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VALUING WOMEN STORYTELLERS: WHAT THEY TALK ABOUT WHEN THEY TALK ABOUT LAW

Ilene Durst†

I urge literature upon lawyers and law students to teach how the culture of the law attracts and repels those who enter its province. Novels are profoundly useful tools to study human nature, and I teach these books as a strategy, not a panacea, to counter many of the ills attributed to legal education and lawyering today. Here, I offer two professionally written narratives, by and primarily about women, to illustrate not only an/other experience of the law, but one that highlights the avoidance of, and disdain for, the law and lawyers when personal, particularly family, relationships are at stake. Both books illustrate the negative import for our legal system when the law’s operation does not reflect the female participants’ morality, and how that lack affects our roles as advocates and decision-makers.

In both Barbara Kingsolver’s The Bean Trees¹ and Jane Hamilton’s A Map of the World,² justice incorporates care, as those terms are defined by the authors and their characters. Justice is achieved both outside of and within legal institutions, through the elevation of the women storytellers’ narratives over the rules. The stories that prevail are told by outsiders and are shaped by the narrators’ powers of empathy, nurtured, at least in part, by their outsider status. The narratives reflect the integration of the women’s moral vision of responsibility in social relationships with their concept of rights and equality.³ Accordingly, the stories are not those generally heard or sanctioned by the legal culture.

Part I analyzes The Bean Trees, a narrative of socially, economically, and politically marginalized characters who become “outlaws” to protect their families. Part II interprets A Map of the World, a tale of a white, middle-class couple enmeshed in the criminal justice system when the wife is falsely accused of sexually abusing a six-year-old boy.⁴ Part III addresses how the characters’ triumphs weaken the legal community’s authority and efficacy and explores why the legal culture’s values might differ from those of the writers and their characters. Part IV summarizes the bases of the accepted notion that everyone needs stories and proposes that exploration of these novels, in particular, can

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3. See CAROL GILLIGAN, IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN’S DEVELOPMENT (1982), where this stage of women’s moral development was first recognized and explored.
4. I apologize in advance for the cursory plot summaries that do not do justice to the depth of the novels’ plots, characterizations, uses of language and humor, and compassion.

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engender improved advocacy, judging, and teaching through an enhanced ethic of justice and ethic of care.\

I. LIVING OUTSIDE THE LAW: THE BEAN TREES

"What astonishing things could be made legal in a modest little office in the state of Oklahoma."

The reader meets Taylor Greer, the twenty-five-year-old narrator, as she leaves her home of Pittman County, Kentucky, for the first time, intending to "drive west until [the] car stopped running." She introduces herself by identifying, and explaining the source of, her major fear:

I have been afraid of putting air in a tire ever since I saw a tractor tire blow up and throw Newt Hardbine’s father over the top of the Standard Oil sign. . . . [He] wasn’t dead but lost his hearing and in many other ways was never the same afterward. They said he overfilled the tire.

With this statement, Taylor claims that she flinches from pushing limits, from transcending boundaries. In truth, however, surpassing society’s expectations has motivated her entire life until this point, and will propel her new journey charted in the novel.

Taylor describes herself as an outsider. In a community best known for its “abundance of potato bugs and gossip,” she was a “nutter,” so poor that she collected walnuts from the ground in the fall to earn money for necessities. Moreover, she is the daughter of a single mother who cleaned other people’s houses for a living, and she had to address the children of those homes, who were her own age, as “Miss” and “Mister” while they referred to her by her first name. She counts herself lucky to have graduated from high school without getting pregnant, the fate that befalls most Pittman County girls.

When Taylor stops at a restaurant in the Cherokee Nation, Oklahoma, an

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5. I use the terms “ethic of justice” and “ethic of care” as they are developed by Dr. Gilligan, who summarizes the terms’ imports most succinctly in her conclusion: “While an ethic of justice proceeds from the premise of equality—that everyone should be treated the same—an ethic of care rests on the premise of nonviolence—that no one should be hurt.” GILLIGAN, supra note 3, at 174.
6. KINGSOLVER, supra note 1, at 216.
7. Id. at 12.
8. Id. at 1.
9. Taylor’s given name is Marietta. See id. at 2. Upon leaving her hometown, she decides to adopt the name of the first place where she runs out of gas, which happens to be Taylorville, Illinois. See id. at 11-12. The name Taylor is more androgynous and, accordingly, a more conventionally powerful identity.
10. Id. at 12.
11. Id. at 133-34; see id. at 139-40.
12. See id. at 2.
13. See id. at 2-3, 10-11.
14. Taylor’s maternal great-grandfather was “full-blooded Cherokee, one of the few that got left behind in Tennessee because he was too old or too ornery to get marched over to Oklahoma.” Id. at 13. Taylor’s mother
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an anonymous Native American woman asks Taylor to “take” a Native American infant girl, the child of her dead sister. According to the aunt, the baby is without “papers” and is a child about whom “nobody that matters, like the police” is concerned. Taylor, beginning to fully inhabit her role as a modern day outlaw, and in spite of her protested lack of maternal instinct, makes no attempt to turn the infant over to the police or social services. Instead, she drives some fifty miles, searching the motels until she finds one where an older, potentially sympathetic, woman is working the desk and barters for a room for the night.

That same night, while bathing the infant girl, Taylor discovers hideous bruises all over the child’s body. Taylor’s observation again does not prompt her to contact any authority; instead it seems to bond her more closely to the child. She names the girl “Turtle” because “[i]f a mud turtle bites you, it won't let go till it thunders,” and Turtle has grabbed her, physically and figuratively.

Weeks later, they are driving through Tucson, Arizona, when the car’s tires give out. Taylor settles in Tucson, presenting Turtle as her daughter.

Taylor then begins to work for Mattie at “Jesus is Lord Used Tires,” where she finds herself in the heart of a contemporary act of civil disobedience. Mattie is a sanctuary worker, and her house/business serves as a step in the underground railroad that sprang up in the late 1970s and early 1980s to aid Guatemalan, Salvadoran, and other Central American refugees whose fear of persecution was not accredited by the Immigration and Naturalization Service. Taylor befriends those to whom Taylor ultimately reveals her real relationship with Turtle are fully accepting of the two as a family. See generally 8 U.S.C. § 1101(a)(42), 1157, 1158 (1996) (defining eligibility for entry as a refugee). Applicants from Guatemala and El Salvador were regularly denied refugee status, ostensibly because they had not demonstrated a well-founded fear of persecution. See, e.g., American Baptist Churches v. Thornburgh, 760 F. Supp. 796 (N.D. Cal. 1991). A more likely reason is that the United States government supported the regimes in power at that time. See UNITED NATIONS COMMISSION ON THE TRUTH FOR EL SALVADOR, FROM MADNESS TO HOPE: THE 12-YEAR WAR IN EL SALVADOR (1993).
Estevan and Esperanza, Guatemalans who were tortured and whose daughter was kidnapped by government forces, and who are hiding under Mattie’s protection.26

Taylor and Turtle are soon forced into contact with the local authorities when someone attempts to attack Turtle.27 The child protection agency then determines that Taylor and Turtle do not have a legal relationship.28 Cynthia, the social worker, advises Taylor that the state will seek to put Turtle in an orphanage or sanctioned foster home, and that Taylor may ultimately qualify to adopt her based on “income and stability.”29 Given that Taylor has lived in Tucson for only six months, and earns $6.50 per hour,30 she doubts that she will qualify.31 After Taylor decides to fight for Turtle, Cynthia advises her that if she can locate Turtle’s natural father or nearest living relative, and that relative consents, the adoption might be accomplished through a simple proceeding in Oklahoma.32

Taylor ultimately adopts Turtle in Oklahoma, following, to some degree, Cynthia’s instructions. She agrees to drive Estevan and Esperanza to their next safe house, which happens to be in Oklahoma, and, therefore, at the same time, she can attempt to locate the aunt who initially gave her Turtle.33 When that search proves fruitless, Estevan and Esperanza accompany Taylor to an Oklahoma notary’s office and assume the roles of the natural parents.34 The adoption is accomplished, the couple goes off to their new hiding place, and Taylor and Turtle return to Tucson, as a “legal” family.35

Both of these story lines, the events leading to Turtle’s adoption and the Guatemalans’ search for sanctuary, are presented and consistently characterized as achieving justice with an ethic of care. Therefore, what occurs “outside” the rules and institutions of law, whether in direct contravention or ignorance of the law’s mandates, becomes the significant and the just. Moreover, the characters’ survival depends not upon the law’s protection or power, but upon their strong friendships and caring community. The women’s and refugees’ “experiences of inequality and interconnection”36 are not stories officially sanctioned by the law. Furthermore, if the facts were revealed within the legal institutions, it seems the families would be torn apart, and the individuals could not survive.

people run for their lives, they frequently neglect to bring along their file cabinets of evidence.” KINGSOLVER, supra note 1, at 159.

