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**THE IDENTITY QUESTION,
MADELEINE ALBRIGHT'S PAST, AND ME:
INSIGHTS FROM JEWISH AND
AFRICAN AMERICAN LAW AND LITERATURE**

*Peter Margulies**

I. INTRODUCTION

My grandfather Severin on my father's side was always very kind to me. I remember when I was five or six years old, my father would drive us down from our apartment in the Bronx to meet grandfather on the Upper West Side of Manhattan. We used to meet in a large cafeteria on Broadway and Ninety-Sixth Street, which served jello, pie, and soup to a steadily aging clientele (I believe a Gap store now occupies this space). He would always have a toy for me, like a large plastic race car. I remember my grandfather in a suit and tie, even though he was retired and over seventy years old.

My parents always emphasized to me that I was Jewish, and told me from an early age that my father and his parents had fled from Vienna, Austria to Shanghai, China,¹ at the time of World War II. I knew my mother had spent the war in the less exotic and more dangerous land of her birth, Poland, where she, my uncle, and my maternal grandparents were among the one-thirtieth of the Jewish population that, through a combination of luck and resourcefulness, survived. When I was slightly older, my grandfather became infirm. He went to a nursing home, and died shortly thereafter. My father sat silently in a chair in our living room for hours when he heard the news.

* Associate Professor, Director, Immigration Clinic, St. Thomas University School of Law, B.A. 1978, Colgate; J.D. 1981, Columbia. I thank my parents, Josef and Lola Margulies, who have taught me most of what I know of justice, memory, and compassion. I also thank Beverly Horsburgh, Dan Morrissey, Ellen Saideman, and Omar Saleem for their comments.

1. I never met my paternal grandmother, who died in Shanghai during World War II of heart failure or hunger, or a mixture of both.

It was not until much later, before the birth of my first child, Sarah, that I learned conclusively that my grandfather's given name was not Severin Margulies, but David Solomon Margulies. Before the war, my grandfather had been the managing director of a major construction company in Vienna. The price of his success, however, was a name change, so that he would not make prospective business associates uncomfortable with evidence of his Jewish background. My grandfather never converted to Christianity, or changed his last name, which is Jewish, but has been mistaken for Greek and Italian. My father never concealed from me my grandfather's given name, or told me anything but the truth when asked. For many years, though, I had a vague feeling that there were easier subjects to discuss within my family.

My grandfather's memory inspires a series of reflections about family and identity, occasioned by revelations that Madeleine Albright, the new Secretary of State and the first woman to hold that position, is of Jewish ancestry, and that Secretary Albright's grandparents died in the Holocaust. There are some minor but eerie parallels to my grandfather's story. Albright's family, the Korbels, were also involved in construction work: they owned a building materials business in Czechoslovakia before World War II. Josef Korbel, Madeleine's father, was a diplomat who, like many Czech Jews, considered himself a Czech patriot, and downplayed his ties to Judaism.²

Just after the Nazi invasion of Czechoslovakia in 1939, when Madeleine was almost two years old, the family fled to London. Around this time, Josef Korbel converted to Roman Catholicism. Madeleine's first cousin, who also fled with the family, took care of her in London. Unfortunately, Madeleine's three surviving grandparents remained in Czechoslovakia. They, along with many others from the Korbel family, perished in the concentration camps at Auschwitz, Terezin, and Treblinka. After the war, the Korbels returned to Czechoslovakia. Madeleine's parents did not tell her about her grandparents' fate, because, at eight years old, she was deemed too young. In 1948, when the Communists took power in Czechoslovakia, the Korbels fled again, this time to the United

2. An analogous view was held by many German Jews, who, like Czech Jews, had the opportunity to assimilate into mainstream society under certain conditions. My grandfather's name change reveals some of the terms of this accommodation. However, my grandfather always retained a private commitment to some form of Jewish community, in contrast to the Korbels. Hannah Arendt was probably fair, albeit sarcastic, in asserting that an assimilated German Jew sought to "be a man in the street and a Jew at home." See HANNAH ARENDT, *THE ORIGINS OF TOTALITARIANISM* 65 (1973) (citing S.M. DUBNOW, *HISTORY OF THE JEWS IN RUSSIA AND POLAND* 228 (1918)).

States. Madeleine's first cousin apparently had a disagreement with Josef Korbel, and claims that she was not asked to join the family on this journey. She remained in Czechoslovakia.

Madeleine completed her education in the United States at Wellesley College and Columbia University, married a newspaper heir, and converted from Roman Catholicism to Episcopalianism. Her parents apparently never told her about her Jewish ancestry, or about her grandparents' fate. She was only told that her grandparents died during the war.³ Albright became a diplomat, an academic, and most recently, she was appointed Secretary of State. Some letters from Czechoslovakia describing her family's background, including one from her first cousin, apparently never reached her. She discounted other letters because they differed from her parents' accounts or because they were from Serbians who were angered at Albright's forthright stand against genocide in Bosnia or because they mixed in anti-Semitic slurs and innuendo about her chastity with allegations about her background.⁴

Albright initially termed the revelations about her family history as "obviously a major surprise,"⁵ but subsequently conceded that she had an inkling for some time about her Jewish ancestry. She insisted, however, that she had not known that many of her relatives died in the Nazi death camps, although she again conceded that indications had been present: "I feel stupid and deeply regretful at not having seen things that are obvious, and I'm going to do my damndest to make it up. . . . Had I not been immersed in the work I was doing, I would probably have put this two and two together."⁶

A large part of what Madeleine Albright knew about her background resides in the tangled history of families. I am concerned here with two kinds of families that intersect in Albright's story. The first is the group we traditionally tend to view as family—the group of immediate and extended relatives which I will call "close" family. While we tend to think of close family as a site for sharing, there is also often silence. Families frequently stifle trauma with denial.⁷ This phenomenon accounts for at least part of Albright's parents' reluctance to offer any information about her past.⁸

3. Indeed, a memoir by Albright's mother written after Josef Korbel's death in 1977 fails to mention these facts.

4. Frank Rich, *Albright Comes Home*, N.Y. TIMES, Feb. 26, 1997, at A15 (noting that Michael Dobbs of the *Washington Post* first reported the story of Secretary Albright's family heritage).

5. Frank Rich, *The Albright Question*, N.Y. TIMES, Feb. 19, 1997, at A19.

6. Rich, *supra* note 4, at A15.

7. See Cynthia Grant Bowman & Elizabeth Mertz, *A Dangerous Direction: Legal*

Albright's story also suggests the existence of another kind of family which is based on larger claims of identity, including race, gender, ethnicity, religion, politics, sexual orientation, and combinations of the above. I call this kind of family the "figurative" family, because its members consciously or unconsciously use the close family as a metaphor for the "warmth of intimacy"⁹ which they practice as an element of identification with those from the same or overlapping groups.¹⁰ The shared experience of oppression buttresses these affective ties, as the history of both Jews¹¹ and African Americans demonstrates.¹²

People—both Jews and others¹³—who have been talking about Albright's story since it came to light, view it as a story about close and figurative family. One element of this discussion centers on Albright's loss in failing to learn more about from where and whom she came, and about her lack of communication with her first cousin, who was her caretaker in London during World War II and learned immediately after the war about the Korbel family's decimation by the Nazis. However, Albright's close family also represents the whole texture of the Jewish experience in the diaspora and the Holocaust. The family matters at issue here are not just personal questions of belief and association, but intensely public issues of

Intervention in Sexual Abuse Survivor Therapy, 109 HARV. L. REV. 549 (1996); cf. Martha Minow, *Surviving Victim Talk*, 40 UCLA L. REV. 1411, 1423–26 (1993) (discussing family violence).

8. My father's willingness to wait until my wife and I were about to have a child to discuss the details of my grandfather's story, while very different from the rigorous silence of Josef Korbel, may stem from similar roots. Other friends and acquaintances have told me similar stories. For example, an acquaintance whose father was a survivor of the death camps said he never talked about his experience. A friend and fellow law teacher told me that she learned of her father's flight from Germany to Canada in 1939 from other family members; her father never spoke about it, either.

9. HANNAH ARENDT, *MEN IN DARK TIMES* 30 (Harvest Book ed. 1968).

10. Some religions, including Christianity, speak in more universal terms of all of humanity as a family before God. See Daniel Boyarin & Jonathan Boyarin, *Diaspora: Generation and the Ground of Jewish Identity*, 19 CRIT. INQUIRY 693, 694–97 (1993). For a vision of Catholicism as promoting justice, see Daniel J. Morrissey, *A Catholic Moment in Legal Education?*, AMERICA, Oct. 29, 1994, at 4. To the extent that such conceptions do not exclude more particular claims of figurative family, they are not inconsistent with the model outlined here. In practice, such universal conceptions have often been viewed as a warrant for exterminating particularity of various kinds. See RICHARD DELGADO, *THE COMING RACE WAR? AND OTHER APOCALYPTIC TALES OF AMERICA AFTER AFFIRMATIVE ACTION AND WELFARE* 130, 143 (1996).

11. ARENDT, *supra* note 9.

12. See Anthony Appiah, *The Uncompleted Argument: DuBois and the Illusion of Race*, in "RACE," WRITING, AND DIFFERENCE 21, 23 (Henry Louis Gates ed., 1985) (citing W.E.B. DuBois); Dorothy Roberts, *The Genetic Tie*, 62 U. CHI. L. REV. 209, 232–33 (1995).

