\textsuperscript{153} The Act permits employers and property owners to buy a license that would allow them to discriminate on the basis of race and color.\textsuperscript{154} Licensees can therefore refuse to hire minority employees, serve minority customers, or house minority tenants. License holders are required to display their license prominently, so that potential customers and employees–both those white and those of color–know clearly the establishment’s discriminatory preferences.\textsuperscript{155} The Act would eliminate racial subterfuge and tokenism.\textsuperscript{156} License fees would be employed to support black businesses, provide black home buyers no-interest mortgage loans, and to grant educational scholarships for black students.\textsuperscript{157} The Act replaces “idealism” with “realism.”\textsuperscript{158} It “maximizes freedom of racial choice.”\textsuperscript{159}

\textsuperscript{150}Id. at 47.

\textsuperscript{151}Id. at 51.

\textsuperscript{152}See id. at 49.

\textsuperscript{153}Id. at 51.

\textsuperscript{154}See id. at 47-48.

\textsuperscript{155}Id.

\textsuperscript{156}See id.

\textsuperscript{157}See id. at 48-49.

\textsuperscript{158}Id. at 49.

\textsuperscript{159}Id. at 52.
What is Bell’s larger objective in telling this story? “‘You have to make people see.’”\(^{160}\)

A return to the analytic model of textual criticism, historical criticism, literary criticism, and the act of interpretation will assist our unfolding of what Bell means here. It might seem that the issue of *textual criticism*–the text to be interpreted\(^ {161}\)–would be nonproblematic in a text of recent vintage such as Bell’s. The question, however, raises some complexities. Consider, for instance, that the chapter entitled *The Racial Preference Licensing Act* consists of both the story of the President’s signing of the Act\(^ {162}\) and a subsequent dialogue about the story between the narrator (purportedly Bell) and his fictional interlocutor, Geneva Crenshaw,\(^ {163}\) whom the narrator identifies as the author of the story about the Act.\(^ {164}\) Both parts of the chapter are fictional, but do we consider them both part of the same fiction? In general, I will want to distinguish the story from the dialogue, which provides a fictional commentary on the story. I do not minimize the literary quality of the dialogue. The dialogue about the story presents a useful twist in that

\(^{160}\) *Id.* at 60. I will return to the methodological significance of the statement. See *infra* text accompanying note 297.

\(^{161}\) *Perrin, Jesus and the Language of the Kingdom,* *supra* note 16, at 2.

\(^{162}\) *Bell, Faces at the Bottom,* *supra* note 1, at 47-52.

\(^{163}\) *Id.* at 52-64. As apparent, some interesting issues of authorship arise here also. If the story of the Act is by Crenshaw, does it “really” represent Bell’s point of view? If a statement in the dialogue, such as “‘You have to make people see,’” see *infra* text accompanying note 160, is by Crenshaw, does it in fact represent Bell’s perspective? Do the narrator’s? Since my purpose lies elsewhere, I shall elide these questions and generally read conclusory statements as Bell’s.

\(^{164}\) *Id.* at 52.
the story is explained not by Bell but by Crenshaw, and Bell as fictional narrator works to come
to terms with Crenshaw’s story. The dialogue therefore appears less instrumental, less operating
toward a predetermined goal or outcome and instead more reflective of an actual debate over
contested issues. The dialogue brings the debate alive. Nevertheless, my own focus will be
more on the story than on the succeeding commentary, a division similar to scholarly assessment
of the parables, where the text to be interpreted is the parable, and the Gospel writer’s
commentary is separable. 165 It is true that unlike in the New Testament, Bell is the author of
both the story and the subsequent dialogue. But, as we shall discuss, 166 the poetic power of
Bell’s fictions arise more in the story; the commentary acts to explicate the story. 167

Perhaps most relevant for our appropriation of historical criticism is its requirement that
we appreciate “the circumstances in which and for which [the text] was written.” 168 Although
Bell’s writing is close to us in time, understanding of its circumstances may vary depending on
the age of the reader and his or her prior knowledge of the civil rights movement. Both the story
of the Act and the following dialogue do provide significant assistance. The story relates that

165 See supra text accompanying notes 18-26.

166 See infra text accompanying notes 182-90 & note 190.

167 Where Bell combine story and explication, this replicates the combination some
scholars argue was expected in parable utterances at the time of Jesus. See Stern, Parables in
Midrash, supra note 34, at 8-9. Some of Bell’s stories, however, include no commentary. See,
e.g., Bell, The Space Traders, in Bell, Faces at the Bottom, supra note 1, at 158-94. For
discussion of this narrative, see infra Part II.B.

168 Perrin, Jesus and the Language of the Kingdom, supra note 16, at 4.
enforcement of various civil rights statutes has been “unenthusiastic” and judicial decision narrow.\(^{169}\) The dialogue affirms that events have rendered obsolete the traditional civil rights goals of integration.\(^{170}\) And, the dialogue continues, any advances in minority protection is due to “white self-interest.”\(^{171}\) Knowledgeable readers of Bell’s corpus will verify that the story of the Racial Preference Licensing Act crystallizes Bell’s long-held view that the civil rights course promoting integration was due to fail and has in fact failed.\(^{172}\)

We come to the crux of our inquiry into Bell’s story in assessing it on the basis of literary criticism. The argument here is that the narrative is a parable: a language event.\(^{173}\) Through the force of the story of the Act, the reader’s understanding is transformed.\(^{174}\) As in the biblical parable, Bell’s story is metaphoric. Recall that metaphor causes “rifts” in, it “disturbs and displaces” the existing order.\(^{175}\) The story of the Racial License Preferencing Act strikes at and unsettles existing civil rights norms. Many readers—for example, my students—are quite taken

\(^{169}\) Bell, Faces at the Bottom, supra note 1, at 49.

\(^{170}\) See id. at 53.

\(^{171}\) See id. at 54.

\(^{172}\) Note, for example, the subtitle of the book in which the chapter on the Act appears: “The Permanence of Racism.” See Bell, Faces at the Bottom, supra note 1.

\(^{173}\) See supra note 59 and accompanying text.

\(^{174}\) Or the reader’s understanding can be transformed, if the reader is open to the story’s message. See infra text accompanying notes 263-70.

\(^{175}\) Ricoeur, The Rule of Metaphor, supra note 65, at 22. See supra text accompanying note 66.
aback by the story’s attack on assumed presuppositions and priorities. Whereas the parable of
the Good Samaritan required listeners to juxtapose two entities—Samaritan and neighbor—they
had thought contradictory, Bell’s tale asks readers to recognize as impossible of fulfilment
something—integration—they had taken as an unquestioned norm. In both cases the challenge
operates as a reversal.

The disruption of existing norms provides the basis for the metaphoric moment of
creation: the productive event that transforms prior categories. The story’s call for “[r]acial
realism” at once acknowledges the failure of an integration model of civil rights and at the
same affirms the availability of another way to proceed. Market-driven economic analysis
replaces the idealism of moral advocacy. Endorsement of this law and economics approach
provides another level of reversal to the story, as law and economics is stereotypically deemed to

See supra text accompanying notes 55-57.

See supra text accompanying note 55. In other of his writings, Bell has characterized
how critical race theory disrupts prior reality, see Derrick Bell, Who’s Afraid of Critical Race
Theory?], and how narrative can affect listeners, “engendering seemingly irreconcilable
perceptions of societal attitudes.” Bell, The Power of Narrative, supra note 144, at 347 (quoting
Stephen Shie-Wei Fan, Immigration Law and the Promise of Critical Race Theory: Opening the
Academy to the Voices of Aliens and Immigrants 97 C. OLUM. L. REV. 1202, 1216 (1997)).

See supra text accompanying note 78.

Bell, Faces at the Bottom, supra note 1, at 47.

See id. at 47, 51.
be conservative in its aims.\textsuperscript{181} The story’s theme is shocking; it has a force that subsequent explication—whether here or in Bell’s subsequent dialogue—does not fully present. The metaphoric power of the message is not adequately “conveyed by prosaic or discursive speech.”\textsuperscript{182} Bell’s dialogue on the Act allows the reader to hold the theme at arms-length; that is not the case in the story itself. The story has a poetic power: it breaks through the old and opens new vistas.\textsuperscript{183} Its method, like the New Testament parables, is “reorientation by disorientation.”\textsuperscript{184}

In bringing forward something new, Bell’s story must be assessed on the basis not of its \textit{adequation} to old categories or norms,\textsuperscript{185} not on the basis of \textit{verification} but of “\textit{manifestation},

\begin{itemize}
\item \textsuperscript{181}See, \textit{e.g.}, ROBIN PAUL MALLOY, LAW AND ECONOMICS 53-56 (1990) (discussing this point). Richard Delgado has also employed law and economics for progressive purposes. See Richard Delgado, \textit{Rodrigo’s Roadmap: Is the Marketplace Theory for Eradicating Discrimination a Blind Alley?}, 93 NW. U. L. REV. 215, 244 (1998) (arguing for the use of market incentives to induce positive employer behavior toward racial minorities).
\item \textsuperscript{182}FUNK, LANGUAGE, \textit{supra} note 37, at 136 (discussing New Testament parable). See \textit{supra} text accompanying note 79.
\item \textsuperscript{183}See \textit{supra} text accompanying note 95.
\item \textsuperscript{184}RICOEUR, \textit{THE PHILOSOPHY OF PAUL RICOEUR}, \textit{supra} note 44, at 244. \textit{Cf. BELL, CONFRONTING AUTHORITY}, \textit{supra} note 143, at 161-62 (discussing how vanguard artists “create a new convention, sometimes building on, but more often exceeding and threatening accepted conventions”).
\item \textsuperscript{185}See RICOEUR, \textit{ESSAYS ON BIBLICAL INTERPRETATION}, \textit{supra} note 39, at 36.
\end{itemize}
i.e., letting what shows itself be.” ¹⁸⁶ The reader’s primary task is one of understanding, of opening oneself to the new world being disclosed. ¹⁸⁷ The reader must try to live “in the aura of the meaning that is sought,” ¹⁸⁸ must try to read with “imagination and sympathy.” ¹⁸⁹ Critique is possible but only on the basis first of understanding. Part of the force of the story of the Licensing Act is that the reader’s understanding remains uncertain: is advocacy of the license really intended by Bell or is the story more rhetorical, more exhortative? ¹⁹⁰ Because of its poetic

¹⁸⁶ Id. at 102 (emphasis added).

¹⁸⁷ See RICOEUR, HERMENEUTICS AND THE HUMAN SCIENCES, supra note 121, at 177. See supra text accompanying note 121.