26. See KINGSOLVER, supra note 1, at 92-95. Estevan and Esperanza recount a harrowing tale of torture, murder of their family members and the kidnapping of their daughter by the government forces. See id. at 131-37.

27. See id. at 165-68.
28. See id. at 173-74.
29. Id. at 171-72.
30. See id. at 50, 178.
31. See id. at 174-78.
32. See id. at 179-81. Oklahoma law provides that private adoptions may be affected, with the consent of the natural parents, by filing the appropriate petition with the court, and without the necessity of a Department of Human Services home study. See OKLA. STAT. ANN. tit.10, § 7501 (West 1998).
33. See KINGSOLVER, supra note 1, at 183-84, 187-89.
34. See id. at 197-202, 211-20.
35. See id. at 217-32.
36. GILLIGAN, supra note 3, at 62-63.
Cynthia, the social worker, makes it quite clear that Taylor would not be allowed to adopt, or even to foster parent, Turtle under the “true” circumstances. Yet Taylor’s friends and mother, Turtle’s pediatrician, the social worker, and the sympathetic reader all acknowledge that Taylor’s parenting of Turtle has been successful, far more so than that of her prior guardians, and that Taylor and Turtle have created a healthy, nurturing family. In effect, the rules leave Taylor no choice but to circumvent or ignore their dictates.

Similarly, the characters and the reader never doubt the veracity of the Guatemalans’ fear of persecution. Estevan and Esperanza recount a compelling narrative of physical and emotional torture, including the loss of their daughter Ismene and the impossibility of returning to their home. We see them struggle at jobs far beneath their level of education and pass from safe house to safe house in fear of discovery and deportation. No one among us with a reasonably developed morality could order them deported to their deaths.

Throughout the book, all the major and minor characters demonstrate extreme wariness, if not outright fear, of dealing with the legal system. The various authoritative institutions are represented as unresponsive to the individual’s needs, such that operating outside the law remains the only feasible alternative. Estevan attributes his plight to a shared North American mentality: “This is how Americans think. . . . You believe that if something terrible happens to someone, they must have deserved it.”

The possibility of punishment does not deter Taylor at any stage, regardless of whether she merely ignores, or is ignorant of, the law, as when she keeps Turtle with her rather than driving to the nearest police station, or whether she actively breaks the law, as when she perjures herself to adopt Turtle and when she transports Estevan and Esperanza to their new safe house. When Cynthia first advises Taylor of her lack of legal “claim” to Turtle, Taylor desperately asks, “How can I fight the law?” She agonizes over the decision to seek the consent of Turtle’s family for weeks, but only because she doubts her maternal ability and is reluctant to assume the permanent responsibility of “official”

37. See KINGSOLVER, supra note 1, at 172-74.
38. See id. at 174-75.
39. Of course, the adoption fails to recognize Turtle’s relationship to her tribe and the tribe’s interest in the proceeding under the Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963 (1994). This analysis does not mean to suggest that such a failure is acceptable. Ms. Kingsolver does address the question fully, however, in Pigs in Heaven, her sequel to The Bean Trees. See BARBARA KINGSOLVER, PIGS IN HEAVEN (1993). Significantly, it is a Native American female lawyer who discovers Turtle’s blood relatives (a maternal grandfather) and who arranges a type of joint custody arrangement whereby Turtle will maintain her ties with her tribe and her grandfather and her family bond with Taylor. See id. at 338-43. For an analysis of the role of the law in the sequel, see Christine Metteer, Pigs in Heaven: A Parable of Native American Adoption Under the Indian Child Welfare Act, 28 ARIZ. ST. L.J. 589 (1996).
40. See KINGSOLVER, supra note 1, at 135-37, 140-42.
41. See, e.g., id. at 117-20, 190-91, 218.
42. Id. at 117. Alice Goodwin, the protagonist of A Map of the World, confirms Estevan’s view to some degree in her opening line: “I used to think that if you fell from grace it was more likely than not the result of one stupendous error, or else an unfortunate accident.” HAMILTON, supra note 2, at 3.
43. KINGSOLVER, supra note 1, at 175.
motherhood.\textsuperscript{44} When she asks Estevan and Esperanza to commit fraud on her and Turtle’s behalf, she never questions her own safety, but is concerned only with Estevan and Esperanza’s exposure to greater risk.\textsuperscript{45} Taylor’s morality, therefore, coincides with the characteristic mature female’s ethos, in which morality is defined as a balancing of responsibility to others and to the self.\textsuperscript{46} Under Taylor’s decision-making process, the desire not to sacrifice herself or her most intimate relationships trumps any other imposed rule. Accordingly, Taylor refuses to abide by the limitations of the law’s construction of justice in order to abide by her moral responsibilities.

Cynthia, the social worker who counsels Taylor regarding the adoption, is emblematic of the institution and the ethic of justice. She is painted as intimidating and distant, much as lawyers are traditionally perceived.\textsuperscript{47} Cynthia, “a prim-looking strawberry blonde,”\textsuperscript{48} wears her “hair pulled back in a gold barrette”\textsuperscript{49} and her blouse “with her collar pinned closed,”\textsuperscript{50} indicating her inflexibility and obedience to social dictates. Although Cynthia isn’t much older than Taylor, “you put somebody in high-heeled pumps and sit her behind a big desk and age is no longer an issue—she is more important than you are, period.”\textsuperscript{51} Cynthia describes herself as “cool-blooded by nature,”\textsuperscript{52} and someone who “could look you straight in the eye and stay there.”\textsuperscript{53} Taylor intuits that Cynthia finds her “a little shocking,”\textsuperscript{54} and that the social worker isn’t “the type that likes to be told anything,”\textsuperscript{55} much like the attorney who maintains absolute control over the client’s problems.\textsuperscript{56}

Cynthia’s rigid adherence to the “rules” often renders her blatantly insensitive to her clients’ needs. Although her social work position may be deemed traditionally female in its emphasis on nurturing and developing family relationships, she still does not recognize how intimidating her power is to an outsider like Taylor. For example, she expresses “concern about Turtle’s tendency to bury”\textsuperscript{57} the dolls used to interview children about alleged abuse, believing that Turtle’s behavior “indicated a fixation with death,”\textsuperscript{58} but Taylor knows that Turtle merely wants to grow “dolly trees.”\textsuperscript{59} Furthermore, Cynthia

44. See id. at 176-83.
45. See id. at 211. When she decides to drive Estevan and Esperanza to Oklahoma, she explains, “I can’t see why I shouldn’t do this. If I saw somebody was going to get hit by a truck I’d push them out of the way.” Id. at 188.
46. See GILLIGAN, supra note 3, at 103-05, 128-50.
47. See infra notes 169-177 and accompanying text.
48. KINGSOLVER, supra note 1, at 166.
49. Id. at 179.
50. Id. at 174.
51. Id.
52. Id. at 175.
53. Id. at 174.
54. Id. at 172-73.
55. Id. at 179.
56. See infra notes 169-177 and accompanying text.
57. KINGSOLVER, supra note 1, at 172.
58. Id.
59. Id.
advises Taylor about the custody arrangement's fragility in Turtle's presence. As Taylor comments, "[i]f... the state of Arizona was going to instill in [Turtle] a sense of security, discussing her future and ownership as though she were an item of commerce wasn't the way to do it." Yet, as Taylor feels emboldened during her final interview with Cynthia, she notices that the "office was tiny, really, and [the] desk wasn't actually all that big. She didn't even have a window in there." She also discovers that Cynthia is a nail biter. Once Taylor grasps that evidence of less-than-perfection, she becomes more articulate, expressing exactly what she needs from Cynthia. It is then that Cynthia shows true depth of understanding and compassion, apologizes for some of her prior insensitivity, and gives Taylor the name of a notary in Oklahoma who may accomplish the adoption.

