

## Abortion of Narrative:

### A Reading of the Judgment of Solomon

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Among the earliest judicial “speech-acts” recorded in Western law is the first judgment of Solomon, of which the well-known account is given in *The First Book of Kings*.<sup>1</sup> I suggest that examination of Solomon’s judgment may be instructive in illuminating in a highly general way the processes that operate in contemporary judicial determinations relating to women as mothers and as non-mothers—i.e., determinations covering the full range of issues often designated as relating to “reproduction”—which include the female act of gestation; the process of giving birth; the totality of physical intimacies implicated in the care extended to dependent infants and children; the issue of abortion; and the riddles raised by reproductive technology.

The Biblical narrative of Solomon’s judgment has long been accepted as a paradigmatic account of “justice” and of “wisdom.”<sup>2</sup> It has constituted a most major contribution to the constructions of motherhood and of female nature that underlie and are embedded in the institutions of Western culture.

My purpose in reading Solomon’s judicial speech-act is to look anew at an adjudication accomplished by word and by sword directed toward and against female—and specifically maternal—bodies. I propose my reading and interpretations as relevant for contemporary judicial determinations relating to issues of human sexuality, determinations that often impede or threaten to sever communitarian bonds—including bonds among women.

In undertaking this task, I adopt as my definition of “reading” one proposed by Roland Barthes—that reading consists of “. . . rewriting the text of the work within the text of our lives.”<sup>3</sup> The method that I have adopted is a careful reading of the text; a situation of the text (a placing of it in con-text);

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1. I have chosen to consider the King James version, rather than recent translations of the Bible, in the belief that the former, perhaps largely because of its intertextual connections with other literature, continues to be the account most familiar to contemporary readers.

2. An uncritical acceptance of “the wisdom of Solomon” is apparent in the legal-professional as well as in the more general culture. Law professors often introduce the study of evidence with examination of the judgment of Solomon. See ERIC D. GREEN & CHARLES R. NESSON, PROBLEMS, CASES AND MATERIALS ON EVIDENCE 4 (1983); JOHN KAPLAN & JON R. WALTZ, CASES AND MATERIALS ON EVIDENCE 64 (6th ed. 1987).

3. Roland Barthes, *Day by Day with Roland Barthes*, in ON SIGNS 101 (Marshall Blonsky ed., 1985).

and an attempt to make the text my own by raising against it certain questions of importance to me.

I will begin by examining the Biblical account. That narrative records that Solomon acceded to the throne of Israel at the time when King David was old and approaching the end of his 40-year reign, and when Solomon's position was threatened by a competing claim of Adonijah to the throne and by Adonijah's military force. At the time of Solomon's ascendancy, the temple had not been constructed in Jerusalem, and, for that reason, the Biblical writer notes, "the people sacrificed in high places,"<sup>4</sup> i.e., upon the mountainsides. Indeed, Solomon, while faithful to the "statutes" of the God of David his father, himself frequented the mountain shrines. The writer records: "Solomon loved the Lord, walking in the statutes of David his father: only he sacrificed and burnt incense in high places."<sup>5</sup>

The text records that the greatest of the mountain worship-sites was Gibeon; that Solomon went to Gibeon to worship; and that while there he offered "a thousand burnt offerings"<sup>6</sup> upon the altar. During his stay at Gibeon, Solomon had a dream. In that "dream by night"<sup>7</sup> the Lord appeared to Solomon and invited him to make a request for some gift.

In response to that invitation, Solomon mused upon his kingly role, expressing both gratitude for the kindness of God that had placed him upon the throne and misgivings about his own competencies. Expressing feelings of uncertainty and powerlessness, Solomon likened himself to a child that "know[s] not how to go out or come in."<sup>8</sup> Solomon expressed wonder at the greatness and the multitudinousness of the people of Israel. Questioning, "Who is able to judge this thy so great a people?"<sup>9</sup> he made his request for "an understanding heart to judge thy people, that I may discern between good and bad."<sup>10</sup>

Thereupon, within the dream, Solomon heard the assurances of the Lord that his request was granted, that an understanding to discern judgment was bestowed upon him, an understanding so singular that "there was none like thee before thee, neither after thee shall any rise like unto thee."<sup>11</sup>

It was not only the power of judgment that was bestowed upon Solomon. An additional, though conditional, promise was made, the promise that long life would be afforded Solomon, on condition that he keep the "statutes" and the "commandments" as kept by David. The implication that "keeping the commandments" should preclude "mountain worship" becomes obvious in the text's recording that after hearing these words, Solomon awoke from his dream

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4. 1 *Kings* 3:2 (King James).