¹⁸⁸ RICOEUR, THE CONFLICT OF INTERPRETATIONS, supra note 119, at 298. See supra text accompanying note 130.

¹⁸⁹ LACOCQUE & RICOEUR, THINKING BIBLICALLY, supra note 47, at xvii. See supra text accompanying note 131.

¹⁹⁰ The story’s power may in fact be somewhat undercut by the succeeding dialogue, where Geneva Crenshaw states that in fact her intention was to provoke and “‘not . . . to urge actual adoption of a racial preference licensing law.’” BELL, FACES AT THE BOTTOM, supra note 1, at 60. Later she argues that even if traditional civil rights advocates resisted the Act, they still might have their consciousness sufficiently raised by the story so that they might seek other new avenues for reform. Id. at 62. Bell may have thought the dialogue’s caveat necessary because, in Crenshaw’s words, “‘I could not leave it to you to figure out the real significance of my story.’” Id. at 52. If read as intended literally, the Act’s proposal might be deemed so oppositional to prior norms that it would simply be rejected out of hand and its message for
power, the story seems definitely a parable in character. Further, there is little evidence of allegorical overtones.

B. The Space Traders

As briefly noted previously, The Space Traders tells the story of alien visitors to the United States who promise the country prosperity—wealth, environmental decontaminants, and so on—if in return, the nation’s people will allow the space traders to transport home with them all of this country’s blacks. The issue receives significant debate, and the vote goes decisively in favor of the trade. As in The Racial License Preferencing Act, decision does not take place on the basis of what is right or moral. Instead, despite the profound injustice, protection of change hence dismissed also. Crenshaw’s interjection that she needed to clarify the text’s meaning reiterates the seeming symbiosis, noted earlier, see supra note 163, between the story and its expositor.

191 See supra text accompanying notes 1-3.

192 See BELL, FACES AT THE BOTTOM, supra note 1, at 158-94. In his latest work, Bell returns briefly to this narrative. See BELL, SILENT COVENANTS, supra note 143, at 47-48.

193 See BELL, FACES AT THE BOTTOM, supra note 1, at 159-60.

194 See id. at 160.

195 See id. at 192.

196 See supra text accompanying note 180.

197 See BELL, FACES AT THE BOTTOM, supra note 1, at 171: “Golightly [a black character] had done what he so frequently criticized civil rights spokespersons for doing: he had tried to get whites to do right by black people because it was right that they do so. ‘Crazy!’ he
white self-interest prevails. As one black character in the story argues, "It has become an unwritten tradition in this country for whites to sacrifice our rights to further their own interests." 198

Along with Bell’s emphasis on racial realism, noted in the prior story of the Licensing Act, 199 the theme of white self-interest is one of the most perduring in Bell’s corpus. 200 How does our interpretive method help us better comprehend the story of The Space Traders?

Analysis on the basis of textual criticism would be rather brief. The chapter in which the narrative appears includes only the story; there is no accompanying explanatory dialogue, as there was in the Licensing Act tale. 201 Some might raise the question whether the length of the story fits within the seemingly more confined textual ambit of a parable, but the time taken to read or narrate the tale may well cohere with the actual spoken time of Jesus’s parables, whose commented when civil rights people did it. ‘Crazy!’ he mumbled to himself, at himself.”

198 Id. at 174.

199 See supra text accompanying notes 179-80.

200 For more expansive discussion of these themes, see George H. Taylor, Racism as “the Nation’s Crucial Sin”: Theology and Derrick Bell, 9 MICH. J. RACE & LAW 269 (2004) [hereinafter Taylor, Racism as “the Nation’s Crucial Sin”].

201 See supra text accompanying notes 162-67. The tale is later described as written by Crenshaw. See BELL, FACES AT THE BOTTOM, supra note 1, at 195. The Epilogue that follows the Space Traders chapter, though, is in part a response to the tale. It is written by the narrator alone as a letter to Crenshaw. See id. at 195-200.
written account may be only an abbreviated summary.\textsuperscript{202}

Historical criticism would seek to situate the tale within not only its current history but the history to which it alludes.\textsuperscript{203} The story itself recounts prior consideration of emigration programs (voluntary and involuntary) for African-Americans.\textsuperscript{204} It also briefly relates as a telling example of a required sacrifice by blacks the original constitutional compromise that permitted slavery.\textsuperscript{205} It recalls as well the American resettlement and confinement of Japanese Americans during World War II.\textsuperscript{206} Commentators such as Michael Olivas have observed that the space trade is analogous to other events in United States history: “Not only have Blacks been enslaved, . . . but other racial groups have been conquered and removed, imported for their labor and not allowed to participate in the society they built, or expelled when their labor was no

\textsuperscript{202}See John Dominic Crossan, \textit{The Parables of Jesus}, 56 \textit{Interpretation} 247, 249 (2002) [hereinafter Crossan, \textit{The Parables of Jesus}] (arguing that the gospel parables are plot summaries of oral presentations that would have taken “much longer,” perhaps an hour).

\textsuperscript{203}See \textit{Perrin, Jesus and the Language of the Kingdom}, \textit{supra} note 16, at 4.

\textsuperscript{204}See \textit{Bell, Faces at the Bottom}, \textit{supra} note 1, at 168 (citing schemes by Benjamin Franklin and other abolitionists to free slaves and return them to Africa and Lincoln’s support for emigration plans).

\textsuperscript{205}Id. at 188. Bell discusses this sacrifice at much greater length in another fictional narrative, \textit{The Chronicle of the Constitutional Contradiction}. See \textit{Bell, And We Are Not Saved}, \textit{supra} note 143, at 26-42.

\textsuperscript{206}See id. at 191.
To move from this historical criticism to literary criticism might seem to deflect attention from the vision of the United States this history reflects, but that is not the case. Rather, the move to literary criticism on the basis of this history helps illuminate the potency of the literary critical insight. Recognition of this history could suggest to some that Bell’s tale is fundamentally allegorical: a recapitulation in fictional form of this historical trail of woe. If it is true, though, that *The Space Traders* forces us to face this history, it acts not only to challenge us to remember as our history a past we would rather forget. Instead, it asks us to confront the fact that this history operates in our present and may presage our future. The tale does act as a parable: it reverses the assumed view of progress toward racial harmony and requires us to face the role of white self-interest in our nation’s decisions. The tale is unsettling, disturbing, and upsetting, precisely to the extent it is not simply a fictional fantasy. The allegorical elements in *The Space Traders*—its evocation of the history analogous to the trade at issue in the story—add to

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the power of the work as a parable.

C. Bluebeard’s Castle

Bell’s recounting of Bluebeard’s Castle\textsuperscript{208} is distinctive. Instead of presenting his own narrative creation, he uses a traditional French fairy tale (as retold operatically by Bela Bartok) to explore the “unkept promises” of American racial justice.\textsuperscript{209} Judith marries Bluebeard and on entering his castle sees seven locked doors. So that she can more fully share his life, Judith asks her husband to open the doors, but he initially refuses. Over time, she does gain the keys from him one door at a time. To her horror, behind each door are symbols of his malevolent reign: weapons of torture, armaments, gold, jewels, and so on.\textsuperscript{210} Bluebeard beseeches Judith not to open the seventh and last door, but she does. Inside are his former wives, still alive. Bluebeard gives her no choice but to join them, and the opera ends as he closes the door upon her.\textsuperscript{211}

Bell’s exploration of the story is overtly allegorical. The first six doors stand for episodes in the United States’s racial history where in each a promising door was opened and then closed. First, the Emancipation Proclamation\textsuperscript{212} freed slaves in Confederate territory, but it provided no

\begin{footnotesize}
\begin{enumerate}
\item Bell, Bluebeard’s Castle: An American Fairy Tale, in BELL, AFROLANTICA LEGACIES, supra note 143, at 155.
\item Id. For a recording of the opera, see BELA BARTOK, BLUEBEARD’S CASTLE, Columbia Records recording 1963, MS 6425.
\item BELL, AFROLANTICA LEGACIES, supra note 143, at 156.
\item Id. at 156-57.
\item Emancipation Proclamation, No. 17, 12 Stat. 1268 (1863).
\end{enumerate}
\end{footnotesize}
substantive rights that would prevent resubjugation. Second, passage of the post-Civil War constitutional amendments suggested promise, but narrow judicial construction rendered the protection basically meaningless. Third, accomplishment of the hopes of Brown has remained elusive. Fourth, the aim of the Civil Rights Act of 1964 to remediate racial discrimination in areas such as employment has not been fulfilled. Fifth, the Voting Rights Act of 1965 led to thousands of new black voters, but in response, techniques such as gerrymandering have been used to dilute the black vote. Sixth, some affirmative action policies have brought improvement, but resistance against them remains strong. Bell’s

213 BELL, AFROLANTICA LEGACIES, supra note 143, at 160-61.

214 U.S. CONST. amends. XIII, XIV, and XV.

215 BELL, AFROLANTICA LEGACIES, supra note 143, at 161-62.


217 BELL, AFROLANTICA LEGACIES, supra note 143, at 162.


219 BELL, AFROLANTICA LEGACIES, supra note 143, at 163.


221 BELL, AFROLANTICA LEGACIES, supra note 143, at 163-64.

222 Id. at 264. For Bell’s more recent reflections on the Supreme Court’s decisions in Gratz v. Bollinger, 539 U.S. 244 (2003), and Grutter v. Bollinger, 539 U.S. 306 (2003), which addressed affirmative action in the educational context, see BELL, SILENT COVENANTS, supra
allegory acknowledges that “change in the racial landscape” has occurred. But the process is not one simply of ascending progress. Instead, while doors do open, they also get shut.

Bell’s recourse to the tale of Bluebeard’s Castle turns from allegory to parable in the following two ways. First, the tale is not simply a useful vehicle in which to explore American racial history. For the historical recounting ultimately returns to the message of the story. As Bell relates, Bluebeard responds to Judith’s request that the castle be opened to outside wind, sun, and light with this blunt retort: “Nothing can enlight this castle.” The tale powerfully evokes the message: sun and light will not come; racism has its permanence. Bell comments: “The [racial] tableau changes with the times, but its structure and final outcome remain constant.” As in Bell’s other narratives, the twist of the tale as applied to racial relations upsets our norms and expectations. We presume a continuing path of progression in race relations, and Bell jolts us, upsets us, disorients us. As in the prior tales we have discussed, the disorientation reorients us to a sober, chastened view of the historic and present plight of the United States’s racial minorities. In Bell’s return from an allegorical appropriation of the tale to

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223 Bell, Afrolantica Legacies, supra note 143, at 165.
224 Id. ("Thus, despite breakthroughs, we find ourselves in the midst of an increasingly grim national scene.").
225 Id. at 159.
226 This theme is an enduring one in Bell. Recall the subtitle of Bell’s work Faces at the Bottom: The Permanence of Racism. See Bell, Faces at the Bottom, supra note 1.
227 Bell, Afrolantica Legacies, supra note 143, at 159-60.
the tale’s own confounding message, he transforms the literary character of the telling from allegory to parable.