Although Cynthia rationalizes her prior promotion of the state's interest in Turtle over any "illegitimate claim" as waiting for Taylor to make up her own mind, the explanation rings true only in the context of a morality of rights. Her conduct seems, rather, a ploy or test of Taylor's character intended to intimidate her, and one cannot help but wonder whether Cynthia would have asked an articulate, educated white woman to jump through the same hoops. Moreover, her closing words to Taylor serve to emphasize her desire to remain apart from her clients when she refuses to answer Taylor's naively intrusive question about why Cynthia would shop for jewelry at a secondhand store.

The Oklahoma notary, Jonas Wilford Armistead, is portrayed with less personal appeal than Cynthia, as a representative of the law totally lacking in empathy for, or even a minimal interest in, the individuals before him. Taylor aptly describes him as "more comfortable with the notarizing part of his job than with the public." He is hearing-impaired, unable to correctly adjust his hearing aid to understand the group, and metaphorically unable to connect with them on any level. He "spoke very slowly, the way people often speak to not-very-bright children and foreigners." The secretary shouts and refers to Turtle as "it" rather than "she." The notary and secretary are depicted as less than competent, as he cannot control his hearing aid, and it takes "several rounds of White-out" before the simple affidavit is completed.

In contrast, Taylor's voice is that of a survivor, a woman who wins in spite
of the odds against her. The reader has no reason to doubt her reliability: The
veracity or potential veracity of the characters and events portrayed seems
beyond question. Taylor is a female speaking for herself who confronts every
obstacle with courage, practicality, and humor. Apart from the information
provided by Cynthia, she navigates the legal system without an attorney or agent
to guide her or mediate on her behalf. She expects little from authoritative
institutions, standing outside by virtue of gender, education, and economics. Yet
her outsider experiences fertilize the soil from which her empathy grows,
empowering her to wrest control and to balance an ethic of justice with an ethic
of care, thereby shepherding Estevan and Esperanza to a safer place and gaining
a new nourishing world for herself and Turtle.\footnote{As Professor Gilligan notes, "[t]he experiences of inequality and interconnection . . . give rise to the
ethics of justice and care, the ideals of human relationship—the vision that self and others will be treated as of
equal worth, that despite differences in power, things will be fair; the vision that everyone will be responded to
and included, that no one will be left alone or hurt." \textit{GILLIGAN}, supra note 3, at 62-63.}

Taylor is the heroine, which even she allows at the end: She is the “main
ingredient” who saves Turtle from abuse and the foster care system and helps
Estevan and Esperanza on their journey to safety.\footnote{\textit{KINGSOLVER}, supra note 1, at 232.} Taylor never doubts her
responsibility to make this journey once she has decided to adopt Turtle and to
protect her friends.\footnote{\textit{See supra} notes 43-45 and accompanying text.} Indeed, her journey follows the arc of the “ordinary”
heroine, who sets out from the known, conventional home in a state of relative
innocence and makes some spiritual sacrifice to achieve her knowledge; she
locates some source, previously missing, that brings her to a richer, more mature
condition.\footnote{See \textit{JOSEPH CAMPBELL}, \textit{THE POWER OF MYTH} 123-63 (1988). Indeed, Campbell posits motherhood as
the ultimate sacrifice and the mother as the paradigmatic heroine. \textit{See id.} As Mattie acknowledges, “[s]ome folks
are the heroes and take the risks.” \textit{KINGSOLVER}, supra note 1, at 188.} Taylor is the risk-taker, whose physical and emotional courage
strengthen and enrich her community.

At the close of the novel, when Turtle and Taylor are browsing in the
Oklahoma Public Library waiting to pick up the adoption decree from the county
courthouse, the trope of bean trees is finally explained when they find a picture
of the plant, which was grown in Mattie’s yard and precipitated Turtle’s first
words.\footnote{\textit{Id.} at 227.} Taylor reads to Turtle that the plant is a wisteria, which “often thrives
in poor soil” because of rhizobia, underground microscopic bugs that fertilize the
plant,\footnote{\textit{Id.} at 227-28.} much like the community that has embraced and nurtured Taylor and
Turtle, Estevan and Esperanza. Taylor explains that they, too, are part of “a
whole invisible system . . . The wisteria vines on their own would just barely get
by, . . . but put them together with rhizobia and they make miracles.”\footnote{\textit{Id.} at 227.}

Accordingly, Taylor appreciates that she has evaded the system, perhaps
even that she has committed crimes. Her survival, however, suggests that those
who function, indeed thrive, in harsh conditions, who obey the “vision that

73. As Professor Gilligan notes, "[t]he experiences of inequality and interconnection . . . give rise to the
ethics of justice and care, the ideals of human relationship—the vision that self and others will be treated as of
equal worth, that despite differences in power, things will be fair; the vision that everyone will be responded to
and included, that no one will be left alone or hurt." \textit{GILLIGAN}, supra note 3, at 62-63.
74. \textit{KINGSOLVER}, supra note 1, at 232.
75. \textit{See supra} notes 43-45 and accompanying text.
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77. \textit{See KINGSOLVER}, supra note 1, at 226-27.
78. \textit{Id.} at 227.
everyone will be responded to and included, that no one will be left alone or hurt, will be protected by natural law, and may, on occasion, be granted a miracle or two. For Taylor and Turtle, for Estevan and Esperanza, justice has been served by avoiding the destruction of positive human relationships that absolute adherence to the law, written and "natural," might have wreaked.

II. LIFE CONFINED AND DEFINED BY THE LAW: A MAP OF THE WORLD

"Oh God," she said, grimacing. 'Justice!'\(^{81}\)

In Jane Hamilton's *A Map of the World*, the reader once again journeys with a heroine who finds herself entangled within the law, this time within the criminal justice system. Alice Goodwin is white, middle-class, thirty-two years old, the mother of two young girls, a school nurse, and happily married to a white middle-class college graduate dairy farmer.\(^{82}\) A six-year-old boy, a student at Alice’s school, falsely accuses her of sexual abuse.\(^{83}\) The accusation comes several weeks after Lizzy, the daughter of Alice's best friend, accidentally drowns in a pond on the Goodwins' farm while in Alice's care.\(^{84}\)

Alice is arrested and charged with seven felony counts, and bail is set at $100,000.\(^{85}\) The Goodwins have no disposable cash, and the farm is mortgaged to the hilt. Because they cannot make her bail, Alice spends almost three months in jail awaiting trial. Howard ultimately raises the bail by selling the farm, and Alice is released shortly before the trial, by which time her family has been fully ostracized by the community.\(^{86}\) When the trial testimony destroys the credibility of the boy and his single mother, Alice is acquitted.\(^{87}\) She and her family leave Prairie Center, Wisconsin, and return to the city and new lives.\(^{88}\)

From the beginning, both Alice and Howard display distrust of, and at times contempt for, the legal community.\(^{89}\) Despite their shared sentiments and their shared economic, social, and educational backgrounds, however, they vary greatly in their measure of resistance and submission to the system. This may result from Alice being the one falsely accused, the literal prisoner of the narrative, from gender differences, or from both. In any event, the novel artfully

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80. GILLIGAN, *supra* note 3, at 63.
81. HAMILTON, *supra* note 2, at 175.
82. See id. at 3-5, 13, 127.
83. See id. at 116-17.
84. See id. at 115-20. The novel's title refers to a series of maps of an imaginary world that Alice had made as a child, which she re-discovers on the morning Lizzy drowns. See id. at 17.
85. See id. at 126-27. And thus, Alice enters Wonderland. Initially, three other young boys allege that she abused them, but they eventually recant. See id. at 334.
86. See id. at 264-68. For the six years prior to Lizzy's death, both Alice and Howard believed that their Prairie Center, Wisconsin farm was a "self-made paradise." *Id.* at 12. They also realized that from the beginning they had been, and always would be, outsiders. See id. at 11-13.
87. See id. at 387.
88. See id. at 384-85.
89. Both view the justice system as corrupt, and once Alice is arrested, acknowledge that "it's going to take more than the truth to get [Alice] out." *Id.* at 121.
portrays how the Goodwins' journey through the system distorts their, and other, human relationships and senses of self.