5. *Id.* at 3:3.

6. *Id.* at 3:4.

7. *Id.* at 3:5.

8. *Id.* at 3:7.

9. *Id.* at 3:9.

10. *Id.*

11. *Id.* at 3:12.

and went immediately to Jerusalem to stand before the site of the Ark of the Covenant to offer burnt offerings and “peace offerings.”<sup>12</sup> At the same time—seemingly in celebration of the dream, the gift of the Lord, and the promised gift—Solomon “made a feast to all of his servants.”<sup>13</sup>

It is immediately after these events, the text discloses, that there came in two women, nameless, who were “harlots” and who stood before the king. This is the precise language of the text:

Then came there two women, that were harlots, unto the king, and stood before him. And the one woman said, O my lord, I and this woman dwell in one house; and I was delivered of a child with her in the house. And it came to pass the third day after that I was delivered, that this woman was delivered also: and we were together; there was no stranger with us in the house, save we two in the house. And this woman’s child died in the night; because she overlaid it. And she arose at midnight, and took my son from beside me, while thine handmaid slept, and laid it in her bosom, and laid her dead child in my bosom. And when I rose in the morning to give my child suck, behold, it was dead: but when I had considered it in the morning, behold, it was not my son, which I did bear.

And the other woman said, Nay; but the living is my son, and the dead is thy son. And this said, No; but the dead is thy son, and the living is my son. Thus they spake before the King.

Then said the king, The one saith, This is my son that liveth, and thy son is the dead: and the other saith, Nay; but thy son is the dead, and my son is the living.

And the king said, Bring me a sword. And they brought a sword before the king. And the king said, Divide the living child in two and give half to the one, and half to the other.

Then spake the woman whose the living child was unto the king, for her bowels yearned upon her son, and she said, O my lord, give her the living child, and in no wise slay it.

But the other said, Let it be neither mine nor thine, but divide it.

Then the king answered and said, Give her the living child, and in no wise slay it; she is the mother thereof.

And all Israel heard of the judgment which the king had judged; and they feared the king: for they saw that the wisdom of God was in him, to do judgment.<sup>14</sup>

This text sets forth both the first words of command uttered by Solomon after

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12. *Id.* at 3:15.

13. *Id.*

14. *Id.* at 3:16-28.

he was given the gift of judgment: "Bring me a sword;" and the first judgment: "She is the mother." These speech-acts, recording the judgment of women in terms of their maternity and non-maternity, constitute a rich text for ethnological, psychoanalytic, and linguistic deconstructions. The reading that I propose occurs within a structure of several questions. I will address the text through these questions, which, I propose, are relevant to contemporary judicial determinations relating to "reproduction." My questions are the following: In each case, who judges and who is judged? In each context, what interplays of word and sword, of narrative and force, are operative? In each context, what questions are answered by judicial speech-acts; or, how do judgments function as elements in social discourse? And, in each context, which inquiries are avoided, which questions suppressed, by judicial speech-acts?

It is my contention that the constructive judicial activities recorded both in Solomon's act and in contemporary practice constitute misogynistic processes; that all involve extreme, violent, and highly premature abortions of female narrative; that they involve harsh erasures of female subjectivities.

As to the question "Who judges?", the answer would seem clear and simple: It is Solomon. But is it Solomon? Or is it "God," whose "wisdom" the people discern in Solomon? Or is it some theretofore untapped power of Solomon, one released in his nighttime dreaming on the hillside at Gibeon? What is the source of authority, the foundation of authority, of the judge-king Solomon? How does he stand relative to those judged, to the nameless women introduced as the first subjects—or indeed objects—of his judgment?