The second twist in Bell’s use of the story goes further. It remains true that “[n]othing can enlighten this castle,”228 and yet, somehow, there is also still room for hope—a seventh door that remains yet to open, the door of the United States’s racial future.229 The metaphoric, “revelatory”230 power of the tale offers a second level of reorientation. The comparison of Bluebeard’s tale with American racial relations is, once again, an allegory, but the juxtaposition has poetic, transformative power. And the contrast with the biblical parables or the two prior fictions of Bell’s that we have depicted is provocative. In all these, the transformative power of the story occurred now, in the reading. In the language event of the parable,231 “just so does the Kingdom of God break abruptly into human consciousness . . . .”232 In the Racial Preference Licensing Act,233 the appeal to “[r]acial realism”234 arises out of a transformed realization of the

228 Id. at 159.

229 Id. at 167.

230 Id. at 155 (emphasis added).

231 FUNK, LANGUAGE, supra note 37, at 220. See also PERRIN, JESUS AND THE LANGUAGE OF THE KINGDOM, supra note 16, at 138, 146, 178 (same).

232 CROSSAN, IN PARABLES, supra note 23, at 65-66. See also RICOEUR, FIGURING THE SACRED, supra note 61, at 165 (“[T]he kingdom of God is not what the parables tell about, but what happens in parables.”).

233 BELL, FACES AT THE BOTTOM, supra note 1, at 47.

234 Id.
situation in which we now find ourselves. *The Space Traders*\textsuperscript{235} pushes us to confront the reality now of white self-interest.\textsuperscript{236} By contrast, what is distinctive about the second level of the transformation offered in *Bluebeard’s Castle* is that it exists as something potential, possible, not something actual or present. Bell writes:

> America, too, has a Seventh Door. Behind it there is the potential for self-revelation for whites as well as blacks. Salvation for all is possible if its light can reveal the destructiveness of whiteness, can provide an antidote to its corrupting influence, a corrective for its mesmerizing hypnotic spell. The door will not be opened until blacks become insistent or when political or economic conditions dictate this long-overdue revelation.\textsuperscript{237}

As evident from the quotation, Bell here does not discard his harsh critique. Change will occur only when “blacks become insistent”—racial realism—or “when political or economic conditions dictate”—white self-interest. But there is a door and revelation can occur. Consistent with the histories of the prior doors, Bell is not sanguine how lasting the effects of the door’s opening will be or whether in fact the door will remain open.\textsuperscript{238} But there is possibility nonetheless. Bell’s response here is consistent with his larger corpus: on the one hand, racism is permanent but, on the other, it remains worthwhile to fight the struggle against it. As I argue elsewhere, this tension marks an enduring paradox in Bell’s work, but, as I also argue, it is a living paradox, not

\textsuperscript{235} *Id.* at 158.

\textsuperscript{236} *Id.* at 171.

\textsuperscript{237} *Id.* at 167.

\textsuperscript{238} *Id.* at 167-68.
safe contradiction.\textsuperscript{239} For present purposes, the literary insight is that the transformative power of the parable as a narrative includes an openness both to what is and to what may be possible.\textsuperscript{240}

\textit{Bluebeard’s Castle} comprises one of Bell’s “Afrolantica Legacies” in the book of the same name. Afrolantica is a fictional creation of Bell’s that first appeared in the tale, \textit{The Afrolantica Awakening}, a chapter in \textit{Faces at the Bottom of the Well}\textsuperscript{241} Afrolantica was a giant land mass that arose unexpectedly in the middle of the Atlantic Ocean.\textsuperscript{242} As explorers to the land found, it had a special peculiarity: its air could be breathed by blacks but not whites.\textsuperscript{243} In

\textsuperscript{239}See Taylor, \textit{Racism as “the Nation’s Crucial Sin,”} supra note 200.

\textsuperscript{240}This balance between the real and the aspirational is also an important theme in the work of my colleague, Jules Lobel. Lobel writes:

Those who view justice not as a mere norm but as a turbulent river, “a fighting challenge, a restless drive,” are continually operating on the fault line between current reality and human aspiration, between what is and what ought to be.

Success in navigating the river requires maintaining the tension between reality and aspiration, between what is and what ought to be, between our reach and our grasp.

\textsc{Jules Lobel, Success Without Victory: Lost Legal Battles and the Long Road to Justice in America} 9 (2003) [hereinafter \textsc{Lobel, Success Without Victory}] (citations omitted).

\textsuperscript{241}See \textsc{Bell, Faces at the Bottom,} supra note 1, at 32-46.

\textsuperscript{242}\textit{Id.} at 32-33.

\textsuperscript{243}\textit{Id.} at 33-35.
fact, blacks venturing on to the land underwent an experience of “heightened self-esteem, of liberation, of waking up.” Many blacks contemplated migrating to Afrolantica’s shores, but when the first group of ships arrived, they were met by the entire land mass sinking back into the ocean. As the ships turned around to go back to the United States, people on board discovered they were not in fact dismayed. “[T]he miracle of Afrolantica was replaced by a greater miracle. Blacks discovered that they themselves actually possessed the qualities of liberation they had hoped to realize on their new homeland. Feeling this was, they all agreed, an Afrolantica Awakening, a liberation—not of place, but of mind.”

As an Afrolantica legacy, Bluebeard’s Castle intends to elicit a similar liberation of mind. The liberation is one of openness and of possibility. In the concluding pages of Afrolantica Legacies, Bell’s fictional counterpart, Geneva Crenshaw, says to narrator Bell that Afrolantica is real. Unlike Camelots and Shangri-las, which “all are envisioned as escapes from the real world,” Afrolantica is instead “a reflection of that world: one offering a perspective that enlightens and encourages people wherever they are.” Bell’s fictions are parables: they have poetic power, they transform, they reorient by disorienting. They manifest both what is—the realities now unfolded by critique—and the possibilities of what may be. What Bell ascribes to

244 Id. at 35.
245 Id. at 45.
246 Id. at 45-46.
247 Bell, Afrolantica Legacies, supra note 143, at 172.
248 See Derrick Bell, Commencement Address–Howard University School of Law, 38 Howard L.J. 463, 470 (1995) (arguing for communication of “a view of what is against a
critical race theory in general applies directly to his own work: it is “transformatively aspirational.”  

D. The Gospel Light

Bell’s story *The Gospel Light* concludes his book *Gospel Choirs* and provides an apt conclusion as well to our discussion of Bell’s narratives. In this tale the narrator and his wife attend a church service where Geneva Crenshaw preaches the sermon. The heart of Crenshaw’s sermon is the following story. Melodie is the daughter of a minister, and she has an exquisite singing voice. While her father and his church do not approve of gospel music, Melodie finds as she grows older that the gospels speak to her. She decides upon the ministry as a vocation, background of what might be”). The openness to what may be is utopian but utopian in its best function, as “exploration of the possible” rather than as escape, “the completely unrealizable.”

RICŒUR, LECTURES ON IDEOLOGY AND UTOPIA, supra note 65, at 310. This clear-minded utopianism has been visible in Bell’s writings since his first work of fiction, *And We Are Not Saved*. That book’s final chapter calls for a “Third Way” between black emigration and violent struggle. Bell explicitly acknowledges that this proposed alternative is “utopian,” but he wants to carve out a space for a prospect that is as yet “difficult to envision.” BELL, AND WE ARE NOT SAVED, supra note 143, at 255.


See BELL, GOSPEL CHOIRS, supra note 143, at 203-14.

See id. at 214.

See id. at 207.

See id. at 208.
graduates from divinity school, and then serves in her father’s church.\textsuperscript{254} On her father’s death, she submits her name for consideration as the church’s pastor.\textsuperscript{255} The church is reluctant, both because she is a woman and because another, male candidate is preferred.\textsuperscript{256} The church nevertheless permits her to offer a trial sermon, and on that day she decides to preach in song, more particularly, in gospel hymns.\textsuperscript{257} The sermon “should have opened all but blinded eyes and sealed hearts,” but blinded eyes and sealed hearts are what she meets.\textsuperscript{258} “Everyone was stunned by the beauty of her music, but determined–despite some inner turbulence not to be moved by it.”\textsuperscript{259} Melodie is rejected as minister, and the male candidate is appointed instead. Later church records indicate that gospel hymns have become congregation favorites.\textsuperscript{260}

The tale operates at several levels: on the role of women in employment and in relationships,\textsuperscript{261} on the abiding spiritual power–to which the book is dedicated–of gospel

\begin{thebibliography}
\bibitem{254} See id. at 208-09.
\bibitem{255} See id. at 211.
\bibitem{256} See id. The subtext here is that Melodie and the other candidate, Shadrach, have the beginnings of a relationship, see id. at 209, and Melodie knows that if she continues in the competition, Shadrach will cease the relationship. See id. at 211.
\bibitem{257} See id. at 213.
\bibitem{258} Id.
\bibitem{259} Id.
\bibitem{260} Id. at 214.
\bibitem{261} Bell has thematized this subject in numerous narratives. See, e.g., Bell, \textit{Shadow Song}, in Bell, \textit{Gospel Choirs}, supra note 143, at 91 (discussing and showing respect for issues of
songs, and on the failure of listeners to hear. It is the last theme that I want to emphasize here.

At this level, the story is allegorical: a tale not only about listeners’ failure to hear the gospels but to hear Bell himself. The story is ultimately parabolic, because it challenges our assumption that we have heard. Bell asks us really to hear.

If we have noted, though, that for Bell a fundamental task is “to make people see,” he also repeatedly acknowledges his awareness that people will refuse to see, refuse to listen, refuse to understand. As in the parable of the Sower, his message is sown on diversely receptive sexual orientation); *Women to the Rescue*, in *Bell, Gospel Choirs*, supra note 143, at 152 (discussing how “blacks must deal with sexism and patriarchy in our communities before we can address effectively the continuing evils of racism,” *id.* at 155); *The Entitlement*, in *Bell, Gospel Choirs*, supra note 143, at 188 (discussing the fictional development of sexual entitlement therapy, where physical intimacy cannot proceed unless the relationship is based on equality and respect, *see id.* at 197); *The Last Black Hero*, in *Bell, Faces at the Bottom*, supra note 1, at 65 (discussing interracial relationships); *The Race-Charged Relationship of Black Men and Black Women: The Chronicle of the Twenty-Seventh-Year Syndrome*, in *Bell, And We Are Not Saved*, supra note 143, at 198 (discussing the difficulty professional black women have in finding and establishing relationships with black men).