Howard, a historian, farmer, and father, exhibits nothing but disdain for Paul Rafferty, the apparently quite competent attorney retained to represent Alice. First, Rafferty's physical surroundings earn harsh criticism: Rafferty's green house with yellow and purple trim "didn't look like a rich man's lair or a sanctuary where a learned person plots the triumph of justice." "If there was anything to like him for it was the fact that he wasn't surrounded by leather, oriental rugs, brass, and marble. It was hard to be scornful of a man who stores his papers in orange Golden Guernsey milk crates." Howard's description of Rafferty's person is equally unflattering. The attorney is "tall and thin, with large protruding eyes behind his thick lenses . . . slightly buck teeth, a graying goatee and the sallow skin of the prisoner." He makes "a noise like a belch" and speaks as if "holding his nose" when Howard first tells him of the arrest. Howard, a man who spends his days around cows and the pungent aromas of a working farm, is even offended by Rafferty's aftershave, "a slow-moving, noxious odor."

Although Rafferty has been highly recommended by the Goodwins' only friends in town, Howard has "occasions when [he] wonder[s] if [Rafferty] was a charlatan . . . if he'd actually gone to law school." Even when Rafferty is prevailing at trial, Howard cannot find a congratulatory word for him, but says to Alice, "I've never met someone before who made me sick, who made me think I was going to vomit."

For all his education and cynicism, however, Howard is the one ultimately cowed and overwhelmed by the system. He attends the proceedings wearing the first new suit he's owned since college. He perspires and shakes in the presence of the "hulking edifice [which] remind[s] the passerby that inside some men are ruined while others make their fortunes." The prosecutor intimidates him, with her hair "like corrugated metal" and "a lot of cumbersome gold jewelry around her arms and neck." Alice, in her too-large orange jail uniform, looks like "the stupid one, to come to the party wearing the wrong clothes." During a trial recess, Howard is "unable to stop jiggling his foot, what for him could pass as hysterics."

90. The name Rafferty may signify raffishness and/or riff-raff.
91. HAMILTON, supra note 2, at 135.
92. Id. at 137.
93. Id. at 136.
94. Id. at 132-33.
95. Id. at 200.
96. Id. at 164.
97. Id. at 351.
98. See id. at 47-49, 174-77. Howard purchased the suit for Lizzy's funeral. See id.
99. Id. at 175.
100. Id. at 178.
101. Id.
102. Id. at 362.
Significantly, Howard arrives for the preliminary hearing convinced of Alice's innocence. Because he "know[s] that [no lawyer] had genuine understanding . . . [and all] were so crippled by bureaucracy and jargon they no longer had common sense," he prays that, if nothing else, the judge will be swayed by Alice's beauty. Yet, the testimony of Robbie, the alleged victim, and the trappings of justice cause Howard to leave the preliminary hearing convinced that Robbie had, in fact, been traumatized and wondering about Alice's judgment after all. Only weeks later, the intimidating power of the legal institution provokes Howard's acknowledgment that "[i]t was very probable she'd done it . . . She wouldn't hurt people in mass quantities—but one. She could have hurt just one."

Later, in his most blatant show of disrespect for the law in general and Rafferty's advice in particular, Howard disregards Rafferty's instructions not to sell the farm, their greatest asset, and the most potent symbol of their stability in the community. When Alice guesses that Howard is considering the sale to raise her bail money, she so advises Rafferty, and he "blows his circuits" because "[t]his will look like you're running." Ultimately, Howard does sell the farm and auction off the equipment to get Alice out of jail and doesn't tell Rafferty until after the closing. Accordingly, he jeopardizes his wife's defense because of his disdain for the law, the lawyers, and (rightfully so) the proceeding itself, and because he perceives Alice's immediate release as fulfilling his duty to his family.

Alice, on the other hand, "trust[s] [Rafferty] even though he's peculiar." Although she does her fair share of poking fun at Rafferty, she considers him "decent" and "smart." "What she loved about [him], what [she] surely must have loved about him for all of [her] life" is that he never questions her innocence. She observes that:

Of course, he never looked me in the eye and asked me to say if I'd done it, but I felt that his capacity to know and identify was exact, that he could look at a rare coin and right off say its worth, just as he could quickly size me up and understand that I would never have hurt...

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103. See id. at 47-49, 174-77.
104. Id. at 133.
105. See id. at 175-77.
106. See id. at 187-88.
107. See id. at 198-201.
108. Id. at 240. "Doubt had undermined all that [he] had taken for granted." Id. at 266.
109. See id. at 327. Howard had also promised Alice that he wouldn't sell the farm. See id. at 147.
110. Id. at 254-55.
111. See id. at 264-65. In a twist on the stereotypical attorney-client relationship, Rafferty wonders why Howard doesn't return his calls. See id. at 264.
112. See id. at 327-28.
113. Id. at 121.
114. See id. at 122.
115. Id. at 147.
116. Id. at 305.
Robbie . . . I liked the way he was not afraid to watch me . . . as if it was his duty to fix his loving gaze on his clients.\textsuperscript{117}

Alice has the more realistic sense of the institution and its power from the start, being the one to accept that the matter would not end easily and would affect them all forever. She sees herself as an outsider both in childhood and young adulthood, in the community and in the jail, and she recognizes that the false accusations would not have taken hold otherwise.\textsuperscript{118} She also authenticates the power of the mere arrest upon herself and the community: “They drag you off in a squad car you almost start thinking you’re crazy or guilty.”\textsuperscript{119} She goes along quietly when arrested,\textsuperscript{120} and, unlike Howard, immediately realizes that they cannot make bail and that she will be in jail for at least three months, until the trial.\textsuperscript{121}

Alice’s imprisonment and entry into crisis, however, break the depression she has suffered since Lizzy’s death several weeks earlier. Howard “always drove home from the jail shaken . . . because she was in a stink of a hellhole and surviving so admirably . . . as stoic as Mary, Queen of Scots.”\textsuperscript{122} In direct contrast, “[h]e was at home, wandering around, picking up rocks from fields, unable to fix [himself] a sandwich or a bowl of cornflakes.”\textsuperscript{123}

Alice fully understands Rafferty’s explanation of the procedure and strategy, while Howard seems unable to grasp it, or to fully believe Rafferty’s explanations.\textsuperscript{124} When Rafferty asks her whether she can identify what triggered the charges, she tells him that she only has a “feeling” but no hard knowledge.\textsuperscript{125} Rafferty listens to and encourages her intuitive reasoning;\textsuperscript{126} Howard is “used to taking a lot of what she said with a grain of salt.”\textsuperscript{127}

When Rafferty begins to educate her about the trial itself, and especially her own testimony, Alice is a willing pupil. He tests her and grills her, praising her all along.\textsuperscript{128} She buys the clothes he suggests for the trial and cuts her hair according to his wishes.\textsuperscript{129} She is prepared to follow all of his instructions,
including adhering to the motion granted by the court to exclude any testimony of Lizzy’s death. 130

Rafferty, evidently a workaholic with a need for control and respect for the rules, grants the importance of understanding Alice’s emotional state (but disregards Howard’s), consistently provides emotional support, and actively seeks her intuition about the parties involved and her participation in preparing her own defense. 131 Rafferty likens litigation to storytelling, citing the element of individual emotion, when he states that:

It’s only taken me about ten years to understand that that’s where every case begins, not with facts or a body, a few tattered pieces of evidence, but with a couple of people and then a whole range of possibility: their pride, their love, their lust, their sense of injury, vengeance, greed, despair you name it. 132

Significantly, prior to trial, Alice is well aware that he demonstrates a healthy level of compassion by his being “concerned, but not preoccupied, with the players’ pain and suffering.” 133 Therefore, he is not a “jerk,” no matter what Howard may believe, although his ethic of care may be “performed,” 134 to the extent that it serves his purpose while Alice submits to his authority.

Even at the trial, however, where Rafferty will ultimately prevail, Howard depicts Rafferty as shabby and physically unappealing, especially in contrast with the prosecutor: “In her mauve linen jacket and white wool skirt, black high heels, and a smoky gray silk shirt, she was far more beguiling than Rafferty could ever hope to be, even if he replaced his cheap plaid suit coat with something more fashionable.” 135 At one point, the judge rules in Rafferty’s favor and Rafferty “hugged his appointment book and simpered, ‘He likes me!’ ” 136 When the star witness, Robbie’s neighbor, testifies to an event that strengthens Alice’s plea of innocence but demeans Robbie and his mother immeasurably, 137 “Rafferty put his hands to his wide open mouth and wiggled his hips in a way that did not become him. ‘I’m gloating,’ he said . . . .” 138 Alice, in contrast, “laughed uneasily at his bulging eyes and the spit that was foaming around his

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130. See id. at 336, 340-41, 379. Alice realizes that he’s having fun, and he points out that he wouldn’t be effective otherwise. See id. at 334-37.