13. See Barry Saunders, *Acknowledging Ethnicity—Until the Taxicabs Pass By*, RALEIGH NEWS & OBSERVER, Mar. 1, 1997, at A19, available in 1997 WL 7824917 (providing African American perspective on Albright).

collective memory. Indeed, Albright's story reveals, if any further proof were needed, the artificiality of the dichotomy between the personal and the political. The press has examined Albright's story, but so too have millions of families, who have talked in living rooms and on telephones about their own memories and the Secretary of State's, as if Albright was for each family a kind of prodigal.¹⁴

The exploration of collective memory spurred by Albright's story is a crucial virtue of figurative families. At the same time, there is something potentially oppressive about the presumption shared by millions, myself included, that Albright's past, sixty years in the making, is a ripe text for our own reminiscences. This essay addresses both the emancipatory and oppressive dimensions of figurative family, often in tandem with close family. Because experiences of subordination are central in developing a sense of figurative family, the discussion centers on the literature and legal theory of two groups which have known subordination, albeit in different ways—Jewish and African Americans.¹⁵ I focus on three stances toward identity—shame, acknowledgment, and engagement.¹⁶

II. IDENTITY STANCES

Some further elaboration about how this essay uses the terms *shame*, *acknowledgment*, and *engagement* may assist the reader.

14. I have talked to my parents because of Albright's story, and learned more about my grandfather's life in Vienna. For example, as I wrote this essay, I learned from my father, who is proud of the great achievements of German culture, such as Mozart, Beethoven, and Goethe, that my grandfather was born in Poland. Cf. Joan Behrmann, *What Could Be More Tragic Than the Loss of Family Heritage?*, DETROIT NEWS, Mar. 6, 1997, at D7, available in 1997 WL 5580291 (remembering her grandfather).

15. Analogies between different systems of oppression can perpetuate subordination, instead of combating it. See Tina Grillo & Stephanie Wildman, *Obscuring the Importance of Race: The Implication of Making Comparisons Between Racism and Sexism (Or Other -isms)*, 1991 DUKE L.J. 397. I seek to demonstrate in this essay that acknowledging differences in the Jewish and African American experience, including the central role of a tacit, semi-conscious White supremacy in American life, can also shed light on the construction of identity.

16. This essay is an exploratory piece whose conclusions are necessarily provisional. The reader should also be aware that to capture the intensity of debates about identity, the essay includes some quotes from Jewish and African American writers which contain racial and ethnic slurs referring to the writer's own group. Writers like Philip Roth and Ralph Ellison used these words to enact the themes of acknowledgment, engagement, and shame discussed in this article. Omitting such expressions would re-enact the dynamic of shame criticized in this essay, and silence writers who should speak for themselves.

A. Shame

Consider shame first. Shame stems from concern about the perceived reactions of the dominant culture. For example, Jewish people who caution that someone's behavior or appearance is "too Jewish" reflect this stance. Shame can also result from revealing to the dominant culture practices, traits, or attitudes which in some fashion are perceived to reinforce negative stereotypes.

The social, political, and economic situations of members of a group determines in large part how members of the group respond to shame. One response is assimilation—trying to become more like members of the dominant culture and discounting the value of practices, attitudes, and traditions from the figurative family. A second response is exit—"converting" to the dominant culture, as when Jews convert to Christianity. A third response is deception—concealing one's ties to both close and figurative family. Madeleine Albright's father sought to conceal his family's history as do some African Americans who seek to "pass" for White.

B. Acknowledgment

The opposite of shame is acknowledgment. Acknowledgment involves the public recognition of ties to both close and figurative families from a particular group, such as Jewish people. Acknowledgment has a variation, which I term "virtual" acknowledgment. In virtual acknowledgment, one does not explicitly disclose close or figurative familial ties, but acts in the dominant culture in a manner consistent with those ties. Madeleine Albright's placing of the Holocaust and human rights near the center of her foreign policy perspective, because it is consistent with her heritage as a descendant of a historically subordinated people, could be viewed as a kind of virtual acknowledgment.¹⁷

C. Engagement

A third stance is engagement. Engagement builds on acknowledgment. A writer who practices engagement both acknowledges her links with figurative family, and incorporates that acknowledgment into an effort to change her figurative family, or the larger society. Of all the

17. To acknowledge one's ties, of course, one has to know about them. My characterization of Albright's views assumes, as she has acknowledged, that she had some inkling of her ancestry well before public revelation of it occurred.

stances described here, engagement is the most risky. This is particularly true when engagement addresses issues which have also engendered shame. In these situations, engagement can yield change, but can also provoke the opprobrium visited upon all those who "betray" their family by airing dirty linen.

III. IDENTITY STANCES AND JEWISH AMERICAN LITERATURE

The conflict between shame and acknowledgment of identity has been the central preoccupation of modern Jewish-American literature. Authors, critics, and fictional characters frequently have experienced shame when confronting Anglo-American culture's images of the Jewish experience. For some, the response has been assimilation or deception, although outright exit has been less common as a phenomenon in literature than in life. These stances, here as elsewhere, have been played out in the arenas of close and figurative family.

Modern Jewish-American fiction acknowledges familial ties through both language and plot. The mixture of vernacular speech, compulsive self-revelation, and stubborn, and sometimes irritating, honesty in most protagonists of Jewish-American fiction bespeaks a set of allegiances distinct from earlier American writers. This hybrid style, a product of immigrant culture, does not hide its difference from the decorous maneuvering of Henry James, or the clipped matter-of-factness of Hemingway. Speaking of typical Anglo-American attitudes, the narrator of Saul Bellow's first novel, *Dangling Man*, notes, "If you have difficulties, grapple with them silently, goes one of their commandments. To hell with that! I intend to talk about mine."¹⁸

Ironically, sometimes this candor raises hackles in the storyteller's close and figurative families who wish to assimilate in peace. For example, in Philip Roth's comic novel, *The Ghost Writer*, the protagonist Nathan Zuckerman writes a short story about his family, which—with a cruel humor born of both years of observation and the resentment which adolescents sometimes bear their parents—portrays Jewish-Americans, warts and all, as materialistic, focused on status and appearances and, at least among males, preternaturally fascinated with women "not of our persuasion."¹⁹ Shocked by this betrayal, Nathan's father asks a family benefactor, Judge Leopold Wapter, to write Nathan to remonstrate with

18. See SAUL BELLOW, *DANGLING MAN* 9 (Meridian ed. 1960), cited in JOHN MURRAY CUDDIHY, *THE ORDEAL OF CIVILITY: FREUD, MARX, LEVI-STRAUSS, AND THE JEWISH STRUGGLE WITH MODERNITY* 218 (1987).

19. PHILIP ROTH, *THE GHOST WRITER* 82 (1979).

him. Judge Wapter concludes his letter with ten questions for Nathan, presumably modeled after both the Ten Commandments and the Four Questions which the youngest child in the family recites at Passover regarding the commemoration of the Jews' flight from slavery in Egypt. Judge Wapter's questions include the following:

5. In a story with a Jewish background, what reason is there for a description of physical intimacy between a married Jewish man and an unmarried Christian woman? Why in a story with a Jewish background must there be (a) adultery; (b) incessant fighting within a family over money; (c) warped human behavior in general?

...

10. Can you honestly say that there is anything in your short story that would not warm the heart of [Nazi war criminals] Julius Streicher or . . . Joseph Goebbels?²⁰

When Nathan tells his mother he is upset by the judge's grouping him with Nazi war criminals,²¹ she interjects, "He only meant that what happened to the Jews . . ."

Nathan interrupts with sarcasm:

[Y]ou want to see physical violence done to the Jews of [New Jersey], go the office of the plastic surgeon where the girls get their noses fixed. That's where the Jewish blood flows in Essex County, that's where the blow is delivered—with a mallet! To their bones—and to their pride!²²

Nathan Zuckerman's acknowledgment of his Jewishness is more acknowledgment than his family needs. Because his family recognizes itself, albeit in distorted form, in his story, Zuckerman provokes not pride but shame—the proverbial *shanda for the goyim*, or shame before the dominant gentile culture.²³

20. *Id.* at 103–04.

21. *Id.* at 106 (Nathan states, "The Big Three, Mama! Streicher, Goebbels, and your son!"). Roth's account here clearly stems from the furor created by his earlier books, particularly *Portnoy's Complaint*, the novel to end all novels about Jewish mothers and Jewish males' worship of White Gentile women *shiksas*. PHILIP ROTH, *PORTNOY'S COMPLAINT* (1969).

22. *Id.*

23. As Roth puts it,

The *goyim*, who looked down on us with enough unearned contempt already . . . would be only too pleased to call us all kikes because of what I had written for the whole world to read about Jews fighting over money. It was not for me to leak the news that such a thing could possibly happen. That was worse than informing—that was collaborating.

Id. at 110.