262 *See, e.g., Bell, Gospel Choirs*, supra note 143, at 3-4 (describing the “spiritual nourishment that is the essence of this music’s appeal,” an essence that has “a universality capable of touching all who hear and needs its comfort, its consolation,” a potential “to touch and unite across barriers of race and class”).

263 *Id.* at 60.
ground. At times Bell analogizes his efforts to the role of a prophet. “About the least dire fate for a prophet is that one preaches, and no one listens; that one risks all to speak the truth, and nobody cares.” Elsewhere he recurs to similar imagery. “The power of prophesy does not guarantee conversion. Most people reject predictions founded in truth as unreasonable inconvenient, or frightening. That is why true prophets are more likely to be persecuted than praised.” An essential part of the reason that Bell has developed and argued for racial realism is that because of self-interest, whites have chosen not to listen to messages about the need for racial reform. Racial realism replaces exhortation to do the right thing with economic analysis and incentives. Recall Bell’s words in his discussion of Bluebeard’s Castle: “[T]here is the potential for self-revelation for whites as well as blacks. . . . The door will not be opened until blacks become insistent or when political or economic conditions dictate this long-overdue revelation.” Bell’s narratives disrupt our categories, our orientation, our understanding in order to move us to a place where the critique, through disorientation, opens us to paths of reorientation. In an interview, Bell cites approvingly Audre Lorde’s statement that one cannot destroy the master’s house with the master’s tools. Bell’s fictional narratives travel a path

264 See Mark 4:3-8.
265 BELL, FACES AT THE BOTTOM, supra note 1, at 157.
266 BELL, AFROLANTICA LEGACIES, supra note 143, at 33.
267 Id. at 167.
268 See Andrea McArdle, An Interview with Derrick Bell, in ZERO TOLERANCE 243, 249 (Andrea McArdle & Tany Erzen eds., 2001) (citing Audre Lorde, The Master’s Tools Will Never Dismantle the Master’s House, in THIS BRIDGE CALLED MY BACK: WRITINGS BY RADICAL
alternative to the master’s tools of doctrinal legal analysis in order to disorient and reorient. As in *Bluebeard’s Castle*, though, he recognizes that despite his efforts, readers may refuse to hear, and the door of possibility may, yet again, close. Bell comments elsewhere, “The presentation of truth in new forms provokes resistance, confounding those committed to accepted measures for determining the quality and validity of statements made and conclusions reached, and making it difficult for them to respond and adjudge what is acceptable.”

If the door closes, for Bell the task is to take up the struggle once again. For the reader or listener, the primary task is to understand one’s own obligation to *hear*. As parables, Bell’s tales reorient, they bring forth something new. We cannot judge them according to accustomed or conventional criteria. In their poetic function, they incarnate “a concept of truth that escapes the definition by adequation as well as the criteria of falsification and verification. Here truth no longer means verification, but manifestation, i.e., letting what shows itself be.” To listen is first to understand, not to critique; we must open ourselves to “the possible mode of being-in-the-world which the text opens up and discloses.” For access to the meaning of a text, we must read with “imagination and sympathy.” Bell can make manifest, can disorient in order to

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269 Bell, Afrolantica Legacies, *supra* note 143, at 168.

270 Bell, Faces at the Bottom, *supra* note 1, at 143.

271 See Bell, Afrolantica Legacies, *supra* note 143, at 174.


273 Ricoeur, Hermeneutics and the Human Sciences, *supra* note 121, at 177.

274 LaCocque & Ricoeur, Thinking Biblically, *supra* note 47, at xvii.
reorient. But the reader or listener bears responsibility also. Ricoeur writes, “This hearing which understands is the crux of our problem.”

III. Narrative

In this Part, I want to situate Bell’s stories within a strand of more general approaches to narrative and, on the basis of our discussion of parable, offer some responses to criticisms of narrative in legal scholarship.

Narratives can operate in a number of ways. Given the emphasis on parables—including Bell’s—as reorienting through disorientation, I particularly want to attend the function of disorientation as explored in general narrative analysis. Kathryn Abrams and Richard Delgado, two of the most prominent scholars of legal narrative, describe variously how narratives can act as “paradigm-shifting,” as rupturing and revelatory, as jarring or

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275 Ricoeur, The Conflict of Interpretations, supra note 119, at 450.

276 See, e.g., Toni M. Massaro, Empathy, Legal Storytelling, and the Rule of Law: New Words, Old Wounds?, 87 Mich. L. Rev. 2099, 2104 (1989) (characterizing how symposium participants “describe or use multiple sorts of stories: stories that bridge, providing connections between people of different experience, stories that explode (like grenades) certain ways of thinking, stories that mask, devalue, or suppress other stories, stories that consolidate, validate, heal, and fortify (like therapy), and even stories that maim or ‘spirit murder’ and so should not be told at all”) (footnotes omitted).

277 See supra text accompanying notes 98-102, 184.

278 Kathryn Abrams, The Narrative and the Normative, in Representing Women: Law,
displacing, as “shatter[ing] complacency and challeng[ing] the status quo.” In part legal narrative acts to disrupt the doctrinal form of analysis of legal discourse; stories challenge non-stories. Legal narrative acts as well as a “counterstory” to jar majoritarian stories. The


See, e.g., PATRICIA J. WILLIAMS, THE ALCHEMY OF RACE AND RIGHTS 199 (1991) (characterizing Bell’s use of the fictional Geneva Crenshaw as an “instrument by which to attack
challenge posed by these counterstories is twofold. First, they unmask as stories what the racial majority deem to be “truths” and “objective standards.” Second, the counterstories “displace or overturn . . . [these] majoritarian myths and narratives.” Counterstories can expose the lie contained in majoritarian narratives. They challenge “accounts by which majoritarians make sense of their world; stories such as: without intent, no discrimination; outright racism is rare and sporadic; we have all the civil rights legislation we need–any more would disadvantage innocent whites; some cultures unfortunately have less ambition and ability the monolithism of white patriarchal legal discourse. . . . She is the fiction who speaks from across the threshold to the powerful unfiction of the legal order; [she is a] destroyer of the rational order”.

284 See Delgado, On Telling Stories, supra note 281, at 670.

285 See id. (“Majoritarians tell stories . . . but with the conviction that they are not stories at all, but the truth.”).

286 See Delgado, Shadowboxing, supra note 281, at 818 (discussing how for actors who have been in positions of power, “their subjectivity was long ago deemed ‘objective’ and imposed on the world”).

287 Id.

288 Richard Delgado, Derrick Bell’s Racial Realism: A Commentary on White Optimism and Black Despair, 24 CONN. L. REV. 527, 530 (1992) [hereinafter Delgado, Derrick Bell’s Racial Realism]. Delgado continues: “It is no accident that Bell has a tremendous underground circulation and a status in the minority community of color. We know that his message is true.” Id.
than others; and so on.”

Counterstories provide a means for undermining the “presuppositions, received wisdoms, and shared understandings” that on the one hand are little attended and simply presumed and that on the other form the cognitive grounds on whose bases legal and political decision occurs.

Narratives also operate differently than arms-length, “objective” doctrinal analysis. They seek from their readers more than simple rational or abstract understanding; understanding of a narrative is affective, more lived, “visceral.” Narratives as well seek to lure the reader into a story; they work noncoercively and insinuatively as they ask the reader to “suspend judgment.” Narratives ask the reader to reconcile two worlds: the text’s and the reader’s. If, however, the reader refuses to be open to the text’s world but stands steadfast in his or her


294 *Id.* at 2415. See also *id.* at 2440 (same).

295 See *id.* at 2435.
own, the story’s goal—to make one see—will fail.

I take the work of Daniel Farber and Suzanna Sherry as representative of the opposition to narrative. Farber and Sherry understand in abstraction the claims raised by narrative advocates: that narratives “are powerful means for both creating and destroying mindset” and “have a persuasive power that transcends rational argument.” Farber and Sherry themselves acknowledge that narratives “can be a source of empathetic understanding” and “can sometimes significantly affect their audiences.” But they argue that narratives should

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296 See Delgado, Brewer’s Plea, supra note 293, at 13 (“Stories require suspension of disbelief.”). See also Abrams, Unity, Narrative, and Law, supra note 280, at 25 (noting the need for a “receptive audience”).

297 See Bell, Faces at the Bottom, supra note 1, at 60.

298 Delgado, Brewer’s Plea, supra note 293, at 13.

299 See, e.g., Farber & Sherry, Beyond All Reason, supra note 7; Farber & Sherry, Telling Stories Out of School, supra note 281. See also Daniel A. Farber & Suzanna Sherry, The 200,000 Cards of Dimitri Yurasov: Further Reflections on Scholarship and Truth, 46 Stan. L. Rev. 647 (1994).

300 Farber & Sherry, Beyond All Reason, supra note 7, at 31.

301 Id. at 39. I return to the issue of narratives’ ability to “transcend[] rational argument.” See infra text accompanying notes 310-12.

302 Farber & Sherry, Telling Stories Out of School, supra note 281, at 830.

303 Id. at 826.
be assessed according to “conventional standards of truthfulness and typicality,”[^304] and it is these criteria that I wish to explore.

My contention is that Farber and Sherry comprehend truthfulness and typicality on the basis of *adequation* to existing norms, whereas narrative as reorientation by disorientation acts on the basis of the *manifestation* of new norms, new truths. I shall argue that the criterion of typicality should be incorporated into the criterion of truthfulness, but let me move toward that point by discussing some of the limitations of typicality on its own terms. For our purposes, recourse to typicality fails on at least two grounds. First, sometimes the injury or story may not be “typical” in the sense of one that happens to the majority of a class—think of racial lynching, for instance—yet it is one deserving attention and redress on its own and one that may as well reflect deeper, more “typical” racial animosity. The story is both an individual story and a deeper, broader story. Further, typicality does not adequately encompass the stories told by those who see more deeply. Think, for example, in the Western tradition of the role of the religious prophet—an analogy drawn by Bell[^305]—or of Plato’s allegory of the cave in the *Republic*.[^306] In both, truth lies in what is seen, not in its being acknowledged as typical. For

[^304]: *Id.* at 854.