131. See supra notes 113-130 and accompanying text.

132. HAMILTON, supra note 2, at 312.

133. Id. at 335.

134. See infra note 176 and accompanying text.

135. HAMILTON, supra note 2, at 341.

136. Id. at 343.

137. Shortly before, when Rafferty concludes Robbie’s cross-examination, Howard makes his most disparaging remark about Rafferty, that he “made [him] think [he] was going to vomit.” Id. at 351; see also supra notes 90-97 and accompanying text (discussing Howard’s attitude towards Rafferty). Howard’s derision is in response to both his and Alice’s awareness of Robbie’s suffering. See HAMILTON, supra note 2, at 351-52. Alice, however, is angered this time by Howard’s criticism of Rafferty. See id.

138. HAMILTON, supra note 2, at 370.
When Alice takes the stand and cannot respond to Rafferty’s questioning with the same ease displayed during trial preparation, he becomes impatient with her and shows it. When he asks the well-rehearsed question of what she meant by “I hurt everybody,” the line she shouted at the sheriff, Alice speaks of Lizzy’s drowning. Of course, that testimony not only contradicts Rafferty’s instructions and defense strategy but also violates the court’s order. Alice “no longer remembered what [she] had been supposed to say,” but knows that she is “under oath to tell the truth, and Lizzy’s death was a good portion of the truth.” Rafferty is infuriated, and cold-shoulders her, like a dejected suitor, for the remainder of the trial. Ultimately, when the jury acquits her, he can only interpret her “disobedience” as strategic, and doesn’t hear (or ignores) her protest that she didn’t plan her testimony and didn’t intend to ignore his instructions. He also refuses to accept her refusal to sue Robbie’s family for damages. Therefore, as soon as she acts independently of him, the caring dissipates. While their attorney-client relationship closes with the victory of acquittal, their personal connection and mutual affection have reached their nadir.

The narrative may be optimistically interpreted by some as a tale of the system working: We have two educated people, with access to competent and compassionate counsel, who in the end triumph and assert their innocence. Yet, the more critical reader, particularly one participating in or concerned about the legal culture, should be disturbed by the husband who cannot place any faith in the lawyer and who is the more wounded of the two characters at the novel’s close. Perhaps, his world is the more shattered because, unlike Alice, “he thinks stories are useless.” Unable to accept the randomness of trouble and wanting a set of rules or laws that govern justice, he is bound to be betrayed. His morality has not developed beyond the point where he can grasp that truth, fairness, justice, and right are not absolutes.

Like Taylor, Alice travels the mythical path of the heroine, but unlike Taylor, Alice is permanently wounded. Forced out of her known nest, the place where

139. Id.
140. See id. at 377, 379.
141. Id. at 379. By answering this question completely and honestly, Alice demonstrates the quintessential ethic of care where morality demands not hurting others. See GILLIGAN, supra note 3, at 64-66, 84-90.
142. See HAMILTON, supra note 2, at 378-79.
143. Id. at 379.
144. Id.
145. See id. at 381, 387.
146. See id. at 387-88.
147. See id.
148. See supra note 113-130 and accompanying text.
149. See HAMILTON, supra note 2, at 389.
150. Id. at 173. Early on, he notes that “Alice was born exaggerating.” Id. at 120. Moreover, when, during their initial consultations, Rafferty asks Howard about Alice’s family history, Howard is unable to tell a story, coming up with only “two simple sentences.” Id. at 165.
151. See id. at 266-67.
152. See GILLIGAN supra note 3, at 164-68.
she and her family are safe from the world, first by Lizzy’s death, and then by Robbie’s accusations, she makes sacrifices of tremendous magnitude—the loss of freedom, the danger of the time spent in jail, the loss of security for her daughters, the loss of the farm and her best friends, and the blow to her marriage. Alice’s journey may not lead her to the optimism and happiness that Taylor achieves, yet Alice does gain a richer, fuller life by learning the importance of forgiveness—indeed, she sees it as perhaps the most crucial element of empowerment and survival, perhaps the most significant aspect of empathy. Alice will be the one who guides the family to survival, if survival is at all possible. Perhaps she has even granted Robbie a small measure of hope, by refusing to further embroil him and his mother in a malicious prosecution or slander suit. Alice understands the value of the experiences, the stories, and the myths that show us how to live as opposed to the rules and institutions that can, at best, provide an outline, an incomplete map of the world.

III. PRESCIENCE OR PRATTLE: WHAT ALLIES THESE STORIES AND ALIENATES THE LEGAL CULTURE

I propose these female protagonists for the contemporary law and literature canon, then, because both women triumph outside of, and in spite of, the legal culture. Moreover, both women’s triumphs illuminate why the contemporary legal culture is so mistrusted. Indeed, Kingsolver and Hamilton may be better seers than the legal actors who respond, within and without the narratives, with disdain for the concepts of justice and care expressed by these women. The continuing failure to respect as heroic the stories of Taylor, Alice, and other women widens the abyss between the institution and those whom it should serve.

In The Bean Trees, neither Taylor, Estevan nor Esperanza trust the legal institutions. All outsiders by virtue of gender, economics, and/or ethnicity, they are convinced that the courts, and social services as a corollary, will not keep their respective families intact and safe. Law is an evil, or foe, not an institution that provides order, certainty, or any measure of security in their lives. Indeed, the novel portrays the law much as it is experienced in communities where citizens legally have no voice, such as the then regime in Guatemala. Estevan and Esperanza, and Taylor in a less dramatic manner, experience the law as a retributive other, an instrument imposing oppression rather than inviting the citizens to participate in justice.

153. See HAMILTON, supra note 2, at 3, 383-90; see also CAMPBELL, supra note 76, at 123-63. Therefore, Alice Goodwin does experience her “good win”—even though the surname is Howard’s.

154. Campbell recognizes motherhood as a universal sacrifice and argues that all mothers follow the path of the mythical heroine. See CAMPBELL, supra note 76, at 114, 125-26.

155. Neither Alice, Howard, nor the reader foregoes compassion for Robbie, who is a troubled child, and is so presented at the trial. See HAMILTON, supra note 2, at 342-61, 365-70, 373-75.

156. When I use the term “canon,” I am not predicting that these books will be read and appreciated in the next millennium, but I am contending that they are valuable and necessary and, therefore, should be read today.
In *A Map of the World*, the Goodwins cannot avoid the legal institutions and, accordingly, do not possess the freedom Taylor exercises to serve her moral obligations. Howard Goodwin’s disregard for the law and fear for his family’s survival cause him to disobey the lawyer’s instructions, thereby weakening his wife’s defense strategy. Alice’s distrust may be more tempered, again perhaps because she is the one deprived of her liberty and, therefore, “needs” the system to operate effectively more than him. Yet, an intelligent, educated woman, she “forgets” perhaps the most significant instructions her attorney has given her and still prevails, even though according to the conventional lawyer’s wisdom, she sabotaged her own case. The laws themselves are not per se evil here, so much as the strategies and procedures by which her verdict of innocence is achieved: The machinations of the parties, witnesses, lawyers, and judges are challenged, rather than the letter of the law.

This lack of trust results in an immediate loss of authority of, and respect for, the law and its various agents. In both novels, then, the courts do not reflect an ethic of care, where family members protect each other, and the community, however defined, protects the weaker or the unfairly pursued. In contrast, that ethic of care is distorted, as in Alice’s imprisonment and trial. Accordingly, Taylor perpetrates a fraud and aids and abets her undocumented friends without regard for the consequences because her moral obligation to these individuals commands her to do so. Alice “forgets” Rafferty’s explicit instructions because of her vision of the truth and, perhaps, her overwhelming need to confess her responsibility for Lizzy’s drowning, a need so all-encompassing that, perhaps subconsciously, she undermines her defense to satisfy her perceived moral obligation. She refuses outright Rafferty’s advice to seek damages from Robbie’s family for the injustice she has suffered because she refuses to prolong or

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157. Established political theory holds that the weaker the individual’s identification with the system, the less authority the system exercises. See, e.g., Alexander Kaufman, *Hegel and the Ontological Critique of Liberalism*, 91 AM. POL. SCI. REV. 807 (1997). Professor Kaufman, relying on Hegel’s notion that an “ethical life must be based on identification with others in a particular common enterprise,” argues that “patriotic trust” is a necessary condition of a stable, cooperative society. Id. at 808-09 (quoting Charles Taylor, *Cross-Purposes: The Liberal Communitarian Debate, in Liberalism and the Moral Life* 166 (Nancy L. Rosenblum ed., 1989)).