The family's shame at this public airing of dirty linen echoes the embarrassment of the assimilated German Jews and Jews from Czechoslovakia, like Madeleine Albright's parents, at the Jews from Eastern Europe—the *Ostjuden*. The German Jews, like my grandfather Severin, who felt a kinship to German culture as well as to Judaism, viewed the *Ostjuden* as uncouth and unlettered.²⁴ The fact that family ties frequently stretched across the two groups is something the German Jews usually endeavored to conceal as much as possible.²⁵

Ironically, popular interpretations of the Holocaust seem to echo the German Jews' refusal to acknowledge the *Ostjuden*. In *The Ghost Writer*, Judge Wapner urges Zuckerman to read *The Diary of Anne Frank*, to better understand the lessons of the Holocaust for Jews. Yet, *The Diary of Anne Frank*, which is the story of a Jewish girl in Holland who ultimately is killed by the Nazis, offers a portrait of Jewish life notable for its lack of particularity. As Roth notes, Anne Frank touched the world when she wrote, "The time will come when we are people again, and not just Jews."²⁶ It is the disjunction of "Jews" from "people"—as if Jewishness was solely a negative image imposed from without, as opposed to a set of commitments for people to live by—that disturbs Roth. Yet, as Roth argues, this erasure of particularity may have been for the best. A more fervent insistence of particularity on Anne Frank's part might have made it seem like she deserved her fate for not "getting with the program."²⁷

In this sense, one can view images of the Holocaust as themselves a manifestation of shame and a sign of assimilation. Another manifestation of shame is deception—the concealment of close family ties, sometimes to children within the family itself. This seems to be the path taken by

24. The most compelling discussion of the relationship between German Jews and *Ostjuden* is in HANNAH ARENDT, *Walter Benjamin, 1892–1940*, in *MEN IN DARK TIMES* 153, 186 (Harvest Book ed. 1968).

25. My father, who was born in Vienna, is a cousin of my maternal grandmother, who spent World War II hiding from the Nazis in Poland until she and the surviving members of my mother's family were liberated by the Russians. My father still jokingly refers to my mother as a "Galiziano," a derisive term for Jews who grew up in my mother's part of Poland: Galicia. I have known about this family tie for many years. However, as noted above, it was only in the course of writing this essay that I learned from my father that his father, the successful Viennese construction executive, was also born in Poland.

26. ROTH, *supra* note 19, at 142.

27. To expect the great callous and indifferent world to care about the child of a pious, bearded father living under the sway of the rabbis and rituals—that was pure folly. To the ordinary person with no great gift for tolerating even the smallest of differences the plight of that family wouldn't mean a thing. To ordinary people it probably would seem that they had invited disaster by repudiating everything modern and European—not to say Christian.

Id. at 144.

Madeleine Albright's parents who never, for whatever reason, found the right time to tell Albright about her grandparents' life and death. A work of fiction which addresses issues of deception outside of the close family is Bernard Malamud's story, *The Lady of the Lake*.²⁸

In Malamud's story, Henry Levin, an American Jew, travels to Europe. His ties to close family have evaporated with the deaths of his parents.²⁹ The dissolution of these ties coincides with Levin's willingness to undo his ties to the figurative family of Jewry. Levin is apparently "tired of the past—tired of the limitations it had imposed upon him."³⁰ To connote his new-found lack of constraints, Levin changes his name to "Freeman"—free man. Freeman meets a beautiful Italian woman, Isabella, who soon asks him, out of the blue, if he is Jewish. Momentarily shocked, but secure in the knowledge that he does not "look Jewish," he replies in the negative. He and Isabella fall in love. However, Freeman's deception turns to disaster when, after proposing marriage, Isabella reveals that she has asked about his origins because she is Jewish. "I can't marry you," she responds, "we are Jews. My past is meaningful to me. I treasure what I suffered for."³¹ Before Freeman can explain, Isabella disappears. Having jettisoned his own past, Freeman is left with no future.

IV. JEWISH AMERICAN LEGAL THEORISTS, LAWYERS, AND ASSIMILATION

Acknowledgment of Jewish identity is still finding its place in American legal theory. The history of legal theory and practice by Jewish-Americans, while reflecting profound contributions to the profession and the public good, reveals many foregone opportunities for acknowledgment of the figurative family of Jews. While failures of acknowledgment by Jewish-American legal theorists usually do not encompass the deception employed by Freeman in Malamud's story, they are nonetheless significant. However, there is also an emerging history of acknowledgment and engagement which requires recognition. I discuss the failures and equivocations of acknowledgment first.

28. Bernard Malamud, *The Lady of the Lake*, in *THE MAGIC BARREL* 105 (1958).

29. *Id.* at 126.

30. *Id.* at 105.

31. *Id.* at 132.

A. Universalism and Jewish Legal Identity

Usually the failures of acknowledgment involve a commitment to some form of universalism. One can discern the influence of this universalism in both the neutral principles of the legal process school which flourished in post-war American academia, and the radical egalitarianism of Marxist theory. The failure of acknowledgment tends to be more decisive with the legal process school. In contrast, radical egalitarians, like the members of the Critical Legal Studies movement, sometimes offer a kind of back-handed acknowledgment which suggests that their Jewish identity may be more important to them than they would have their readers believe.

Let us consider first the dynamics of identity in the legal process school. Herbert Wechsler, the greatest exponent of the "neutral principles" view of law, which exalted the legal process over substantive values, warned against acknowledging figurative family in any aspect of the legal system.³² Wechsler expressed this view in his criticism of the State of Israel's abduction, trial, and execution of Adolf Eichmann, the official in charge of the Nazi death camps, for "crimes against the Jewish people."³³ Wechsler argued that assessing the Holocaust in universal terms, as "a war crime and a crime against humanity as well as a crime against the law of

32. In situating Wechsler as a member of the legal process school, I recognize that Wechsler nonetheless had substantial differences with other members of the school, such as Alexander Bickel. The difference between Wechsler and Bickel centered on whether courts could depart from Wechsler's "neutral principles" to act in accordance not with principle, but with prudence. See Edward L. Rubin, *The New Legal Process, the Synthesis of Discourse, and the Microanalysis of Institutions*, 109 HARV. L. REV. 1393, 1398 (1996); cf. Anthony T. Kronman, *Alexander Bickel's Philosophy of Prudence*, 94 YALE L.J. 1567 (1985) (discussing Bickel's approach).

33. Israeli intelligence agents seized Eichmann in Argentina, where principles of international law granted them no authority. One's view of the sanctity of those principles in Eichmann's case may be influenced by knowledge that Argentina in effect held itself out as a haven for Nazis fleeing prosecution for war crimes. In her famous account of the trial, Hannah Arendt acknowledged Argentina's role as a haven, while still finding Israel's action illegitimate. HANNAH ARENDT, *EICHMANN IN JERUSALEM: A REPORT ON THE BANALITY OF EVIL* 264 (Viking Compass Books ed. 1965). My discussion of Wechsler's views is drawn from Pnina Lahav's thoughtful article. See Pnina Lahav, *The Eichmann Trial, the Jewish Question, and the American-Jewish Intelligentsia*, 72 B.U. L. REV. 555 (1992). Wechsler reiterated his view that the Eichmann trial was illegal in Norman Silber & Geoffrey Miller, *Toward "Neutral Principles" in the Law: Selections from the Oral History of Herbert Wechsler*, 93 COLUM. L. REV. 854, 916 (1993). For a critique of the earlier war crimes trials conducted at Nuremberg by the victorious Allied Powers, see DAVID LUBAN, *LEGAL MODERNISM* 335 (1994). Wechsler always defended the legality of the Nuremberg Tribunal, for which he was a key advisor. See Silber & Miller, *supra*, at 891-917.

the states where the offense was perpetrated," was the most fitting approach.³⁴

For Wechsler, who did not mention his own Jewish background, the identity of the Nazis' targets was almost incidental: the Holocaust's "victims were Jewish people."³⁵ In contrast to the Israeli legislation, Wechsler omitted the article 'the' before his mention of "Jewish people." The Israeli legislation acknowledged the ties of figurative family, while Wechsler's omission had the effect of grudgingly conceding the existence of some superficial common trait, as in "tall and skinny people." Wechsler's characterization discounted two important facts. First, Jewish achievements, from the recording of the Old Testament to the development of Yiddish to the distinctive voices of writers like Malamud, Bellow, and Roth, stem largely from people who acknowledged strong, not superficial, ties to some conception of Jewish identity.³⁶ Second, while the Nazis also believed in a strong conception of Jewish identity, the answer to the Nazis should be not to weaken those family ties, but to acknowledge their worth.

Wechsler's refusal to acknowledge figurative family ties was not without moral justification. Wechsler clearly believed that neutral principles are a check on the excesses of particularity, including not only Israel's abduction of Eichmann, but also abuses committed by Israel against Palestinian Arabs.³⁷ In refusing to acknowledge figurative family ties, Wechsler avoided the oppression of others which can emerge from the family paradigm. He did so, however, only at the price of bleaching out key facts about the subordination of Jewish people, and assimilating them into "people . . . not just Jews,"³⁸ just like Roth's Anne Frank.

Another trend in Jewish legal theory which echoes the universalism of legal process theory is Marxism. At first blush, Marxism, with its disdain for neutrality and rights, seems like the antithesis of the legal process school. Upon closer examination, however, Marxism is close to legal process jurisprudence in its erasure of ethnic, racial, gender, and religious

34. See Lahav, *supra* note 33, at 565 (citing Herbert Wechsler, *The Nation's Future* (NBC radio debate, Apr. 8, 1961)).

35. *Id.*

36. The question of whether that identity can be secular and humanist, or should involve some kind of religious observance is beyond the scope of this essay. The dominant voices in American legal culture, including progressive lawyers, discouraged assertion of Jewish ideality earlier in this century. See JEROLD S. AUERBACH, *UNEQUAL JUSTICE* 186 (1976) (quoting Thurman Arnold as recommending a promising young lawyer as being devoid of "Jewish characteristics").

37. See Lahav, *supra* note 33, at 564.

38. ROTH, *supra* note 19, at 142.

identity.³⁹ Orthodox Marxism stresses a materialist analysis, focusing on the ownership and control of the means of production, which treats class as central. Other sources of identity are at best distractions, and at worst, occasions for class disunity that capitalists can exploit.⁴⁰ Yet, even intellectuals with a Marxist bent have expressed their Jewish roots in varying ways.