[^305]: See *supra* text accompanying notes 265-66. Jules Lobel also distinguishes between the prophetic and the current, majoritarian view. The value of prophecy is determined not by success according to current norms but by transformation in the long-term. See LOBEL, *SUCCESS WITHOUT VICTORY*, *supra* note 240, at 106, 116.

someone like Bell, the truth of his work should not depend on it being judged as typical, for its “typicality”—the pervasiveness of the racial injustice that he intends to describe—is acknowledged only if we first understand—have manifested in us—its underlying truth.  

So the question becomes the “truth” of Bell’s or any narrative that acts to reorient by disorientation. Farber and Sherry raise the issue here as one of the “veracity and verifiability” of a story. Recall, though, Ricoeur’s criticisms of this approach. Analysis has been so “heavily determined by the history of the principles of verification and falsification” that it has become difficult for the standard approach “to conceive of a concept of truth that would not be taken for granted and defined a priori as adequation.” By contrast, Ricoeur wants to articulate and defend another approach to truth, one that “escapes the definition by adequation as well as the criteria of falsification and verification. Here truth no longer means verification, but manifestation, i.e., letting what shows itself be.” For narrative—and in particular, as I have argued, Bell’s narratives—truth is measured as manifestation, not adequation.

307 As throughout, the analogy here to the prophets and to Plato, as earlier to the Jesus’s parables, is not to equate Bell’s status with these figures but to indicate a methodological similarity in how truth is disclosed.

308 Farber & Sherry, Beyond All Reason, supra note 7, at 99.

309 Ricoeur, Essays on Biblical Interpretation, supra note 39, at 36 (referring specifically to linguistic analysis).

310 Id. at 102.

311 See Part II supra.

312 Kathryn Abrams argues that narratives “offer new understandings of what ‘truth’ as a
Yes, a criterion of truth as manifestation presents problems. As Farber and Sherry anticipate, it is difficult to know how to appraise a criterion that seems to rely on an intuitive “flash of recognition” and that may be susceptible to a reader’s reaffirmation of his or her own preconceptions or biases.\(^\text{313}\) Ricoeur himself acknowledges a certain circularity in understanding: to understand one must live “in the aura of the meaning that is sought.”\(^\text{314}\) There is also a certain circularity between understanding and critique. Critique is possible, but only after “reading and interpretation with imagination and sympathy.”\(^\text{315}\) This circularity is undeniably frustrating for parties on both sides: for those narrators who maintain they are not understood because the reader has not, in the narrators’ view, sufficiently opened themselves to the story being told, and for those who criticize the story and are in turn criticized for not understanding.\(^\text{316}\) Stories assisted by internal or supplementary analysis—the dialogues, for example, following many of Bell’s narratives between Bell and the fictional Geneva Crenshaw—

criterion for belief might be . . . they challenge the notion that ‘truth’ must be established by comparison with an external point of reference,” that is, by adequation to given, external norms. Abrams, *Unity, Narrative and Law*, *supra* note 280, at 22.

\(^{313}\)See Farber & Sherry, *Telling Stories Out of School*, *supra* note 281, at 836-37.

\(^{314}\)RICOEUR, *CONFLICT OF INTERPRETATIONS*, *supra* note 119, at 298.

\(^{315}\)LAOCQUE & RICOEUR, *THINKING BIBLICALLY*, *supra* note 47, at xvii.

\(^{316}\)See, e.g., Farber & Sherry, *Telling Stories Out of School*, *supra* note 281, at 851 (“[F]or those readers who neither resonate or recognize, and for those who passionately disagree [with a story], there is no way to enter the dialogue.”).
can provide some common grounds of analysis for both narrator and reader. But the issue of the primacy of manifestation remains. A new truth, it is contended, is being told, and this new truth may reorient by disorientation, by unsettling existing norms, existing truths. To really understand, one must really listen.

To reject manifestation because of its methodological uncertainties is to reject the possibility of there being new truths that have yet to be disclosed. It is difficult to comprehend, however, how Farber and Sherry’s interpretive model can accommodate itself to the possibility of manifestation rather than only to adequation, and this in turn raises questions about the adequacy of their interpretive approach. Farber and Sherry endorse a model of legal pragmatism. Legal pragmatism is not formalist in its reasoning and allows for a range of cognitive tools to be employed in reaching a judgment. Their own form of pragmatism is

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317 Farber & Sherry have argued that narratives do not contain analytic elements but simply story. See, e.g., Farber & Sherry, Beyond All Reason, supra note 7, at 86, 99; Farber & Sherry, Telling Stories Out of School, supra note 281, at 809. Richard Delgado has strongly criticized this argument, offering Bell’s work as an exemplary counterexample of a more typical critical legal narrative. See Delgado, On Telling Stories, supra note 281, at 670.

318 See Farber & Sherry, Beyond All Reason, supra note 7, at 132-33.

319 See id. See also Daniel A. Farber, Reinventing Brandeis: Legal Pragmatism for the Twenty-First Century, 1995 U. Ill. L. Rev. 163, 169 [hereinafter Farber, Reinventing Brandeis] (“The pragmatist’s judicial decision will rarely claim to rest on a single premise. Rather than using the metaphor of the foundation as a means of support, pragmatists prefer to speak of a web of beliefs or a many-legged stool.”).
conservative in the descriptive sense that it relies considerably on the weight of tradition. As Farber writes separately:

The pragmatist philosophers were keenly sensitive to the importance of tradition . . . as a necessary ingredient in all human reasoning. For the pragmatists, tradition was . . . the essential foundation for intellectual and social progress. Consistency with the past is, as Holmes said, as much a necessity as a virtue, for “the past give us our vocabulary and fixes the limits of our imagination.” . . . Creativity and innovation do not arise from a rejection of tradition but rather from a full embrace of it . . . .

Setting aside the question of the accuracy of this characterization of pragmatist approaches more generally, Farber’s statement is revealing about the methodology that he and Sherry adopt. Consider again this statement from the longer quotation: “Consistency with the past is . . . as much a necessity as a virtue, for ‘the past give us our vocabulary and fixes the limits of our imagination.’” This is a methodology of adequation, and it is an approach that a methodology open to manifestation rejects as insufficient. Compare Ricoeur’s definition of tradition.

320 See Eskridge, Gaylegal Narratives, supra note 279, at 612-13, 626 (characterizing Farber and Sherry’s approach as “conservative pragmatism”).

321 Daniel A. Farber, Legal Pragmatism and the Constitution, 72 MINN. L. REV. 1331, 1344-45 (1988) [hereinafter Farber, Legal Pragmatism and the Constitution] (quoting OLIVER WENDELL HOLMES, COLLECTED LEGAL PAPERS 139 (1920)).

322 Id. (citation omitted).

323 One of the most intriguing aspects of Ricoeur’s philosophy of imagination, see
Tradition is “not the inert transmission of some already dead deposit of material but the living transmission of an innovation always capable of being reactivated by a return to the most creative moments of poetic activity. . . . In fact, a tradition is constituted by the interplay of innovation and sedimentation.”

This definition of tradition can be contextualized within the larger dimensions of hermeneutics, to whose development Ricoeur and Hans-Georg Gadamer are the principal contemporary contributors. In my view, hermeneutics provides the broad interpretive domain within which narratives such as Bell’s and, more generally, the poetic and the parable may be located typically at the more disruptive end of the spectrum. Hermeneutics argues that understanding does not arise simply on the basis of applying what has come before (a sedimentary notion of tradition) to the instance at hand (the story being told or the legal case at issue). Instead, the pre-existing whole (the tradition, the existing norm of understanding) is informed by the part (the instance of application), and understanding of the part is informed by the whole; each informs the other. As Gadamer argues, application involves “co-determining, supplementing, and correcting [a] principle.” Commentator Joel Weinsheimer explains that

RICŒUR, LECTURES ON IMAGINATION, supra note 115, is that he denies that the past fixes the limits of our imagination. For Ricoeur, this pragmatist approach is one of reproductive imagination, but there is another sphere of productive imagination, where, interestingly, fiction plays a notable role.


325 GADAMER, TRUTH AND METHOD, supra note 120, at 39
this means that neither the interpretive rule “nor the instance to which it is applied is antecedent to the other;” their relationship is “reciprocal rather than unilateral. Each term modifies and acts on the other so that they interact.”326 The particular is not assessed in terms of its adequation to existing norms, for these norms may be informed by, transformed by the incorporation of the particular. Something new is seen, and that recasts the previously existing whole.

Frank Michelman discusses similarly the notion of practical reason. “Judgment mediates between the general standard and the specific case. . . . This process, in which the meaning of the rule emerges, develops, and changes in the course of applying it to cases is one that every common law practitioner will immediately recognize.”327 The hermeneutic process of application is not extreme or extraordinary, but part of everyday interpretation. Existing interpretive norms are reassessed and reintegrated as part of the routine process of application to new situations. It is insufficient to rest application on an adequation to prior norms and rules. In the process of application, something new occurs, something new is made manifest, and that truth must be incorporated into a recast set of norms. In the typical process of application, as in typical common law development, the new that appears may be a slight difference from the old

326JOEL WEINSHEIMER, PHILOSOPHICAL HERMENEUTICS AND LITERARY THEORY 80 (1991) [hereinafter WEINSHEIMER, PHILOSOPHICAL HERMENEUTICS AND LITERARY THEORY]; see also JOEL WEINSHEIMER, GADAMER’S HERMENEUTICS: A READING OF TRUTH AND METHOD 192 (1985) (“[T]he general is . . . is continually determined by the particular, even as it determines the particular. Application is not reductive but productive . . . .”).

and change may be very incremental. But the more major disruptive power of the narrative, as of the poetic and the parable, is simply a more extreme version of the same process. It may be

328 See, e.g., Eskridge, *Gaylesbian Narratives*, supra note 279, at 630:

A more positive lesson of pragmatism is that in the longer run, opinions are more plastic. One’s “stock of old opinions” and experiences is itself dynamic. If one’s opinions adjust a little for every story detailing persecution of responsible, patriotic gay and lesbian or straight military personnel by unreasoning or underhanded investigators, the cumulative range over a number of years might be substantial.

329 Perhaps this interrelation of the more modest process of application with the disruptive and reorientative process of the poetic or the parable may help overcome objections to the notion of manifestation. One of the criticisms of manifestations is that some claim ignorance of “‘disclosure’ as an ‘event’ in understanding. They say that this is not their model for what it is to understand . . . .” Frei, *The “Literal Reading” of Biblical Narrative*, supra note 112, at 55 (endorsing this position). The more minute occurrences of disclosure in the moment of application may make more credible the possibility of larger “events” in the poetic moment. A second criticism, voiced by Farber and Sherry, is that reports of “conversion” on the basis of a story are “scarce.” Farber & Sherry, *Telling Stories Out of School*, supra note 281, at 826. Perhaps, though, the repetition of exposure to a message in stories can slowly bring a reader to a changed orientation. Recall Eskridge’s statement, *supra* note 328. It is a different point if a reader refuses to change positions. See *supra* text accompanying notes 110-12.