Professor Kaufman posits that while the institution’s and its members’ goals need not mirror each other, the institution must have “sufficient insight to treat [the individual’s] cause as if it were [its] own.” Id. at 814 (quoting GEORG WILHELM FRIEDRICH HEGEL, ELEMENTS OF THE PHILOSOPHY OF RIGHT § 309G, at 348 (Allen W. Wood ed. & H.B. Nisbet trans., Cambridge Univ. Press 1991) (1891)). Moreover, that positive relation must be grounded in durable, rational principles—an “unchangeable essence” of guidance. Id. at 815 (quoting GEORG WILHELM FRIEDRICH HEGEL, *Phenomenology of Spirit* 213 (A.V. Miller trans., Clarendon Press 1977) (1807)). Accordingly, patriotic trust requires both “rational reflection and sentiment.” Id. at 809.

Another literary illustration of this political phenomena is *Paradise*, Toni Morrison’s most recent novel, where two “edenic” communities are undone, in part, by a rigidity of one community’s laws and its lack of inclusiveness. There are no lawyers or courts per se, because the community of Paradise was founded upon a shared vision. When individual visions change with time, but the community institutions do not recognize the changing values, the community self-destructs. See TONI MORRISON, PARADISE (1998).

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exacerbate Robbie’s suffering. Moreover, the Goodwins show us that this mistrust has bled beyond the traditional outsider, to the more privileged, educated, white middle class. Even the middle class, for whom a democratic justice system is designed, is sufficiently alienated to withdraw its trust.

Not only do the fiction writers paint the effects of the public’s distrust upon the institution, but they discern the illegitimacy of the rules at issue. Kingsolver recognizes the interest of Turtle’s tribe in her upbringing and writes a sequel, *Pigs in Heaven*, to explore it. Similarly, the law upon which the Immigration and Naturalization Service relied to deny political asylum to so many Central American refugees like Estevan and Esperanza was reinterpreted, after extensive litigation, to provide the necessary relief.

Furthermore, the barrage of cases involving allegations of abuse against child care workers, which occurred throughout the 1980s, has by and large resulted in reversals of the convictions. The reversals were based primarily upon the courts’ improved understanding of how children’s testimony could be tainted by improper investigation and questioning.

Legitimacy of the laws aside, lawyers still are supposed to navigate the unknown world of the rule of reason for their clients, especially those clients with less knowledge, education, and experience with the culture. If the lawyer’s identification rests solely with the legal community, however, the client’s alienation is virtually guaranteed, especially when the client perceives herself as an outsider in the first instance, and the controversy involves unquantifiable personal, rather than business, relationships. In the courtroom, in the settlement conference, or in negotiations, lawyers tell the story that they believe the other legal actors will accredit. When the lawyer enters the culture of the courtroom, she is the equivalent of the anthropologist reporting on the studied culture to the

159. While dissatisfaction with the performance of the law’s agents may not weaken compliance with the rules, it generally prevents individuals from seeking the law’s assistance to resolve issues (such as in Taylor’s adoption of Turtle) and does shape the public’s policy positions, which ultimately influence legislation. See Tyler, supra note 158, at 860-66. This result occurs even when the dissatisfaction is based on inaccurate or misleading information. See id. at 854-55. Therefore, when a white male possessed of a certain amount of privilege, such as Howard, refuses to follow his attorney’s advice, and his opinion of the system is shaped by this encounter, no matter how distorted his views, they cause him to “opt out” or to withdraw respect for the institution.

160. See Gary Hengstler, *Vox Populi: The Public Perception of Lawyers: ABA Poll*, 79 A.B.A. J. 60 (1993) (discussing how the frequency of a person’s interaction with the legal profession negatively influences her perceptions of attorneys). Of the individuals polled, only 25% had never used an attorney. See id. at 2. Those who knew little about the legal system and those who “get most of their information from television,” rather than newspapers, viewed attorneys most favorably. Id at 9.

161. See supra note 39.


164. See id. at 474-75.

165. One commentator has proposed that trustworthiness of the authorities is the essential ingredient and that this trustworthiness rests upon an “evaluation of character, not competence.” Tyler, supra note 158, at 873. Accordingly, “legal authorities need to move away from emphasizing the neutrality of their decision-making procedures as a basis for public support and deference. . . . [and instead] need to focus on issues of character and benevolence.” Id.; see also HAMILTON, supra note 2, at 174-75.
court: She must translate the client’s stories. In doing so, she also must betray the client’s version to some extent, for with each retelling, the story is fashioned to its audience and, therefore, is bound to change. The Taylors and Alices of the world who want to participate in the decision-making that will affect their lives, and feel greater satisfaction and trust when allowed to do so must be educated as to what the legal community can and cannot achieve.

Furthermore, when participants, like Taylor, Alice, and even Howard, judge the legal actor according to whether he “cares about them and their problems and is truly trying to find a solution that is good for those involved,” they are virtually predestined to be disappointed. The last thirty years of research concerning the psychological attributes of attorneys shows that those individuals attracted to the study of law share the same attributes encouraged or nurtured during a legal education, traits which tend to work against such an ethic of care and the ability to adequately translate the system for the client. The research validates the attorney stereotype: an individual “more achievement-oriented, more aggressive and more competitive than other professionals and people in general.” Attorneys generally prefer to make decisions by “thinking,” rather

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166. See, e.g., James Clifford, Traveling Cultures, in CULTURAL STUDIES 96-112 (Lawrence Grossberg et al. eds., 1992). Clifford asserts, correctly, I think, that there is “no politically innocent methodology for intercultural interpretation.” Id. at 97. Moreover, the ethnographer cannot assume that her linguistic knowledge is the equivalent of cultural knowledge. See id. at 99. Perhaps even more pertinent to my inquiry, Clifford questions the traditional “the native speaks, the anthropologist writes” relationship, with the caveat that “[h]is own attempt to multiply the hands and discourses involved in ‘writing culture’ is not to assert a naïve democracy of plural authorship, but to loosen somewhat the monopolistic control of the executive writer/anthropologist and to open for discussion ethnography’s hierarchy and negotiation of discourses in power-charged, unequal situations.” Id. at 100. The ethnographer/native relationship appears here as an exact corollary of the lawyer/client interaction, and the client’s need for greater participation in the enterprise is one of the more alienating factors he faces when crossing into the legal culture.

167. See Tyler, supra note 158, at 869-72.

168. Taylor’s lack of trust and concomitant lack of adequate legal representation result in her almost losing custody of Turtle in the sequel, Pigs in Heaven. In the sequel, a wise female lawyer is the one who achieves the optimal results for all concerned, an unusual result in contemporary literary novels. See supra note 39, at 338-43; see also WEISBERG, infra note 179, at 51-55; Metteer, supra note 39, at 624-28.

Alice looks to the court for what could be characterized as a religious experience: absolution of her perceived sins. Theresa, Lizzy’s mother, a devout Roman Catholic and a psychologist who has had experience testifying, likens the courtroom to church: “the same quiet, an almost fearful silence... all that drama and ritual in both, and the mystique of the priest or the judge.” HAMILTON, supra note 2, at 177.

169. Tyler, supra note 158, at 872.

170. See Susan Daicoff, Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism, 46 AM. U.L. REV. 1337, 1372 (1997). Research identifies the typical law student as “dominant, competitive, leadership-oriented, socially confident, extroverted, sociable, free from anxiety and insecurity, ebullient, and at ease in interpersonal relations.” Id. Typically, he is not “the type of person who is concerned chiefly with people, who values harmonious human contacts, is friendly, tactful, sympathetic, and loyal, who is warmed by approval and bothered by indifference and who tends to idealize what he admires.” Id. at 1372-73 (quoting Paul Van R. Miller, Personality Differences and Student Survival in Law School, 19 J. LEGAL EDUC. 460-67 (1967)). Because legal education stresses and rewards only the development of analytical ability, “students may ignore the social and emotional consequences of decision-making.” Id. at 1381. Law students may deal with this tension by becoming even more aggressive and ambitious. See id. at 1389.