One avenue of this expression is the Messianic element of Marxism. Karl Marx envisioned an end to history, entailing the withering away of the state and the emergence of a classless society. Of course, this vision also owes a great deal to Georg Friedrich Hegel. In addition, Marx believed that one could not wait for the Messiah; instead, people had to act and organize. Marx, however, sought to inspire these actions through his prophecy against an oppressive system of class exploitation,⁴¹ with a vigor that recalled the jeremiads of the Old Testament prophets.

Some contemporary legal scholars influenced by Marxist thought have acknowledged their identity in other oblique ways. Mark Tushnet is a good example. Tushnet made his name as a Critical Legal Studies scholar applying a Marxist analysis of law. His disdain for rights is a particular feature of this approach. Tushnet recently critiqued the work of Critical Race scholars, who insist on other elements of identity besides class, and the work of post-modern scholars, which he regards as lacking normative content. Gary Peller, in a bitter exchange with Tushnet on the first point, has linked Tushnet's wariness of the more personal style and assertion of racial identity by Critical Race scholars with a Jewish drive toward assimilation.⁴²

A closer look at Tushnet's work complicates Peller's analysis of Tushnet's Jewish identity. Tushnet's assertion of his Jewish identity is ambivalent, erratic, and anecdotal, yet it is still present. Consider in this regard Tushnet's retelling of an incident from his childhood as a "red diaper baby," a child whose parents were at one time active Communists. Tushnet recounts how his mother, asked in a deposition about whether she knew Communists were meeting in her living room, responded with a

39. See Boyarin & Boyarin, *supra* note 10, at 708.

40. This is a key element in the Critical Race Theory critique of Critical Legal Studies. See Kimberlé Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimization in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1356-69 (1988); Harlon Dalton, *The Clouded Prism*, 22 HARV. C.R.-C.L. L. REV. 35 (1987); Richard Delgado, *The Ethereal Scholar: Does Critical Legal Studies Have What Minorities Want?*, 22 HARV. C.R.-C.L. L. REV. 301 (1987).

41. See Isaiah Berlin, *Benjamin Disraeli and Karl Marx*, in *AGAINST THE CURRENT: ESSAYS IN THE HISTORY OF IDEAS* 252, 283 (Penguin Books ed. 1982).

42. Gary Peller, *The Discourse of Constitutional Degradation*, 81 GEO. L.J. 313 (1992).

comprehensive inventory of the living room furniture. Her eye-glazing account, replete with evocations of “the piano in the corner, with an accordion underneath,”⁴³ stalled the legal process in a mire of domestic detail. In telling this story, Tushnet evokes the irony which Jews and other subordinated people have always used to confound their pursuers.⁴⁴

Both the legal process and Marxian commentators miss crucial opportunities through their, at best, oblique acknowledgment of Jewish roots. Both schools of thought perpetuate the view that acknowledgment is bad form, and assimilation the pathway to the common good—the fabled “melting pot” of American culture. However, the melting pot metaphor neglects the crucial question: Who throws whom into the pot?

Neglecting this question has consequences for law and legal theory. In the legal process school’s refusal to acknowledge difference, one can see the roots of neo-conservative opposition to affirmative action. Opposition develops because any recognition of the need for different treatment creates tensions with the assimilation ideal and with unitary conceptions of “merit.”⁴⁵

Similarly, reticence about acknowledging identity has led to criticism, in the name of universal norms like “legal scholarship” or “narrative integrity” of Critical Race theorists, who expressly incorporate identity into their work.⁴⁶ The problem, of course, is that treating “legal scholarship” as

43. Mark Tushnet, *Critical Legal Studies: A Political History*, 100 *YALE L.J.* 1515, 1535–36 (1991).

44. See DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL* 175–76 (1992).

45. Bickel states most clearly his view that affirmative action is a dangerous deployment of acknowledgment of difference: “A quota is a divider of society, a creator of castes . . . especially in a society desperately striving for an equality that will make race irrelevant.” ALEXANDER M. BICKEL, *THE MORALITY OF CONSENT* 133 (1975). Yet Bickel also recognized, as this essay contends, that criteria for university admissions, employment, and other goods are “class-bound and framed in terms of the culture of a dominant group.” *Id.* at 132. This move allowed Bickel to view some criteria as discriminatory, and thus suspect under a legal process paradigm, while affirming the baneful influence of group identity. Bickel drew the line at acknowledging the value of group identity under law. For an explicitly different view acknowledging this value, see Gary Peller, *Race Consciousness*, 1990 *DUKE L.J.* 758; cf. Susan Sturm & Lani Guinier, *The Future of Affirmative Action: Reclaiming the Innovative Ideal*, 84 *CAL. L. REV.* 953 (1996) (reframing in more inclusive fashion criteria for access to employment and other social goods).

46. See Daniel A. Farber & Suzanna Sherry, *Legal Storytelling and Constitutional Law*, in *LAW’S STORIES* 37 (Peter Brooks & Paul Gewirtz eds., 1996); Richard Posner, *Nuance, Narrative, and Empathy in Critical Race Theory*, in *OVERCOMING LAW* 368–84 (1995); Daniel A. Farber & Suzanna Sherry, *Is the Radical Critique of Merit Anti-Semitic?*, 83 *CAL. L. REV.* 853 (1995); Daniel Farber & Suzanna Sherry, *Telling Stories Out of School: An Essay on Legal Narratives*, 45 *STAN. L. REV.* 807 (1993); Suzanna Sherry, *The Sleep of Reason*, 84 *GEO. L.J.* 453 (1996); Mark Tushnet, *The Degradation of Constitutional Discourse*, 81 *GEO. L.J.* 251 (1992). I discuss these critiques in two upcoming pieces: Peter Margulies, *Doubting Doubtfulness, and All That Jazz: Establishment Critiques of Outsider Innovations in Music and Legal Theory*,

a self-evident and objective concept enshrines a particular kind of legal scholarship, while excluding others. Acknowledging particularity at least allows for a discussion of both difference and common ground, instead of a unilateral exclusion which effectively ends conversation.

B. Engagement and Jewish Identity

Acknowledgment also paves the way for engagement. As noted above, I use the term engagement to connote those writers who have shared the transformative ideals of Tushnet and other radical commentators, but who have also more expressly incorporated some conception of figurative family into their work. Yet acknowledgment and transformative rhetoric can be a dangerous mix, particularly when one targets one's own figurative family for transformation. Often the family, as with the Nathan Zuckerman's family in Roth's *The Ghost Writer*, can view the engaged writer as acknowledging too much, and doing so in the wrong place. Sometimes the engaged writer, like Roth with his sarcasm, can even contribute to this impression.

Hannah Arendt's writing about the Eichmann trial and Israeli sovereignty reveals both the promise and the peril of engagement. Arendt was not a lawyer, even though her writings on these two subjects have legal implications. She studied philosophy with Martin Heidegger,⁴⁷ but was arrested in 1933 by the Nazis for smuggling Communists out of the country. Arendt became a refugee relief worker in Paris after fleeing Nazi Germany upon her release. Returning to Germany for a talk after the war, she acknowledged her identity explicitly: "[F]or many years I considered the only adequate reply to the question, Who are You? to be: A Jew. That answer alone took into account the reality of persecution."⁴⁸ Arendt, in her

51 U. MIAMI L. REV. __ (forthcoming 1997); Peter Margulies, *Inclusive and Exclusive Virtues: Identity, Responsibility, and Merit in Recent Legal Thought*, 46 CATH. U. L. REV. __ (forthcoming 1997).

47. Some years after World War II, Arendt tried to rehabilitate Heidegger, who had joined the Nazi Party in the 1930s. Arendt also had a romantic relationship with Heidegger before the war. See ELZBIETA ETTINGER, *HANNAH ARENDT/MARTIN HEIDEGGER* (1995). Yet Arendt acknowledged to colleagues Heidegger's bad behavior. See HANNAH ARENDT & KARL JASPERS, *CORRESPONDENCE 1926-69*, at 47-48 (Lotte Kohler & Hans Saner eds., & Rita Kimer trans., 1st ed. 1992) (describing Heidegger as a "potential murderer" for his role in the prosecution of his teacher and colleague, Edmund Husserl). Focusing solely on Arendt's emotional attachment to Heidegger risks trivializing her views on political theory. See Anne M. Lane, *Hannah Arendt: Theorist of Distinction(s)*, 25 POL. THEORY 137, 140 (1997). Scholars since Arendt have found Heidegger to be an important source of insight; see, e.g., Edward Rubin, *On Beyond Truth: A Theory for Evaluating Legal Scholarship*, 80 CAL. L. REV. 899 (1992) (invoking Heidegger to formulate criteria for legal scholarship).