On other grounds, Mark Tushnet claims that Bell’s narratives fail because “our society
troubling that there is no more formal or uniform way to resolve the relationship between the
general and the particular at the moment of application; different interpreters will resolve the
interrelation in different ways. But that is the reality with which we are faced. Denial of the
truth that a new manifestation may bring leaves us very partial and limited in our understanding.

Farber himself quotes positively Michelman’s statement.\footnote{Daniel A. Farber, \textit{The Inevitability of Practical Reason: Statutes, Formalism, and the Rule of Law}, 45 VAND. L. REV. 533, 538 (1992).} Farber’s work also includes
assertions that pragmatism “can encompass both tradition and prophecy.”\footnote{Farber, \textit{Reinventing Brandeis}, supra note 319, at 181.} It is difficult to
find, however—whether in Farber’s own work or the work he has co-authored with Sherry—incorporation of the role that manifestation of the new may play. Their work more centrally
seems predicated on Farber’s phrase: “Consistency with the past is . . . as much a necessity as a
virtue, for ‘[t]he past give us our vocabulary and fixes the limits of our imagination.’”\footnote{Farber, \textit{Legal Pragmatism and the Constitution}, supra note 321, at 1344-45 (citation
lacks a similar set of shared assumptions.”} Because of societal diversity, different readers will
react to Bell in different ways. Mark Tushnet, \textit{The Degradation of Constitutional Discourse}, 81
\textit{Geo. L.J.} 251, 274 (1992). Again the response would be that in the moment of application,
readers are being asked to challenge their existing assumptions and to revise and recast them as a
result of their encounter with the new, with the new truths that Bell claims to expose. Whether in
fact this will occur is the distinguishable issue of the nature of reader response. But it is not
sufficient methodologically for Tushnet simply to observe differing assumptions as a starting
point. The question is whether the narrative can help overcome or bridge these differences.


\footnote{Farber, \textit{Reinventing Brandeis}, supra note 319, at 181.}

\footnote{Farber, \textit{Legal Pragmatism and the Constitution}, supra note 321, at 1344-45 (citation}
Emphasis on adequation alone does not allow room for manifestation. There is more than one kind of reason, more than one approach to discovering the truth. Farber and Sherry quote

333 This point is emphasized in Jay Mootz’s review of Farber and Sherry. See Francis J. Mootz, III, Between Truth and Provocation: Reclaiming Reason in American Legal Scholarship, 10 YALE J.L. & HUMAN. 605 (1998) (reviewing FARBER & SHERRY, BEYOND ALL REASON, supra note 7).

334 Essential to Farber & Sherry’s project is a defense of the Enlightenment. See, e.g., FARBER & SHERRY, BEYOND ALL REASON, supra note 7, at 27 (“At least since the Enlightenment, knowledge has been thought of as universally accessible and objective.”). One way to view the contest between advocates of narrative and Farber and Sherry is that the debate here parallels a similar debate within the Western tradition: between the Enlightenment and its antagonist, Romanticism. Consider Isaiah Berlin’s depiction of the two. See ISAIAH BERLIN, THE ROOTS OF ROMANTICISM (Henry Hardy ed., 1999). The use of symbol was central to romantic thought, id. at 99, because of its attention to dimensions of depth. Id. at 102. Romanticism tried to express symbolically what “could not be expressed literally.” Id. at 100. The effort was to convey something “immaterial” using “material” means. Id. at 102. “Whatever description I give always opens the doors to something further, . . . but certainly something which is in principle incapable of being reduced to precise clear, verifiable, objective prose.” Id. at 103. The romantic stance was dramatically distinguishable from the Enlightenment’s appeal to a knowable, objective truth. Id. at 105.
Brandeis: “‘If we would guide by the light of reason, we must let our minds be bold.’” The lesson, they immediately add, is: “Those of us in the mainstream must remain open-minded; we must not be afraid to learn from others.” This does not seem a lesson that Farber and Sherry have adequately incorporated. Recall Ricoeur’s phrase: “This hearing which understands is the crux of our problem.” The crux of the narrative problem is the failure to hear that leads to the failure to understand.

335 Farber & Sherry, Beyond All Reason, supra note 7, at 142 (quoting New State Ice Co. v. Liebmann, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting)). Farber also quotes this passage in the final sentence of his more lengthy essay on Brandeis. See Farber, Reinventing Brandeis, supra note 319, at 190.

336 Farber & Sherry, Beyond All Reason, supra note 7, at 142. See also id. at 107 (noting the qualities “‘that a search for truth reflects–such as open-mindedness, humility, [and] tolerance . . . .’”) (quoting William P. Marshall, In Defense of the Search for Truth as a First Amendment Justification, 30 Ga. L. Rev. 1, 31-32 (1995)).

337 Ricoeur, The Conflict of Interpretations, supra note 119, at 450.

338 Cognitive psychologist Howard Gardner writes:

Unless one is committed to religious fundamentalism, one should always remain open to changing one’s mind; it is worth attending to ideas that have affected many others, even when one personally finds little of value in them. Our thought processes sharpen when we wrestle with these ideas, and it is even possible that we might eventually find merit in the ideas that we once rejected. . . . [A]wareness of resistance is valuable both to the creator of new vision and to the individual
IV. Narrative as Idealistic?

After having explicated and situated Bell’s narratives on their own terms, it is now appropriate, in this final Part, to enlarge the frame of reference. For those, including Bell, who employ narrative to challenge racism, is the weight they grant to narrative too superficial a tool to effect change, is it too idealistic, too much attentive only to contexts of discourse? Should the sources of racial entitlement and change be acknowledged rather as more fundamentally predicated upon material factors? These questions have been provocatively posed by my colleague Richard Delgado. Delgado differentiates between idealist and materialist schools of who initially resists a strange and exotic presentation—possibly because it hits too close to home.

GARDNER, CHANGING MINDS, supra note 110, at 127.


340 See, e.g., Delgado, Crossroads, supra note 339; Richard Delgado, Two Ways to Think About Race, 89 GEO. L.J. 2279 (2001) [hereinafter Delgado, Two Ways]. The division between materialism and idealism has been a significant one in Delgado’s writings for years. See, e.g., Richard Delgado, Explaining the Rise and Fall of African American Fortunes—Interest Convergence and Civil Rights Gains, 37 HARV. C.R.-C.L. L. REV. 369, 370-71 (1992)
racial critique:

An “idealist” school holds that race and discrimination are largely functions of attitude and social formation. For these thinkers, race is a social construction created out of words, symbols, stereotypes, and categories. . . . A second school holds that while text, attitude, and intention may play important roles in our system of racial hierarchy, material factors such as profits and the labor market are even more decisive in determining who falls where in that system. For these “realists,” racism is a means by which our system allocates privilege, status, and wealth.341

Delgado expresses primary adherence to the materialist school.342

To do adequate justice to Delgado’s position would take a separate article; here let me explore only a select few of Delgado’s points. Proper appreciation of Delgado’s stance requires reconciliation of his materialist orientation with his role as one of the most prominent advocates of legal storytelling.343 We must also understand how Delgado can criticize idealism and yet

[hereinafter Delgado, Explaining].

Delgado writes frequently with Jean Stefancic. I shall try to be explicit in the text when referring to works written by Delgado alone and when referring to works that are co-authored with Stefancic.


342 See, e.g., id. at 152; Delgado, Two Ways, supra note 340, at 2285.

343 See supra text accompanying notes 278-82.
demonstrate great respect for Bell’s work and, indeed, can identify Bell as another preeminent member of the materialist school. As an example of a materialist approach, Delgado describes Bell’s thesis of “interest convergence” racial change in the United States, including decisions such as Brown v. Board of Education have occurred not because of white’s ethical altruism but because of white self-interest, including fears of domestic disturbance and international reputation. Change occurred not because of discourse, argument, or persuasion but due to material conditions. Let me offer another, related example. Bell argues that the racism’s perdurance owes to white’s maintenance of a property right in whiteness. “The set of assumptions, privileges, and benefits that accompany the status of being white can become a valuable asset that whites seek to protect.” The advantages are again material: economic, political, and psychological.

Yet in helping us assess the difference between materialism and idealism, the theme of a

344See, e.g., Delgado, Crossroads, supra note 339, at 146-50.

345See, e.g., id. at 137-38; Delgado, Explaining, supra note 340, at 371.


348Delgado, Crossroads, supra note 339, at 137-38. For prior discussion of Bell’s theme of white self-interest, see supra text accompanying notes 197-200.


350Id. at 185.
property right in whiteness raises two provocative points. First, for whites low on the economic ladder, maintenance of this property right may be actually contrary to their economic interests. They identify with whites at the economic top rather than ally with blacks of an economic class similar to their own; in fact they blame blacks of their economic class for being the source of their problem. These whites act against their own best economic interests. A material interest–here the property right in whiteness–is not necessarily equivalent to an economic interest. Second, this material interest is founded in a cognitive structure. The status ascribed to whiteness is based not on biology but on belief, a belief supported and confirmed in white culture.

Let me generalize the point. Part of the essential scholarly contribution of Bell and Delgado is that they argue against and seek to replace inadequate current cognitive models of

351 Derrrick Bell, Racism: A Major Source of Property and Wealth Inequality in America, 34 IND. L. REV. 1261, 1270-71 (2001). As Bell recognizes, this result is contrary to his interest convergence thesis. See, e.g., BELL, AND WE ARE NOT SAVED, supra note 143, at 165.

352 Yes, some still may believe the difference is biological, but that is not the case for most.

353 In his new book, Bell cites as a principle here the notion of “hegemony,” a belief, reinforced by the social structure, in the value of the current social order. See BELL, SILENT COVENANTS, supra note 143, at 187. So, as noted above, see supra text accompanying note 350, whiteness can have economic, political, and psychological value, but that is a result of a status that exists in the head, not in biological reality. As the text now goes on to argue, cultural status is a cognitive phenomenon that has real, empirical consequences.
racial change. In Bell’s view, the assumption of the traditional civil rights community that racism would be progressively eradicated has failed.\textsuperscript{354} As we saw in discussion of \textit{The Racial Preference Licensing Act},\textsuperscript{355} Bell argues that the fight against racism should rely less on the “idealism” of ethics and more on the “racial realism” of economics.\textsuperscript{356} Bell’s realism wants to oust idealism, but racial realism is itself a cognitive model that intends to supplant another, failed cognitive model. In their work, Delgado and his frequent co-author Jean Stefancic have coined the term “empathic fallacy” as a way of criticizing the belief that idealist vehicles such as speech, dialogue, exhortation, and remonstrance will lead to individuals’ reforming their views.\textsuperscript{357} Why do these vehicles fail? We are not autonomous entities who choose among competing ideas. Instead, we bring to debate a pre-existing structure of understanding.