171. Id. at 1390. Achievement orientation is defined as “the need to compete against an internal or external standard of excellence,” and implies a lesser need for “friendship, love or belonging” and a lack of altruism. Id. at 1391-92. “Competitiveness” signifies “the desire to win in interpersonal situations.” Id. at 1390 (quoting John M. Houston et al., Assessing Competitiveness: A Validation Study of the Competitiveness Index 13 PERSONALITY & INDIVIDUAL DIFFERENCES 1153, 1155 (1992).
than "feeling," in other words, they prefer "logical analysis, principles, cool and impersonal reasoning and cost/benefit analysis" and are "more tolerant of conflict and criticism," rather than "harmonizing, building relationships, pleasing people, making decisions on the basis of one's personal likes and dislikes, and being attentive to the personal needs of others." Moreover, these psychological decision-making strategies vary greatly from those employed by the general population.

The absence of this ethic of care may be demonstrated most in litigation, where, in one male attorney's pointed self-assessment, "[t]o be... really good..., you have to be a jerk." The most common emotional demonstrations by litigators include intimidation (generally toward adversaries, but at times, toward their own clients), "strategic friendliness" (toward judges, juries, and clients), and a "performed" ethic of care designed to win the case and/or the audience. Indeed, to reassure any client, the litigator generally "appeal[s] to his own competence, expertise and skill . . . 'I've handled lots of cases like this in the past.' . . . 'Don't worry about a thing, this is something for a lawyer to handle.'"

Rafferty, in *A Map of the World*, embodies some of these stereotypical traits, but because he recognizes Alice's emotional needs and powers of empathy, he is not a "jerk," no matter what Howard may believe, although his ethic of care may be "performed," to the extent that it serves his purpose only as long as Alice submits to his authority.

Similarly, Cynthia, Taylor's social worker/advocate, demonstrates the same respect for the rules, promoting the state's interest in Turtle over any "illegitimate claim," but ultimately encourages and supports Taylor's desire to adopt Turtle. The reader may safely conclude, however, that if Cynthia learned of Taylor's machinations in securing the adoption decree, she would withdraw that support.

One notices, too, that Taylor's triumph is more "lawyerly" than Alice's, according to conventional public wisdom. After all, Taylor wins by subterfuge

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172. *See id.* at 1392-93. For a more detailed explanation of the Meyer-Briggs personality test, *see id.* at 1393 n.339. The test "demonstrate[s] ways in which individuals prefer to focus mental energy, gather data, make decisions, perform mental tasks, and deal with the external world." *Id.*

173. *Id.* at 1393 n.339 (quoting Lawrence R. Richard, Psychological Type and Job Satisfaction Among Practicing Lawyers in the United States 233 (1994) (unpublished Ph.D. dissertation) (on file with Temple University)).

174. *See id.* at 1393-94. A lawyer's propensity toward more logical, unemotional decision-making and lesser interpersonal skills than the general population may account, in part, for the great divide between lawyers and their clients. *See id.* Those qualities may tend to make the lawyer more effective, *see id.*, but also tend to mislead the public regarding attorneys' morals, *see id.* at 1396-99. Visions of lawyers in popular fictions confirm this view. *See, e.g.*, Chris Lehman, *The Thrill Is Gone, CALIFORNIA LAWYER*, Aug. 1998, at 25. Those fictions "portray a world—and a justice system—that is corrupt and conspiracy ridden beyond the wildest imagination of *X-Files* creator Chris Carter or director Oliver Stone." *Id.* at 26.


176. *See id.* at 59-82.

177. *Id.* at 82.

178. *See PIERCE, supra* note 175 and accompanying text.

179. The literary advocates in these narratives generally comport with the poethical traits of lawyers identified by Professor Richard Weisberg. *See RICHARD WEISBERG, POETHICS AND OTHER STRATEGIES OF LAW*
and manipulation, by aggressively "rephrasing" the facts, and by elevating her own and her friends' needs over the law. In contrast, Alice wins by telling the truth, motivated perhaps by the realization that "[y]ou slip around the truth once, and then again, and one more time, and there you are, feeling, for a moment, that it was sudden, your arrival at the bottom of the heap."

While the attorney's typical qualities may be necessary at times for the legal system to render impartial decisions, practicing an ethic of care with one's clients doesn't prevent one from donning the other mask upon engaging with legal agents. In fact, women lawyers may be more likely to incorporate an ethic of care into their practice, either by fashioning creative solutions to problem-solving or by managing to separate their courtroom behavior from their behavior towards clients and co-workers. And, since society in general can accommodate all the variety of decision-making qualities, can we not expect the same from attorneys? Given the legal community's enormous power in society, and its mushrooming engagement in areas of life previously thought to remain solely in the "personal" sphere, asking attorneys, both female and male, to inculcate an ethic of care into their dealings with clients does not appear unreasonable, burdensome, nor a recipe to lose, as both Kingsolver and Hamilton prove.

IV. WHY THE LEGAL CULTURE NEEDS THESE WOMEN'S STORIES

Many attorneys are, and will continue to be, resistant to the lessons of mere fiction, especially when the heroines are women and the stories urge attorneys to

AND LITERATURE (1992). Those six traits are:

1. verbal manipulation [defined as] the ability to control situations through language; 2. apartness [defined as being] separate from the mass of humanity... who shine more in isolation than in groups; 3. distrustfulness... an unhealthy skepticism bordering on misanthropy; 4. professional ethical relativism [concerning lawyers'] rigorous loyalty to clients' interests... [without] a keen eye toward the strictures of ethical legal behavior; 5. fragility (and bachelorhood) [showing] a lack of interest in personal comforts; [and] 6. passivity... an individual... rather on the fringes, directing the fates of others and not participating fully in life.

Id. at 54-55.

180. HAMILTON, supra note 2, at 3.

181. Similarly, if law school succeeds in diminishing a student's tendency to operate based upon an ethic of care, as Daicoff concludes, it should be able to reverse that result to some degree. See Daicoff, supra note 170, at 1381-89.

182. See PIERCE, supra note 175, at 121-32, 141-42. 26% attempted to "reshape the adversarial role," while 58% attempted to "split" their work roles. See id. A minority adapted the "male" emotional strategies but almost uniformly charged that behavior with personal loss. See id. at 132-38. As one who has attempted the "splitting" strategy, both in private practice and nonprofit work, I can attest to its extraordinary difficulty and psychological weariness.

The studies relied upon by Professor Daicoff do take some account of gender differences and note that women seem more oppressed when compelled to abandon their ethic of care in law school. See Daicoff, supra note 170, at 1390-91, 1399-1404. Those who attempt to incorporate an ethic of care in their practice face a great deal of resistance and psychiatric stress as well. See id.