48. ARENDT, *supra* note 9, at 17.

reporting on the Eichmann trial, also acknowledged the importance of the proceeding for Jewish identity: “[F]or the first time (since the year 70, when Jerusalem was destroyed by the Romans), Jews were able to sit in judgment on crimes committed against their own people . . . for the first time, they did not need to appeal to others for protection and justice”⁴⁹

Yet, Arendt still had profound reservations about the Eichmann trial. Her first reservation stemmed from the same previously discussed concerns about international law. Her second objection was that the trial, in its “official version,” contributed not to an understanding of the Holocaust but to its mystification, in a way analogous to Philip Roth’s concern about the canonization of Anne Frank. While Roth rejected the portrayal of Anne Frank, the cultural icon, as a saint shorn of particularity, Arendt saw the success of this portrayal as “reducing horror to sentimentality.”⁵⁰ Similarly, Arendt viewed the Eichmann trial as a demonization of a bureaucrat, who was culpable precisely because he obediently managed an efficient state apparatus that killed over six million people. While the prosecution at the trial painted Eichmann as a murderous mastermind, it was Eichmann’s obedience and calm efficiency that most terrified Arendt. As she observed, Eichmann represented not the singularity, but the “banality of evil.”⁵¹ Arendt noted that “[t]he trouble with Eichmann was precisely that so many were like him, and that the many were neither perverted nor sadistic, that they were, and still are, terribly and terrifyingly normal.”⁵²

For Arendt, demonizing Eichmann and sentimentalizing Anne Frank created a dangerous myth for the world and the Jewish figurative family. One consequence of this myth was the demonization of others, like the Arab inhabitants of Palestine.⁵³ Arendt argued that Jews were not immune from experiencing Eichmann’s condition, in which demonization of others makes brutality into business as usual.⁵⁴

When one realizes that Arendt could stake out this position, but also tell her friend, the novelist and critic Mary McCarthy, that “[a]ny real

49. ARENDT, *supra* note 33, at 271.

50. ARENDT, *supra* note 9, at 19. Readers who have seen Steven Spielberg’s movie, *SCHINDLER’S LIST*, may remember the red coat of the young girl who ultimately dies at the hands of the Nazis—the only spot of color in a sea of stark black and white. As the father of two young Jewish girls, I can testify to the power of this image, sentimental though it may be.

51. ARENDT, *supra* note 33, at 252.

52. *Id.* at 276.

53. Arendt did not expressly make this point in *Eichmann in Jerusalem*, but it is consistent with concerns about displacement of Palestinians she had expressed prior to the creation of the State of Israel, almost 20 years before her report on the Eichmann trial. See ELIZABETH YOUNG-BRUEHL, *HANNAH ARENDT: FOR LOVE OF THE WORLD* 223–33 (1982).

54. ARENDT, *supra* note 33, at 292–93.

catastrophe in Israel would affect me more than almost anything else,"⁵⁵ the full extent of Arendt's engagement becomes clear. Yet, as noted above, engagement can offend notions of figurative family, particularly when engagement involves an audience beyond the family's boundaries. Many Jewish intellectuals and activists criticized Arendt as soulless, distant, and even anti-Semitic in her views.⁵⁶ Contributing to this impression was Arendt's steadfast refusal to publicly participate in the "warmth of intimacy"⁵⁷ which is part of figurative family identity.⁵⁸

One of the intellectuals who criticized Arendt's tone of "Olympian authority" was Ralph Ellison,⁵⁹ author of the great novel, *Invisible Man*.⁶⁰ Ironically, Ellison's relationship with the diverse figurative family of African Americans raised some of the same concerns about distance, acknowledgment, and engagement that shaped Arendt's relationship with Jewish Americans.⁶¹ The following section addresses these issues in African American literature and law.

55. YOUNG-BRUEHL, *supra* note 53, at 455.

56. *Id.* at 337-55.

57. ARENDT, *supra* note 9, at 30.

58. A public statement like the reflection about Israel in her letter to Mary McCarthy might have slaked the public uproar. But Arendt was unwilling, and perhaps unable, to make such a statement in public.

One important development in legal scholarship in the past 10 to 15 years has been the emergence of a group of writers who, in contrast to Wechsler's failure of acknowledgment and Arendt's wariness about public displays of family feeling, have acknowledged their Jewish identity, and done so in a more personal way than Arendt displayed. Many of these writers were inspired by the work of the late Robert Cover. See ROBERT BURT, *TWO JEWISH JUSTICES: OUTCASTS IN THE PROMISED LAND* (1988); ROBERT COVER, *NARRATIVE, VIOLENCE, AND THE LAW: THE ESSAYS OF ROBERT COVER* (Martha Minow et al. eds., 1992); Robert Burt, *Constitutional Law and the Teaching of the Parables*, 93 YALE L.J. 455 (1984); Howard Lesnick, *The Wellsprings of Legal Responses to Inequality: A Perspective on Perspectives*, 1991 DUKE L.J. 413; Sanford Levinson, *Identifying the Jewish Lawyer: Reflections on the Construction of Professional Identity*, 14 CARDOZO L. REV. 1577 (1993) (discussing how Judaism influences images of professionalism); Peter Margulies, *Difference and Distrust in Asylum Law: Haitian and Holocaust Refugee Narratives*, 6 ST. THOMAS L. REV. 135 (1994); Russell G. Pearce, *Jewish Lawyering in a Multicultural Society: A Midrash on Levinson*, 14 CARDOZO L. REV. 1613 (1993); Suzanne L. Stone, *In Pursuit of the Counter-Text: The Turn to the Jewish Legal Model in Contemporary American Legal Theory*, 106 HARV. L. REV. 813 (1993); Steven L. Winter, *Legal Storytelling: The Cognitive Dimension of the Agon Between Legal Power and Narrative Meaning*, 87 MICH. L. REV. 2225 (1989); cf. MILNER S. BALL, *THE WORD AND THE LAW* (1993) (discussing Cover's thought); Beverly Horsburgh, *Jewish Women, Black Women: Guarding Against the Oppression of Surrogacy*, 8 BERKELEY WOMEN'S L.J. 29 (1993); Beverly Horsburgh, *Lifting the Veil of Secrecy: Domestic Violence in the Jewish Community*, 18 HARV. WOMEN'S L.J. 171 (1995).

59. See RALPH ELLISON, *SHADOW AND ACT* 108 (1972).

60. RALPH ELLISON, *INVISIBLE MAN* (Vintage Books ed. 1972).

61. Henry Louis Gates, Jr., *King of Cats*, NEW YORKER, Apr. 8, 1996, at 70, 80 (discussing

V. IDENTITY STANCES IN AFRICAN AMERICAN FICTION

Ties to the figurative family, as well as close family, have always been central to African American fiction. Just as the contrast between the Jew as outsider and Christianity as the norm has been a salient theme in Jewish American fiction, the relationship between Blacks and Whiteness has had a prominent place in the literature of African Americans. Characters struggle with acknowledgment of their figurative families, and worry about what Whites will think of their relatives. Writers who focus attention on the family's "dirty linen" are accused of reinforcing racism. Indeed, racism raises the stakes for African American writers, creating a sense of urgency that the relatively privileged position of American Jews has dissipated.

One outgrowth of American racism has been a narrowing of options for Blacks who wish to shed the racial element of their identity. While American Jews have had the choice of assimilation, exit, or deception, the link between racism and readily discernible attributes such as skin color makes assimilation and exit much more difficult for African Americans.⁶² Historically, at least, assimilation and exit were choices for African Americans only where deception was also possible—i.e., when an African American could "pass" for White.⁶³ African American writers have explored the kind of acknowledgment that is necessary for a person who possesses such an option.

In this regard, consider the character Golden Gray from Toni Morrison's *Jazz*.⁶⁴ Gray is the offspring of a romance between a Black man and the daughter of a Confederate colonel. His color matches his first name—Golden. His father, for understandable reasons, has left the scene, and his mother keeps from him this half of his lineage. As a young man, Gray discovers this secret, which devastates him. He feels incomplete, like

Ellison's distance from younger generation of African American writers).

62. The rigid definition of race employed in the United States—particularly the view that any trace of Black ancestry made a person Black in the eyes of the law—has inspired resistance and critical analysis, as well as deception. See IAN HANEY-LOPEZ, *WHITE BY LAW* (1996); David Wilkins, *Introduction*, in K. ANTHONY APPIAH & AMY GUTMANN, *COLOR CONSCIOUS* 3 (1996); Adrienne Davis, *Identity Notes Part One: Playing in the Light*, 45 AM. U. L. REV. 695 (1996); Neil Gotanda, *A Critique of "Our Constitution is Color-Blind."* 44 STAN. L. REV. 1 (1991); D. Marvin Jones, *Darkness Made Visible: Law, Metaphor, and the Racial Self*, 82 GEO. L.J. 437 (1993).

63. For two recent works of non-fiction written by law teachers whose appearance might have allowed them to pass, see JUDY SCALES-TRENT, *NOTES OF A WHITE BLACK WOMAN: RACE, COLOR, COMMUNITY* (1995); GREGORY H. WILLIAMS, *LIFE ON THE COLOR LINE: THE TRUE STORY OF A WHITE BOY WHO DISCOVERED HE WAS BLACK* (1995).

64. TONI MORRISON, *JAZZ* (1992).

someone missing an arm. He leaves to search for his father, with the avowed intention of killing him. When the two meet, his father is blunt: "I know what you came for. To see how black I was."⁶⁵

Gray's father, Hunter, views Gray's mother as many have viewed Secretary Albright's parents, accusing her of willfully hiding the child's background from him so that he will be free from the inconvenience of membership in a subordinated group.⁶⁶ In response, Gray offers a justification analogous to the one provided by many on behalf of Albright's parents: "She protected me. If she'd announced I was a nigger, I could have been a slave."⁶⁷ Hunter replies that an acknowledgment of Blackness does not ineluctably lead to enslavement; there always have been free Black people, he asserts. Gray responds in the key of universalism sounded by Herbert Wechsler in his discussion of the Holocaust: "I don't want to be a free nigger, I want to be a free man."⁶⁸ "Don't we all," Hunter replies. "Be what you want—white or black. Choose."⁶⁹ While Gray's choice is left ambiguous, the reader learns that Gray does not make good on his intention to kill Hunter, who appears later in the novel.