In an important sense, we are our current stock of narratives, and they us. We subscribe to a stock of explanatory scripts, plots, narratives, and understandings that enable us to make sense of— to construct— our social world. Because we then

\begin{footnotes}

\item[355] See Bell, \textit{Faces at the Bottom}, supra note 1, at 47-64, discussed supra, text accompanying notes 148-90.

\item[356] See Bell, \textit{Faces at the Bottom}, supra note 1, at 49.

\item[357] See Richard Delgado & Jean Stefancic, \textit{Images of the Outsider in American Law and Culture: Can Free Expression Remedy Systemic Social Ills?}, 77 CORNELL L. REV. 1258, 1276, 1281 (1992) [hereinafter Delgado & Stefancic, \textit{Images of the Outsider}]. See also id. at 1261 (“[T]he empathic fallacy[] consists of believing that we can enlarge our sympathies through linguistic means alone.”).
\end{footnotes}
live in that world, it begins to shape and determine us, who we are, what we see, how we select, reject, interpret and order subsequent reality.\(^{358}\)

Racism is itself part of the “dominant narrative” that comprises the understandings on the basis of which we reason, and these dominant narratives resist change.\(^{359}\) In its reliance on dialogue and exhortation to effect change, the empathic fallacy is too idealistic. Note, though, that like Bell, Delgado and Stefancic challenge idealism on the basis of an alternative cognitive structure.

“[W]e are our current stock of narratives . . . .”\(^{360}\) As they write elsewhere, “The devices by which we construct and make sense of our social world are largely linguistic, consisting of categories, concepts, and particularly narratives.”\(^{361}\) Cognitive structures themselves have a materiality; inextricably they provide a framework, an interpretive density, through which and by

\(^{358}\) Id. at 1280. Among those cited in support at the end of this quotation, see id. at 1280 n.166, are the first two volumes of Ricoeur’s Time and Narrative. See 1RICOEUR, TIME AND NARRATIVE, supra note 324, & 2 PAUL RICOEUR, TIME AND NARRATIVE (Kathleen McLaughlin & David Pellauer trans., 1984). As I will later suggest, I agree that Ricoeur says we are structured by our narratives, but I will argue that for Ricoeur these narratives can change, as in metaphoric moments. See infra text accompanying notes 386-88.

\(^{359}\) Delgado & Stefancic, Images of the Outsider, supra note 357, at 1279.

\(^{360}\) Id. at 1280 (emphasis added).

\(^{361}\) Richard Delgado & Jean Stefancic, Norms and Narratives: Can Judges Avoid Serious Moral Error?, 69 TEX. L. REV. 1929, 1957 (1991) [hereinafter Delgado & Stefancic, Norms and Narratives]. See also id. at 1953 (“[W]e are all situated actors, constituted in large part by the ‘stories’ or narratives by which we understand and impose order on reality.”).
means of which we understand. 362 Material actions undertaken by the civil rights community–
dedicated labors of untold years–may not achieve the desired goal if they are pursued according
to an insufficient cognitive understanding of racism’s modality. At times, Delgado writes, a
“gestalt switch” may be necessary. 363 We may need “to examine the legal background–the
bundle of assumptions, baselines, presuppositions, and received wisdoms–against which the
familiar interpretive work of courts and legislatures takes place.” 364 If we fail at this cognitive
task, “all the rest is shadowboxing.” 365 Delgado argues that the search must be undertaken both
for the “broad structures” that have led to racial and other forms of suppression and for those that

362 Bell, for example, describes how at the time Brown, 347 U.S. 483 (1954), was being
decided, segregation was not simply aberrant. Rather, he writes, “[i]t was the dominant
interpretive framework for a social structure that organizes the American garden’s very
configuration. Segregation . . . consolidated the imaginative lens through which Americans
would now conceive race.” BELL, SILENT COVENANTS, supra note 143, at 82 (emphasis added).

Paul Ricoeur pursues the larger argument here at greater length. In contrast to the
Marxist division between an economic infrastructure and superstructure of ideas, Ricoeur argues
that concepts themselves inform and are part of the infrastructure. RICOEUR, LECTURES ON
IDEOLOGY AND UTOPIA, supra note 65, at 223. Action has a symbolic structure, and this
symbolic structure is constitutive of action. Id. at 82.

363 Delgado, Shadowboxing, supra note 281, at 823.

364 Id. at 823-24.

365 Id. at 824.
may replace them with true equality and democracy. Cognitive structures should be included within both of these lists.

If cognitive structures have a materiality, then what becomes of Delgado’s distinction between idealist and materialist forms of racial critique? The distinction remains vital on two grounds. First, Delgado argues that recent racial critique has been disproportionately idealist in

366 Delgado, Two Ways, supra note 340, at 2296.

367 See, e.g., Richard Delgado, Derrick Bell’s Toolkit—Fit to Dismantle That Famous House?, 75 N.Y.U. L. REV. 283, 307 (2000) (“Sometimes . . . one needs to turn a thought structure on its side, look at it from a different angle, and gain some needed distance from it, before the path to liberation becomes clear.”); Delgado, Brewer’s Plea, supra note 293, at 6 (“We needed new ideas and theories–sometimes if you are up a tree and a flood is coming, you have to climb down before climbing up a taller one.”); Richard Delgado & Jean Stefancic, Why Do We Tell the Same Stories?: Law Reform, Critical Librarianship, and the Triple Helix Dilemma, 42 STAN. L. REV. 207, 223 (1989) [hereinafter Delgado & Stefancic, Why Do We Tell the Same Stories?] (arguing that the ideas of divergent individuals such as Bell “offer the possibility of legal transformation and growth. Like nature’s mutant or hybrid, they offer the infusion of new material needed to retain the vitality of our system of thought.”).

The status of the present Article should likewise be conceived as an attempt to displace a prevalent conceptual structure–one defining understanding on the basis of its adequation to existing norms–with a new conceptual structure–one expanding understanding to allow manifestation of the new. Both of these conceptual structures have a materiality; they provide an interpretive lens through which data is assessed, explained, and understood.
orientation. Critique has focused “almost exclusively on discourse at the expense of” attention to issues such as power, history, and other social, political, and economic determinants of racial fortune. Delgado seeks to redress an imbalance. At this level, both idealist and materialist analysis can coexist, and Delgado’s encouragement of a materialist perspective does not undermine the space for an account, such as this Article’s, that emphasizes discourse analysis. In turn, for my part, the present Article’s concentration on cognitive structures rather than questions of power or history does not intend to denigrate work in these other areas. To be more precise, the issue the Article addresses is the need for

368 Delgado, Crossroads, supra note 339, at 122.


370 The brevity of these remarks on the importance of this material work might seem a form of academic genuflection: a brief, honorific show of purported respect, while regard really lies elsewhere. Let me suggest why that suspicion is, I hope, mistaken in the present case. The time I spent as a boycott organizer in Los Angeles for Cesar Chavez’s United Farm Workers left a lasting impression about the relationship between organizing and legal rights. Legal discourse, including legal rights, do not arise and are not maintained without organizing, without expression of political power. In the legal literature, this relationship is especially well articulated in the work of Staughton Lynd. See, e.g., Staughton Lynd, The Right to Engage in Concerted Activity
acknowledgment of cognitive structures that allow entrance of Bell’s disruptive arguments, arguments that advance theses about very material subjects such as interest convergence and whiteness as property.

At a second level, however, Delgado’s endorsement of materialist over idealist approaches is more challenging. The claim is that recourse to materialist analysis is necessary as a matter of efficacy: materialist factors create change; idealist factors largely do not. Change occurs on the basis of social, political, and economic movement, not on the basis of narrative. Recall Delgado and Stefancic’s coining of the empathic fallacy: we are constituted by our stories, and later discourse—the introduction of new narratives—will not move us, will not create fundamental change.371

371 See Delgado & Stefancic, Images of the Outsider, supra note 357, at 1261:
[T]he empathic fallacy[] consists of believing that we can enlarge our sympathies through linguistic means alone. By exposing ourselves to ennobling narratives, we broaden our experience, deepen our empathy, and achieve new levels of sensitivity and fellow-feeling. We can, in short, think, talk, read, and write our way out of bigotry and narrow-mindedness, out of our limitations of experience.

after Union Recognition: A Study of Legislative History, 50 Ind. L.J. 726 (1975). William Eskridge endorses a similar recognition in the gay and lesbian movement. See, e.g., Eskridge, Gaylegal Narratives, supra note 279, at 632 (“information and persuasion will be unavailing unless backed up by power and protest”) (citing the views of Franklin Kameny). The present Article’s attention to cognitive understanding assesses therefore only one aspect of a much larger picture.

371 See Delgado & Stefancic, Images of the Outsider, supra note 357, at 1261:
We are all situated actors, whose selves, imaginations, and range of possibilities are constructed by our social setting and experience. We are, in a sense, our current narratives. Thus, an unfamiliar narrative invariably generates resistance; despite our best efforts, counterstories are likely to effect at most small, incremental changes in the listener or reader.\footnote{Delgado & Stefancic, Norms and Narratives, supra note 361, at 1933. See also Richard Delgado, Norms and Normal Science: Toward a Critique of Normativity in Legal Thought, 139 U. PA. L. REV. 933, 961 (1991) (“[M]ost audiences will generally react to the reformer’s message with either anger or puzzlement. Members of the control group will be angry: How dare they use that argument against us? And persons not members of either the insurgent or the control group will respond with puzzlement: I thought they meant the [status quo] by justice.”).}

Under this critique, even if this Article is successful in establishing that uses of narratives such as Bell’s make manifest something new and so cannot be evaluated according to existing norms of adequation, this thesis seemingly has more theoretical than actual import. Because narratives that seek to transform—including Bell’s—will continue not to persuade. As we have discussed throughout, readers will resist the narrative.