183. See supra note 174 and accompanying text.

184. Moreover, while extended discussion of this point is beyond the purview of this article, Daicoff concludes that lawyer dissatisfaction and dysfunction is to some degree related to the relentless need to achieve, compete, etc. See Daicoff, supra note 170, at 1414-23. Assuming her conclusion is correct, efforts to inculcate the legal culture with more of an ethic of care become even more necessary.
temper their rule-based reasoning with consideration for personal relationships. The law and literature community, myself included, has identified for itself the goal, among others, of overcoming such resistance.\footnote{185 See, e.g., MARTHA C. NUSSBAUM, POETIC JUSTICE (1995) (discussing teaching literature to teach compassion); WEISBERG, supra note 179, at 213-24 (offering literature as modeling a remedy for the contemporary lawyer's poor communication strategies); Milner S. Ball & James Boyd White, A Conversation Between Milner Ball and James Boyd White, 8 YALE J. L. \\& HUMANITIES 465, 469 (1996) (articulating Professor White's inquiry as the activity of making meaning with language in relation to another); Carolyn Heilbrun & Judith Resnik, Convergences: Law, Literature and Feminism. 99 YALE L.J. 1913 (1990) (advocating a law and literature canon incorporating feminist perspectives); Judith Resnik, Changing The Topic, 8 CARDOZO STUD. L. \\& LITERATURE 339 (1996) (discussing teaching literature to show law students what they and the law cannot yet conceive); Robin L. West, The Literary Lawyer, 27 PAC. L.J. 1187, 1197-98 (1996) (discussing the use of literature "to cure the fear of difference").\footnote{186 See, e.g., James Clifford, supra note 166, at 98-104. The ethnographer/native relationship appears here as an exact corollary of the lawyer/client interaction, and, as discussed supra, the client's need for greater participation in the enterprise is one of the more alienating factors she faces when crossing into the legal culture.\footnote{187 An apprenticeship, as described by Professors Melissa Harrison and Margaret E. Montoya, that takes into account literary and anthropological strategies to assist the law student to disable his, and the writers', "cultural dyslexia," meaning "the inability to read the alien, cultural worlds of other people," would appear invaluable as well. Melissa Harrison \\& Margaret E. Montoya, Voices/Voces in the Borderlands: A Colloquy on Re/Constructing Identities in Re/Constructed Legal Spaces, 6 COLUM. J. GENDER \\& L. 387, 393 (1996) (quoting Gisli Palsson, Introduction: Beyond Boundaries, in BEYOND BOUNDARIES: UNDERSTANDING, TRANSLATION AND ANTHROPOLOGICAL DISCOURSE 1, 23 (Gisli Palsson ed., 1993)). In Harrison and Montoya's article, they model their methods of "slow-motion reading" and "resonance" to expand their imaginations (and ours) so that the ethic of care can encompass the other. Id. Slow-motion reading, adapted from the work of the French feminist lawyer and literary critic, Claudine Herrman, requires the reader, listener, or other type of audience, to engage with the text or conversation by interrogating herself as the interaction continues, to ensure that she grasps all levels of meaning. See id. at 393, 433-35. Resonance grants emotionalism equal authority with rational thought. See id. at 393. Although the authors find reading and thinking useful, they find interactive experiences, perhaps in the form of an apprenticeship to an "other," essential to acquiring the necessary range of knowledge and empathy, particularly for the white, privileged woman. See id. at 437-39. But see Richard Delgado, Rodrigo's Eleventh Chronicle: Empathy and False Empathy, 84 CAL. L. REV. 61, 96 (1996) (suggesting that the only successful strategy is to become a "race traitor" by, in effect, "refusing[ing] to be white . . . [S]uppose a neatly dressed white person, who happens to be a race traitor, is pulled over by a police officer and then let go with a warning. The person ought to question the officer, 'Would you have done this if I had been black?'").\footnote{188 And this is precisely the role of the novel—that "consciously structured hybrid of languages" where "what is realized . . . is the process of coming to know one's own language as it is perceived in someone else's language, coming to know one's own belief system in someone else's system . . . an ideological translation of another's language and the overcoming of its otherness." MIKHAI L BAKHTIN, THE DIALOGIC IMAGINATION 365 (1981).\footnote{189 See Resnik, supra note 185, at 350.} See id. at 437-39. But see Richard Delgado, Rodrigo's Eleventh Chronicle: Empathy and False Empathy, 84 CAL. L. REV. 61, 96 (1996) (suggesting that the only successful strategy is to become a "race traitor" by, in effect, "refusing[ing] to be white . . . [S]uppose a neatly dressed white person, who happens to be a race traitor, is pulled over by a police officer and then let go with a warning. The person ought to question the officer, 'Would you have done this if I had been black?'").\footnote{188 And this is precisely the role of the novel—that "consciously structured hybrid of languages" where "what is realized . . . is the process of coming to know one's own language as it is perceived in someone else's language, coming to know one's own belief system in someone else's system . . . an ideological translation of another's language and the overcoming of its otherness." MIKHAI L BAKHTIN, THE DIALOGIC IMAGINATION 365 (1981).\footnote{189 See Resnik, supra note 185, at 350.}}
necessary modes of persuasion, even if they succeed only in leaving their legal audiences uncomfortable.

While both Taylor and Alice disturb their fictional and legal audiences, they advocate more successfully than the characters who officially argue for, or dispense, justice. Both women have a facility with language and imagination, qualities that would stand any lawyer in good stead. Our heroines employ those qualities to navigate and comprehend the alien worlds around them, rural and urban, in prison and in court, at home or at work. In fact, the storytelling strategies that enable the writers to lure us, as readers, into their fictional dreams, allow Taylor into the worlds of Turtle, Esperanza, and Estevan, and shelter Alice through her ordeal, while allowing her to maintain her compassion for her accusers.

Significantly, then, regardless of what an attorney might choose to learn about perceptions of the law from *The Bean Trees*, the careful reader will understand that Taylor succeeds in her heroic quests precisely because she listens to her audiences and relies on her feelings and rational thinking to resolve creatively her and her friends' controversies. Her sharp perceptions and careful attention to Turtle enable her to grow into motherhood and to appreciate Turtle's difference. Her compassion for Estevan and Esperanza, as well as others similarly in danger, empowers her to help them to their next hiding place and, albeit unwittingly, to provoke Esperanza's catharsis regarding the loss of her daughter. Taylor's understanding grows in proportion to the time spent with these people outside her ordinary realm. She hones her ability to hear outside her world by arguing with and questioning herself and by directly confronting the issues she faces.

Alice also finds her compassion in her imaginative powers, and her position as an outsider, an observer, and a storyteller, propels her into her crisis but also permits her to survive. Her empathy toward her accuser, Robbie, his mother, and the women with whom she is imprisoned, creates the psychological resources necessary for her to not only endure the immediate experiences, but to forgive and return to a full life with her family. Howard, in contrast, is repulsed by the culture of the criminal proceeding and cannot embrace the verbal imagination of Alice's stories or Rafferty's strategies, perhaps what he needs most.

Accordingly, these narratives achieve precisely what most commentators urge for law and literature by illustrating how the legal culture communicates and responds to the female other, how one ignored or demeaned by the culture may subvert the institution and win, and how the culture may mature. In spite of the insecurity and loss of dignity these women suffer before the law, they act, rather than react, and ultimately claim victory. Moreover, both novels model the behavior necessary for the legal culture to learn to listen closely to its various audiences, to appreciate the importance of perspective and voice—precisely what the public senses a lawyer cannot accomplish and what serves to alienate the
legal culture from the public.\(^{190}\)

All literary writers may not "aim for justice,"\(^{191}\) but many, including these authors, write to satisfy the storyteller's traditional function to create community.\(^{192}\) Adrienne Rich, for example, claims that "[t]his impulse to enter with other humans, through language, into the order and disorder of the world, is poetic at its root as surely as it is political at its root."\(^{193}\) In fact, the literary arena, rather than the political arena, may create a more secure space in which political beliefs, including theories of justice, may be challenged.\(^{194}\) Certainly, it is a better practice to school our students in the translation and interpretation of the other through literature, than to allow them to first test those powers in the courtroom.

Once we acknowledge an ethic of care as a necessary quality, storytelling—a fundamental human activity—provides a window on the worlds we do not, or cannot, live in.\(^{195}\) The quality is necessary not only to advocate effectively for our clients within the legal culture, but also to understand what they seek from us and to enable us to honestly explain what we can and cannot achieve for them. Accordingly, we should honor Taylor and Alice, our heroines, as prophets, who remind us of our deepest commitments as a community and who show us how we can do better.

\(^{190}\) Professor Weisberg recognizes that American novelists are more "benign" in their portrayals of attorneys than the continental authors and address the law with "an intriguing blend of social satire and subtle admiration." \textsc{Weisberg, supra} note 179, at 51-52. I would add that one might compare our heroines with Franz Kafka's Joseph K., Albert Camus' Merseault, or even Herman Melville's Billy Budd, all of whom are essentially passive and inarticulate in the face of the law's threat, and all of whom are analyzed in \textsc{Richard H. Weisberg, The Failure of the Word: The Protagonist as Lawyer in Modern Fiction} (1984).

\(^{191}\) \textsc{West, supra} note 185, at 1199.

\(^{192}\) See, e.g., \textsc{Campbell, supra} note 76; \textsc{Marina Warner, From the Beast to the Blonde: On Fairy Tales and Their Tellers} (1995); J. Hillis Miller, \textit{Narrative, in Critical Terms for Literary Study}, 66-79 (Frank Lentricchia & Thomas McLaughlin eds., 2d ed., 1995).


\(^{194}\) See, e.g., Miller, \textit{supra} note 192.

\(^{195}\) Nor should we rest on only one hermeneutic practice in resolving issues that cut to the core of one of our most powerful institutions.