Morrison's focus is on Gray's virtual acknowledgment of family, made before he even meets his father. As True Belle, his mother's servant, tells him as he gets ready for his journey into his past, "It don't matter if you do find [your father] or not; it's the going that counts."⁷⁰ Realizing True Belle's prediction, Gray saves a pregnant Black woman he finds lying unconscious in a ditch on his way to find his father. The woman turns out to be the mother of Joe, one of the two main characters in the novel. True Belle, who helped raise Gray, turns out to be the grandmother of Joe's future wife, Violet. Thus, but for Gray's decision to be a Good Samaritan for an unkempt Black woman lying on the side of the road, the plot, as well as Joe, might have been stillborn.

In telling Gray's story, Morrison seems to be suggesting the possibility of a kind of virtual acknowledgment. In this kind of acknowledgment, good works, and not express acknowledgment of family in and of itself, is the essence of salvation. Judy Scales-Trent says the same thing in talking about her missing great-uncle Charles, who apparently disappeared to try his luck at passing in the White world.

65. *Id.* at 172.

66. Hunter surmises, "She probably let you think [you were White]. Hoped you'd think it."
Id.

67. *Id.*

68. *Id.* at 173.

69. *Id.*

70. MORRISON, *supra* note 64, at 159.

Scales-Trent argues that passing probably hurt her great-uncle more than anyone else, by rendering him incomplete, severed from his own memories while keeping secrets from his old and perhaps his new family.⁷¹ Yet, finally, her hope for her great-uncle Charles is similar to Morrison's vision of Golden Gray—that he act as a Good Samaritan for Black people in desperate circumstances.⁷²

By this standard, Madeleine Albright is doing all she ever could, regardless of when she first had an inkling that she might be descended from Jews. Albright has not been a careerist or a practitioner of an amoral Realpolitik, à la Henry Kissinger, who became the first Jew to be appointed Secretary of State. Rather, Albright has viewed the Holocaust as central to her view of foreign policy, and human rights as an essential foreign policy precept. She meets the Good Samaritan test. Query, however, whether Bernard Malamud, who wrote of the disaster which befalls Freeman when he conceals his past in *The Lady of the Lake*, would think this virtual acknowledgment sufficient. Morrison's and Scales-Trent's visions of the incompleteness which follows from a failure of explicit acknowledgment suggest that they have the same concerns.

Parallels between Jewish American and African American literature are also manifest in the shame which some characters feel about other members of their figurative family. The notion of a *shanda for the goyim* which triggers Judge Wapter's letter to Nathan Zuckerman in Roth's *The Ghost Writer*, is chillingly present in Dr. Bledsoe from Ralph Ellison's *Invisible Man*. Bledsoe runs a college much like the Tuskegee Institute, which Booker T. Washington founded and Ellison attended.⁷³ Like German Jews seeking to disavow the Ostjuden, Dr. Bledsoe regards the poor Blacks who live near the college as embarrassments, who will discredit Blacks—and Bledsoe in particular—before the White man. Because of his concern for his position, Bledsoe is incensed when the novel's narrator, a promising student at the college, obeys the request of a White trustee, Mr. Norton, to see some of the less affluent sections of town.⁷⁴ Receiving the narrator in his office, Bledsoe asks, "Did you think

71. SCALES-TRENT, *supra* note 63, at 98.

72. *Id.*

73. Bledsoe's college features ubiquitous monuments to "the Founder," who, like the college and Ellison's narrator, is unnamed. See RALPH ELLISON, *INVISIBLE MAN* (Vintage Book ed. 1972).

74. Mr. Norton has gotten more than he bargained for, first in an encounter with the incestuous farmer John Trueblood, whom local Whites have made a kind of poster child for perceived Black depravity, and then in a fracas at a local bar with a troop of mentally ill Black war veterans. *Id.*

that White man had to come a thousand miles—all the way from New York and Boston and Philadelphia just for you to show him a slum?”⁷⁵ Making his concern about his White patrons even more explicit, Bledsoe remonstrates with the narrator for his naiveté in believing that Whites really seek candor and honesty from Blacks: “Why, the dumbest black bastard in the cotton patch knows the only way to please a white man is to tell him a lie!”⁷⁶ Far from forgetting the incident, Bledsoe expels Ellison’s narrator from the college. Bledsoe gives him a letter of introduction which, unbeknownst to the narrator, who is too honorable to peek at its contents, he has drafted to ensure that the narrator never finds a decent job.⁷⁷ In Bledsoe’s vision of family, honesty with outsiders is tantamount to treason against the race.

The Bledsoevian vision is not the only one. Possibilities for both acknowledgment and engagement exist. The latter is manifest in recent African American literature on patriarchy in the Black family. On this issue, actual and figurative families exhibit similar dynamics. Black artists, scholars and activists recently have become more vocal about the effect of patriarchy in Black communities, including both violence against women and sexual harassment in employment. These problems obviously are not unique to the Black community; they exist, for example, in the Jewish community as well.⁷⁸ However, the subordinated position of Black males in the general society makes discussion of such problems analogous to the *shanda for the goyim* dynamic described above in Jewish family discourse.

Engagement with patriarchy in African American literature has a long tradition. One of the most compelling account is from Zora Neale Hurston, in her classic novel, *Their Eyes Were Watching God*.⁷⁹ Hurston’s heroine, Janie, travels through the book reaching for the light, like the pear tree she admired as a girl.⁸⁰ Janie’s grandmother, however, thinks that such ambitions are at best naive, and at worst, dangerous. She offers a more sober-minded assessment, centered on what Critical Race scholars would later call the “intersection” of race and gender:

75. *Id.* at 136.

76. *Id.* at 137.

77. *Id.* at 187.

78. See Horsburgh, *supra* note 58. Of course, patriarchy constitutes a continuum of practices and belief-systems of which overt violence is only one part. In a more subtle way, for example, when I view taking care of my daughters, Sarah and Emma, as “helping” my wife Ellen, instead of simply doing what a parent does, I reinforce patriarchy, or at least perpetuate it. See MARTHA FINEMAN, *THE NEUTERED MOTHER, THE SEXUAL FAMILY AND OTHER TWENTIETH CENTURY TRAGEDIES* (1995).

79. ZORA NEALE HURSTON, *THEIR EYES WERE WATCHING GOD* (1937).

80. *Id.* at 24.

Honey, de white man is de ruler of everything as fur as Ah been able tuh find out. Maybe it's some place way off in de ocean where de black man is in power, but we don't know nothin' but what we see. So de white man throw down de load and tell de nigger man tuh pick it up. He pick it up because he have to, but he don't tote it. He hand it to his womenfolks. De nigger woman is de mule uh de world so fur as Ah can see.⁸¹

Those who would make the figurative family a restrictive arena, like those who believe that women's self-assertion threatens values in the close family, have objected to Black women airing concerns about patriarchy. As a result, writers like Alice Walker, whose book, *The Color Purple*, portrays the struggle of a Black woman, Celie, to survive and prevail in the face of violence, have been viewed as disloyal.⁸² These writers have persisted in their engagement with the issue of patriarchy, not out of a sense that they can somehow divorce their identity as women from their identity as Blacks, but out of a conviction that these two strands of identity inevitably intertwine.

VI. AFRICAN AMERICAN LEGAL SCHOLARSHIP AND THE FIGURATIVE FAMILY

African American legal scholars have also evoked the figurative family. For the most part, however, like some younger Jewish legal

81. *Id.* at 29.

82. See Linda Ammons, *Mules, Madonnas, Babies, Bathwater, Racial Imagery and Stereotypes: The African-American Woman and the Battered Woman Syndrome*, 1995 WIS. L. REV. 1003; Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991); Angela Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 599-601 (1990). A comparable dynamic manifested itself in the Black community with regard to the sexual harassment accusations made against Clarence Thomas by Anita Hill. Discussion of other "isms" in the Black community has also inspired debate. See Harlon Dalton, *AIDS in Blackface*, in THE AIDS READER: SOCIAL, POLITICAL, AND ETHICAL ISSUES 127 (Nancy F. McKenzie ed., 1991) (homophobia); Stephen L. Carter, *Loving the Messenger*, 1 YALE J. L. & HUMAN. 317 (1989) (anti-Semitism); Lisa C. Ikemoto, *Traces of the Master Narrative in the Story of African American/Korean American Conflict: How We Constructed "Los Angeles"*, 66 S. CAL. L. REV. 1581 (1993) (anti-Asian sentiment); Reginald C. Robinson, *"The Other Against Itself": Deconstructing the Violent Discourse Between Korean and African-Americans*, 67 S. CAL. L. REV. 15 (1993) (anti-Asian sentiment). Commentators have argued that both Blacks and groups distrusted by some members of the Black community should acknowledge their own biases and the role of inter-group conflict in buttressing the American culture of White supremacy. See Ikemoto, *supra*; Robinson, *supra*; cf. MICHAEL ROGIN, BLACKFACE, WHITE NOISE: JEWISH IMMIGRANTS IN THE HOLLYWOOD MELTING POT 16 (1996) (analyzing connections between Jewish American identity and depiction of Blacks in American movies).

scholars,⁸³ this image has been portrayed in a more eclectic and less restrictive fashion. For example, African American legal scholars have condemned bigotry and gratuitous violence wherever they find it, including in the Black community. Yet, African American scholars for the most part have resisted the appeal of a bleached-out universalism.