In the face of Delgado’s challenge, does my thesis about the nature of Bell’s narrative have any remaining heft, any actual import? Let me answer by trying to respond to the most pointed question raised by Delgado’s critique: why does Delgado, why does Bell, materialists and perspective. As we illustrate, however, we can do this only to a very limited extent.
both, continue to write? This response itself has four differentiable levels. First, writing can take the form of truth-telling, whether it is efficacious or not. This element is more overt in Bell. Bell writes, for instance, “We’re a race of Jeremiahs, prophets calling for the nation to repent.”373 As previously noted,374 Bell goes on to acknowledge: “About the least dire fate for a prophet is that one preaches, and no one listens; that one risks all to speak the truth, and nobody cares.”375 Truth-telling voices objection and protest; it does not let those living falsely to go free, even where it does not change minds.376 Speaking the truth also can provide the writer some sense of integrity, of refusal to acquiesce.377 Second, even where the narrative does not change the minds of a racial majority, it can act as a counterstory supporting the story of racial minorities; it tells the truth of their story.378 The value of story for these communities must be underscored. Third,

373Bell, Faces at the Bottom, supra note 1, at 157.

374See supra text accompanying note 265.

375Bell, Faces at the Bottom, supra note 1, at 157.

376See, e.g., Delgado & Stefancic, Derrick Bell’s Chronicle, supra note 207, at 328 (“[S]torytellers have directed their attention to the oppressors, reminding them of a day when they would be called to account.”).

377See, e.g., Bell, Confronting Authority, supra note 143, at 161.

378See Delgado, Derrick Bell’s Racial Realism, supra note 288, at 530 (“Our need, then, is for counterstories that reveal the lie implicit in the thousands of majoritarian narratives and sub-narratives according to which we are inferior, according to which our lowly estate is deserved. . . . It is no accident that Bell has a tremendous underground circulation and status in the minority community of color. We know that his message is true.”).
the counterstory urges that the majoritarian story is neither the only story nor a necessary story. The current social system is not a closed system; alternatives exist. Counterstories, writes Delgado, “can open new windows into reality, showing us that there are possibilities for life other than the ones we live. They enrich imagination and teach that by combining elements from the story and current reality, we may construct a new world richer than either alone.”379 As we have discussed, this notion of possibility is an essential element of Bell’s writings, as we discerned most directly in his narrative, Bluebeard’s Castle.380 The work of Delgado and Bell is “transformatively aspirational.”381

These three levels of response remain independent of the challenge Delgado raises at a fourth and final level: does critical race narrative change the perspective of those in the white majority? Response here must itself proceed in several steps. First, let us enlarge the question:

379 Delgado, Storytelling for Oppositionists, supra note 282, at 2414-15. See also Delgado & Stefancic, Derrick Bell’s Chronicle, supra note 207, at 328 (noting, using the example of the Bible, that “storytellers for oppressed groups” can tell “tales of hope and struggle—for example, that of the Promised Land—to inspire and comfort the community during difficult times. Reality could be better—and, perhaps, will be.”).

380 See supra text accompanying notes 228-49.

381 Bell, Who’s Afraid of Critical Race Theory?, supra note 177, at 906 (discussing critical race theory in general). As previously intimated, see supra notes 65, 115, 248, & 323, I am especially interested in the role played in Delgado’s and Bell’s work by imagination and utopia, particularly imagination where productive rather than just reproductive and utopia as exploration of the possible rather than as escape.
can minds change? Cognitive psychology suggests the answer is yes. In a recent work Howard Gardner argues:

[M]ost mental representations are neither given at birth nor frozen at the time of their adoption. In our terms, they are constructed over time within our minds/brains and they can be reformed, refashioned, reconstructed, combined, altered, and undermined. They are, in short, within our hands and within our minds. Mental representations are not immutable; analysts or reflective individuals are able to lay them out, and, while altering representations may not be easy, changes can be effected.382

Gardner’s research indicates that mind change most likely occurs when the following factors operate together: reason, research (supporting data), resonance (affective support), representational redescriptions (multiple reinforcing representations), resources and rewards that can be drawn upon, and background real world events.383 Notice that material factors are relevant to the ideational change. And yet they do not determine the change. Cognitive elements retain a certain autonomy. Gardner alludes, for example, to the role of imagination.384 More broadly, the possibility of mind change indicates that we need not be simply the product of our biological, cultural, and historical heritage.385

382GARDNER, CHANGING MINDS, supra note 110, at 46.

383See id. at 15-17. I later return to Gardner’s seventh factor, which may negate change: resistance. See infra note 392.

384See id. at 47.

385Id. at 211-12. This judgment may conflict with Delgado and Stefancic’s conclusion
In attempting to conceptualize more precisely the nature of mind change, I would revert back to our prior discussion of the hermeneutic relationship between whole and part. At the moment where understanding is attempted, we bring to bear the pre-existing “whole” that we are—the various elements of our background and tradition, social, cultural, historical, and cognitive. These interpretive norms are brought to bear on the “part”—the element that is new. And the hermeneutic argument is that the whole does not subsume the part but that each informs the other. The part can modify and act on the whole and vice versa.  

Think of this action even more precisely through a return to the operation of metaphor. Metaphor—the “part” newly introduced—displaces a given order—a prior “whole”—in order to present a new order. Now incorporate these functions of metaphor and application into the operation of narrative. Narrative does not operate as a form of arms-length logic; it works affectively, disruptively. Existing norms are challenged; their sufficiency is questioned. The parable of the Good Samaritan asks the listener to hold together two contradictory elements: neighbor and Samaritan. Narrative does not simply offer an alternative order; it undermines the integrity of the order previously held dear. Parable, metaphor, and narrative can create change.

that “our ability to escape the confines of our own preconceptions is quite limited.” Delgado & Stefancic, *Images of the Outsider, supra* note 357, at 1281. Observe that the debate here concerns the material nature of our cognitive structures.

386 See *Weinsheimer, Philosophical Hermeneutics and Literary Theory, supra* note 326, at 80.

387 See *Ricoeur, The Rule of Metaphor, supra* note 65, at 22.

388 See *supra* text accompanying notes 55-57.
And yet we must again face the fact of potential resistance. Delgado and Stefancic argue: “Divergent new narratives, ones that could jar and change us, always spark resistance . . . .”\footnote{Delgado & Stefancic, Norms and Narratives, supra note 361, at 1953.}
The fact of resistance is recognized also biblically\footnote{Recall the parable of the Sower, Mark 4:3-8. See supra text accompanying note 112.}, in Bell\footnote{See supra text accompanying notes 263-70.}, and in psychologist Gardner\footnote{GARDNER, CHANGING MINDS, supra note 110, at 18 (“[M]ind changing is unlikely to come about when the resistances are strong, and the other factors do not point strongly in one direction.”).}
Yet even if conversion is rarely instantaneous, perhaps the unsettling of prior logic by narrative can create a crack, a wedge, that can be progressively opened incrementally over time by new narratives, just as drops of water can eat into stone. The typically incremental nature of change is recognized by Gardner\footnote{See id. at 102.} and is a possibility that Delgado and Stefancic acknowledge.\footnote{See Delgado & Stefancic, Norms and Narratives, supra note 361, at 1933 (“[A]n unfamiliar narrative invariably generates resistance; despite our best efforts, counterstories are likely to effect at most small, incremental changes in the listener or reader.”).} But even this “optimism” about narrative may be more suspect, write Delgado and Stefancic, “when applied to evils, like racism, that are deeply inscribed in the culture.”\footnote{Delgado & Stefancic, Images of the Outsider, supra note 357, at 1281.} Bell’s prognosis is unrelentingly more dire: “[R]acism is an integral, permanent, and indestructible component of
this society.” 396

A paradox seems at work in Bell397 and also in Delgado and Stefancic. The structures of racism are perduring, resistance to racial change is strong, and yet they continue to write. In part their writings, including their narratives, are distinctive because they offer more material perspectives and strategies—for example, attention to interest convergence and to local and international labor markets—that act as alternatives to what they find to be failed idealistic models based on dialogue and discourse.398 And yet these more material arguments are writings, writings that attempt to persuade. The paradox is that the structures of racism are enduring, yet these writings suggest all hope is not lost. The possibility that a reader will be moved by a

396 B ELL , F ACES AT T HE B OTTOM , supra note 1, at xiii. For additional citations to similar propositions in Bell, see Taylor, Racism as “The Nation’s Crucial Sin,” supra note 200, at 272-73.

397 Elsewhere, see id., I discuss as a central theme the paradox in Bell’s work between his thesis that racism is permanent and his continued efforts to write and act against it.

398 I should acknowledge too that in his most recent work arguing for materialist against idealist models of racial change, Delgado’s principal intended audience is other scholars within critical race theory. See Delgado, Crossroads, supra note 339; Delgado, Two Ways, supra note 340. The possibility of persuasion may be more available when the reader’s views are closer in spectrum to the author’s. Yet the remaining distances may well make persuasion difficult here as well. More generally, if there is at least the possibility of persuading someone of similar but not identical views, then perhaps this is additional evidence that we are not simply cabined within our own interpretive worlds but can bridge gaps between us.
parable or a narrative is not foreclosed; the reception of the metaphorical twist is unpredictable. We do not know ahead of time whether the reader will be indifferent, will resist, or will be reoriented by the disruptive manifestation of the new. At the end of his new book, *Silent Covenants*, Bell quotes Robert Gordon: “‘Things seem to change in history when people . . . act[] as if . . . they could change things; and sometimes they can, though not always in the way they had hoped or intended; but they never knew they could change them at all until they tried.’” For Bell, as for Delgado and Stefancic, one must do what one can; and one of the

399 See RICOEUR, THE RULE OF METAPHOR, *supra* note 65, at 99 (alluding to MONROE C. BEARDSLEY, THE METAPHORICAL TWIST, 22 PHILOSOPHY AND PHENOMENOLOGICAL RESEARCH 293 (1962)).


For Delgado and Stefancic’s appreciation of the availability and effectiveness of a narrative twist, I was struck by their quotation of the following passage from Michel Foucault as an epigraph at the beginning of one of their articles:

“This book first arose out of a passage in Borges, out of the laughter that shattered, as I read the passage, all the familiar landmarks of my thought—our thought, the thought that bears the stamp of our age and our geography—breaking up all the ordered surfaces and all the planes with which we are accustomed to tame the wild profusion of existing things, and continuing long afterwards to disturb and threaten with collapse our age-old distinction between the Same and the Other. . . .

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available tools is narrative, narrative that can reorient by disorienting, narrative that can make
manifest something new.

Delgado & Stefancic, Why Do We Tell the Same Stories?, supra note 367, at 207 (quoting
Michel Foucault, The Order of Things: An Archaeology of the Human Sciences xv (1973)).