Interestingly, however, where such universalism has appeared, it has often sounded in the same key as some of the more restrictive *shanda for the goyim* visions of family previously described. Similarly, White scholars critiquing African American legal scholarship have not picked up on the ties between universalism and restrictive family notions. For mainstream White scholars, a universalist discourse, with its bows toward tolerance and civility, could not possibly be oppressive. Indeed, mainstream scholars have accused Black *opponents* of universalism of a *shanda for the goyim* mentality.

A good example here is the controversy surrounding Randall Kennedy's article, *Racial Critiques of Legal Academia*.⁸⁴ Kennedy, in this well-known piece, invokes Ralph Ellison as part of his critique of the explicit racial identification of Critical Race scholars.⁸⁵ Critical Race scholars have argued that their experience with subordination yields insights which are less readily available to scholars from mainstream backgrounds.⁸⁶ Rather than commit themselves to a neutral, universalist ethos of doctrinal or empirical scholarship, Critical Race scholars straightforwardly herald how race and other factors compromise claims to

83. See Winter, *supra* note 58.

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

85. *Id.*

86. See DERRICK BELL, AND WE ARE NOT SAVED (1987); DERRICK BELL, CONFRONTING AUTHORITY: REFLECTIONS OF AN ARDENT PROTESTER (1994); DERRICK BELL, FACES AT THE BOTTOM OF THE WELL (1992); KIMBERLÉ CRENSHAW ET AL., CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT (1995); RICHARD DELGADO, THE RODRIGO CHRONICLES (1995); MARI J. MATSUDA ET AL., WORDS THAT WOUND: CRITICAL RACE THEORY, ASSAULTIVE SPEECH, AND THE FIRST AMENDMENT (1993); PATRICIA WILLIAMS, THE ALCHEMY OF RACE AND RIGHTS: DIARY OF A LAW PROFESSOR (1991); PATRICIA WILLIAMS, THE ROOSTER'S EGG (1995); Alex M. Johnson, Jr., *The New Voice of Color*, 100 YALE L.J. 2007 (1991); Kennedy, *supra* note 84; Michael A. Olivas, *The Chronicles, My Grandfather's Stories, and Immigration Law: The Slave Traders Chronicle as Racial History*, 34 ST. LOUIS U.L.J. 425 (1990); cf. GARY MINDA, POSTMODERN LEGAL MOVEMENTS: LAW AND JURISPRUDENCE AT CENTURY'S END (1995) (situating outsider scholarship, law and economics, and other bodies of work in context of legal academia); Kathryn Abrams, *Hearing the Call of Stories*, 79 CAL. L. REV. 971 (1991) (discussing, inter alia, feminist scholarship); Deborah Rhode, *Feminist Critical Theories*, 42 STAN. L. REV. 617 (1990) (same); William N. Eskridge, *Gaylegal Narratives*, 46 STAN. L. REV. 607 (1994) (discussing outsider scholarship focusing on gays and lesbians); Marc Fajer, *Can Real Men Eat Quiche Together? Storytelling, Gender-Role Stereotypes, and Legal Protection for Lesbians and Gay Men*, 46 U. MIAMI L. REV. 511 (1992) (same).

neutrality. Addressing the impact of these factors makes a more particular or “positional” perspective both valuable and necessary. Kennedy, while acknowledging that race can make a difference in certain areas,⁸⁷ rejects the positionality of Critical Race scholars.

What is most interesting for our discussion of figurative family is Kennedy’s deployment of Ralph Ellison’s work. Kennedy takes for his epigraph Ellison’s observation that, “[p]erhaps the most insidious and least understood form of segregation is that of the word.”⁸⁸ Ellison insisted on depicting the craft, discipline, and diversity that pervade African American culture, as well as the racism imposed on African Americans by Whites. In Ellison’s work, one finds repeated warnings about the dangers of “sociologizing” the African American experience by stressing the second theme and slighting the first. Kennedy, to buttress his argument, also notes Ellison’s acknowledged debt to White modernist writers like T.S. Eliot, Ezra Pound, Gertrude Stein, and Ernest Hemingway.⁸⁹ In short, Kennedy portrays Ellison as an apostle of neutrality who views race or ethnicity as incidental, much as Herbert Wechsler contended that the victims of the Holocaust happened to be “Jewish People.”

Kennedy’s acknowledgment of Ellison is itself a gesture in the key of family. His homage to Ellison reflects a link across generations of African American, indeed American, culture. Unfortunately, his reading of Ellison is incomplete.

Ellison’s position was a good deal more complex than the ode to neutrality described by Kennedy. Consider Ellison’s views on the relationship between art and racial identity: “[I]t is through the process of making artistic forms . . . out of one’s experience that one becomes a writer, and it is through this process, this struggle, that the writer gives meaning to the experience of the group.”⁹⁰ Ellison understood the intertwining of artistic and group identity, which Kennedy is reluctant to acknowledge. Similarly, Kennedy regards the Critical Race Theory critique of White civil rights scholarship as merely a skirmish in a racialized turf war.⁹¹ He views race as largely irrelevant to the issue of whether one’s scholarship encompasses the aspirations of subordinated groups. In contrast, Ellison forthrightly asserted that writers from other American ethnic groups, including Jews, “do not speak adequately for me

87. Kennedy, *supra* note 84, at 1816.

88. *Id.* at 1745 (citing RALPH ELLISON, *SHADOW AND ACT* 24 (Vintage Books ed. 1972)).

89. *Id.* (citing RALPH ELLISON, *SHADOW AND ACT* 116 (Vintage Books ed. 1972)).

90. *See* ELLISON, *supra* note 59, at 146.

91. Kennedy, *supra* note 84, at 1788–1801.

or for Negroes generally."⁹² Yet, Ellison also acknowledged that the experience of subordination could provide a bond between different groups, such as Blacks and Jews.⁹³ While Kennedy in *Racial Critiques* derogates the significance of subordination as an element in the making of legal scholarship, Ellison is better viewed as acknowledging that experiences of subordination are part, although not the sole part, of the dynamic process of creation. Certainly, it would be difficult to argue that *Invisible Man* is about a person who "just happens" to be Black. Rather, it is about the rigors of reconciling identity and humanity in a world that ascribes the former to Blacks only in stereotyped terms, and steadfastly denies Blacks the latter.

While mainstream White scholars have labeled Critical Race theorists' intense objections to Kennedy's piece as evidence of a figurative family stifling internal dissent,⁹⁴ Kennedy's incomplete reading of Ellison suggests a different analysis. One can argue just as easily that Kennedy's stance echoes the posture of Ellison's most frightening fictional creation, Dr. Bledsoe of *Invisible Man*. Because Kennedy does not dispute that race can make a difference in certain instances,⁹⁵ his argument, like Bledsoe's, is basically a prudential one—that robust discussion of the difference race makes will strike Whites as merely playing the "race card."⁹⁶

Kennedy's fear is that Whites will view African Americans not as legitimate scholars but as the academic equivalent of Bledsoe's image of the impoverished Blacks whom Ellison's protagonist shows to the White trustee.⁹⁷ Like the impoverished Blacks whom Bledsoe despises, Kennedy views Critical Race scholars as having "dragged the entire race into the slime."⁹⁸ Unlike Bledsoe, Kennedy is quite straightforward in his criticism.⁹⁹ Kennedy acknowledges links between his views on issues like

92. RALPH ELLISON, *GOING TO THE TERRITORY* 279 (Vintage Books ed. 1995).

93. See ELLISON, *supra* note 59, at 117.

94. See Farber and Sherry, *Telling Stories Out of School*, *supra* note 46, at 843 n.186; see also BELL, *supra* note 86, at 110–11 (describing Kennedy's reaction to students who believed that he "thought white").

95. Kennedy, *supra* note 84, at 1816.

96. *Id.* at 1809.

97. Other scholars have noted that the debate about merit between Kennedy and Critical Race scholars is itself a kind of show for White people, like the humiliating free-for-all among Black men staged by White movers and shakers as entertainment fit to follow a stripper in the early pages of *Invisible Man*. See Abrams, *supra* note 84, at 995–98 (citing Patricia Williams, *The Obliging Shell: An Informal Essay on Formal Equal Opportunity*, 87 MICH. L. REV. 2128 (1989)).

98. ELLISON, *supra* note 60, at 138.

99. Recall that Bledsoe first harangues Ellison's hero and then offers to help him get settled in New York. Ellison's protagonist only finds out much later that Bledsoe's letter of introduction

Black-on-Black crime and what Regina Austin has called the "politics of distinction," the position that a "difference exists between the 'better' elements of [the African American community] and the stereotypical 'lowlifes' who richly merit the bad reputations the dominant society accords them."¹⁰⁰ It is only a modest leap to view Kennedy's *Racial Critiques of Legal Academia* as rendering a similar tableau in the context of academia: Kennedy and a group of like-minded Black scholars doing relatively traditional work in the universal, neutral tradition stand apart from the intellectual lowlifes who in Kennedy's view cheapen intellectual discourse by making race an "intellectual credential."¹⁰¹ Under this view, Kennedy, not his critics, is invoking a restrictive notion of figurative family to pigeon-hole his opponents.

It would be unfair, however, to view Kennedy as a modern-day Bledsoe. Bledsoe seemed ultimately to care far more about self-aggrandizement than about racial uplift. Indeed, at one point in his colloquy with Ellison's narrator, Bledsoe inserts himself into a metaphor usually used for God, fate and the status quo.¹⁰² In contrast, Kennedy's focus, like Ellison's, has always been on enhancing citizenship for African Americans, and on avoiding the devaluation of Black life and achievement. Ironically, one of the most vivid examples of Kennedy's engagement on these issues is in his discussion of Black-on-Black crime, where he comes closest to explicitly adopting Austin's "politics of distinction," with its separation between deserving and undesirable elements in the African American community.

The very act of discussing Black-on-Black crime is, for Kennedy and other more radical outsider scholars like Regina Austin and Paul Butler, a challenge to the notion of shame before the majority. For African Americans, an association with crime has triggered oppressive stereotypes, much as images of avarice and materialism have helped fuel anti-Semitism. Bledsoe's response to Black-on-Black crime was to cover it up, to avoid disillusioning his powerful White allies. In contrast, Kennedy confronts the issue.

Kennedy's essential point is one that Ellison could easily have made. For Kennedy, scholars who focus more on Black defendants than on Black

is in fact a warning to potential employers.

100. See Randall L. Kennedy, *The State of Criminal Law, an Racial Discrimination: A Comment*, 107 HARV. L. REV. 1255, 1260 n.20 (1994) (citing Regina Austin, "The Black Community," *Its Lawbreakers, and the Politics of Identification*, in AFTER IDENTITY 143, 145 (Dan Danielson & Karen Engle eds. 1995)).

101. See Kennedy, *supra* note 84, at 1801-07.

102. "Your arms are too short to box with me, son," Bledsoe cautions. ELLISON, *supra* note 60, at 142.

victims in effect are “sociologizing” Black-on-Black crime. These scholars are pouring the diverse dynamics of crime—including desperation and resentment, but also greed, macho posturing, and peer pressure—through the funnel of racism. Yet, Kennedy’s larger point is that the radical scholars’ focus on defendants obscures other forms of racism, including powerful Whites’ indifference to law enforcement in Black communities. Kennedy asserts that law enforcement authorities historically have not cared about Black victims.¹⁰³ To the extent that his argument is with the essentializing of Black crime as a reaction to racism, and the obscuring of other aspects of Black life, including Black victimization by crime, which occurs as a consequence, Kennedy’s argument tracks Ellison’s.

The encouraging aspect of the Black-on-Black crime debate is that even opponents of Kennedy’s are engaging in a frank discussion in a medium—the law reviews—which is read by an audience of people both in and outside of the figurative family of African Americans. For example, Regina Austin and Paul Butler both practice what Austin describes as a culture of identification which acknowledges kinship with African American lawbreakers.¹⁰⁴ Yet both also agree with Kennedy that many African American lawbreakers victimize other members of the African American community, and that the criminal justice system legitimately undertakes to punish these offenders.¹⁰⁵

Conversely, even Kennedy practices some politics of identification with offenders, albeit of a skeptical sort. Describing a possible case of race-based jury nullification in the District of Columbia, Kennedy deplors this result, yet offers an explanation for the jury’s verdict remarkably similar to the discretionary approach outlined by Butler: “Perhaps the nullifiers believed that this particular defendant, even if guilty, would no longer engage in criminal conduct or that the misery created by such

103. Indeed, Kennedy has argued elsewhere, that this is the primary problem with the current administration of the death penalty: defendants, including Blacks, who kill Blacks are far less likely to receive the death penalty than are those who kill Whites. See Randall L. Kennedy, *McCleskey v. Kemp: Race, Capital Punishment, and the Supreme Court*, 101 HARV. L. REV. 1388 (1988).

104. Ellison also acknowledges more kinship than Kennedy in this respect. See ELLISON, *supra* note 92, at 300. See Austin, *supra* note 100; Paul Butler, *Racially Based Jury Nullification: Black Power in the Criminal Justice System*, 105 YALE L.J. 677 (1995).

105. Where Austin and Butler differ is on issues like the intent of those who make and enforce the laws, and the degree of discretion to hold harmless some lawbreakers in situations where, in an era of draconian sentencing, the punishment seems out of proportion to the crime. Kennedy’s conservatism on the intent issue, particularly with reference to disparities in sentencing between crack and powdered cocaine defendants, is particularly odd given his focus on the Supreme Court’s disregard of statistics on death penalty disparities in *McCleskey v. Kemp*, 481 U.S. 279 (1987).

conduct is less costly than the misery created by sending yet another young black man to prison.”¹⁰⁶ In this sense Kennedy approaches the rueful identification practiced by Ellison, who refuses to disown even the incestuous John Trueblood, and acknowledges of the most hapless Black people on the street, “[T]hat’s you too, Ellison.”¹⁰⁷

As Ellison notes, however, this kinship should include race, but also speak of a common humanity—“an identification which goes beyond race.”¹⁰⁸ Acknowledging where you are and where you come from, on this view, does not preempt a different acknowledgment from others, but rather encourages it by example. In this way acknowledgment of both actual and figurative family promotes an inclusive society.

VII. CONCLUSION

One way in which Jewish people acknowledge family ties is by naming children after relatives who have passed away, often using initials. My older daughter, Sarah Diane, is named after my grandfather, David Solomon. In the world of relative ease which my wife and I inhabit with our children, this acknowledgment was a modest way of recognizing a different world, in which Jews had to hold figurative family at arm’s length.

This acknowledgment must inspire engagement in the pursuit of justice. In this respect, the current moment poses challenges for Jews. As writers like Roth have noted, the prosperity of life in America for Jews can dull a central legacy of the Jewish diaspora: what Robert Burt, writing about Louis Brandeis, described as a “passionate identification with the outcast.”¹⁰⁹ Living in a diasporated world, according to Arendt, the outcast has a special perspective: in a shipwreck, it is “the position on the ‘top of the mast’ from which the tempestuous times . . . [can] be surveyed better than from a safe harbor.”¹¹⁰ Those who believe they are safe can rapidly lose this perspective on their past. Without engagement in outsiders’ quest for equity, the Jewish acknowledgment of roots is empty.

The confluence of engagement and acknowledgment is even clearer for the Critical Race scholars. Unlike most Jews, but like other people of

106. Kennedy, *supra* note 100, at 1260 n.21. Kennedy also credits Austin with influencing his own approach. *Id.* at 1274 n.83.

107. ELLISON, *supra* note 92, at 300.

108. *Id.*

109. BURT, *supra* note 58, at 122.

110. See ARENDT, *supra* note 9, at 175.

color in America, they contend with the “indignities du jour”¹¹¹ which reinforce racial domination. These “microaggressions”¹¹² range from stops by the police, to the watchful stares of store clerks, to the assumption at schools in predominantly White neighborhoods that women of color arriving to pick up their own children are baby-sitters.¹¹³ For scholars of color, like Randall Kennedy, Regina Austin, and Paul Butler, who may disagree about many matters, the need to match acknowledgment with engagement is manifest. As Ralph Ellison put it, “I have to *affirm* my forefathers and *I must* affirm my parents or be reduced in my own mind to a White man’s inadequate . . . conception of human complexity I must affirm those unknown people who sacrificed for me.”¹¹⁴

Ellison’s assertion that one must acknowledge those one has never had the opportunity to know applies to both Madeleine Albright and me. While Albright never had the opportunity to get to know her grandparents, stories of their lives can still be meaningful to her. This has been true in my experience, as a story from my mother’s side of the family suggests.

When I was a boy, my maternal grandmother, Erna, told me a great deal about her brother, Manek, who had been killed by the Nazis. As a boy, Manek had been a superb student at the high school or “gymnasium” (pronounced by my grandmother in the European fashion with a hard “g”). As I wrote this article, my mother told me that Manek went on to study antiquities in Italy, and became an engineer. Many years after Manek’s death in World War II, my grandmother accompanied our family on a trip to Italy, although she rarely traveled and was suspicious of airplanes. We visited the Colosseum and the other great ruins of Rome. My mother told me that my grandmother joined us in part to retrace her brother’s steps, and make peace with her own memories. We visited the colosseum and the

111. See Patricia J. Williams, *Notes from a Small World*, NEW YORKER, Apr. 29 & May 6, 1996, at 87, 92.

112. See Peggy C. Davis, *Law as Microaggression*, in CRITICAL RACE THEORY: THE CUTTING EDGE 169 (Richard Delgado ed., 1995).

113. See Williams, *supra* note 111, at 92. “We don’t say anything—we’re just accustomed to it,” Williams’ classmate observes. *Id.* Along similar lines, consider the story of Isabel Wilkerson, a New York Times reporter returning from a trip to Europe with her husband after the explosion off Long Island of T.W.A. Flight 800. “Increased security” in the wake of this disaster translated into Customs officials at Chicago’s O’Hare Airport singling out Wilkerson and her husband—the only African Americans whom Wilkerson had noticed on the flight—for an intrusive, 45-minute search. See Isabel Wilkerson, *A Passenger Lands Safe, and Sorry*, N.Y. TIMES, Aug. 4, 1996, at E3.

114. ELLISON, *supra* note 92, at 287. This acknowledgment coupled with engagement is a central gesture in Critical Race Theory. See Jerome M. Culp, Jr., *Autobiography and Legal Scholarship and Teaching: Putting the Me in the Legal Academy*, in CRITICAL RACE THEORY: THE CUTTING EDGE 409 (Richard Delgado ed. 1995).

other great ruins of Rome. After the trip, my grandmother discovered what she probably knew already—that memories do not rest that easily. But she clearly felt the journey was worthwhile.