Solomon, as already suggested, was a king facing particular challenges to his authority and to his nationalizing project. Ascending to the kingship at a time when a monotheistic, patriarchal, and nationalistic Judaic culture had not achieved strong stability but was still constituting itself, still struggling to resist the pulls and threats of surrounding and not-yet-fully-overcome female, matriarchal, polytheistic, and local cultures,<sup>15</sup> Solomon had the task of ruling over a multitudinous and diverse people whose unity continued to be threatened or destabilized by the persisting attraction of female rites, of matriarchally-marked modes of worship that persisted in proximate and competing cultural structures. Within those structures, the power of judgment, the power to determine life and death, attached imaginatively and socially to institutions and mythologies that valorized motherhood rather than to such patriarchal structures as supported the Judaic judge-king. The local and cyclical knowledges of small agrarian communities attached to largely female fertility deities have been the subject of much commentary,<sup>16</sup> as has what some commentators would characterize as the "darker" side of those cultures,

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15. For a discussion of the encounter of Judaic culture with matriarchal polytheisms, see MERLIN STONE, *WHEN GOD WAS A WOMAN* (1976); see also MARY DOUGLAS, *PURITY AND DANGER* (1966).

16. See, e.g., DOUGLAS, *supra* note 15; JULIA KRISTEVA, *POWERS OF HORROR* 90-112 (1982).

specifically, their sacrificial practices: their toleration of ritualistic exercises of deadly and perhaps even murderous power by “mothers” or by those acting in the name of the “Mother.”

Anthropologist Mary Douglas has discussed the operation of Biblical law—emphasizing texts of Leviticus and Deuteronomy—that preceded the Solomonic period.<sup>17</sup> She has seen that law as making operative a cultural transition from sacrificial murder to taboo. The reading of Solomon’s judgment requires attention to the shape and to the functions of that precedent law. Douglas and other writers have identified in Biblical texts strong connections between laws defining dietary prohibitions and those proscribing contact with maternal bodies. They have read in the texts a prescribed ab-jection of mothers and an insistent separation/differentiation of male and female advanced by the definition of maternal bodies as horrific.<sup>18</sup>

And who is judged? Two unnamed women. Two “harlots.” The text reveals of their lives and their circumstances no more than it does their names. It offers no suggestion concerning the motivation of their dispute, no account of the cultural realities that might lead one woman to claim as her own the male child of another.

The text offers no account of why the two women dwelled “in one house.” Neither does it give account of the nature of their “harlotry.” Were they “ordinary whores”? Or were they “ritual prostitutes” devoted to fertility goddesses and having the role of assisting young men to overcome fear of defloration? Or may they have been, perhaps, patrilocal wives—women wedded to different men but continuing to reside in the house of their father?<sup>19</sup> Could these two dwellers within a single household have even, perhaps, been sisters? Our access to the subjectivities of the women is highly constrained by the method of Solomon’s adjudication, the apparent—indeed, highly visible—interplay of word and sword.

This raises the second question: What does the text disclose of the interplay of force and narrative in law? The text records a narration by nameless women of apparently conflicting facts, their debate in the king’s presence. It records Solomon’s response to the discourse of argument. Solomon recites the opposing and contradictory propositions; he observes: “The one saith, This is my son that liveth, and thy son is the dead; and the other one saith, Nay, but thy son is the dead, and my son is the living.” In response to that

17. DOUGLAS, *supra* note 15, at 113-121.

18. See KRISTEVA, *supra* note 16, at 105. Kristeva argues that the text of *Deuteronomy* 14:21 which specifies, “Thou shalt not seethe a kid in his mother’s milk,” is not merely a dietary proscription but is also a metaphor of incest.” *Id.* at 105. She identifies similar prohibitions of incestuous contact with the mother’s body in texts that enjoin the removal from a nest of a mother along with her young or eggs, *Deuteronomy* 22:6-7, or that mandate against sacrificing on the same day a cow or a ewe with her young, *Leviticus* 22:28. Violation of such prohibitions, Kristeva urges, would amount to setting up an “abnormal bond between mother and child,” defying the strict requirement of clear separation of child from mother. *Id.*

19. For a discussion of ritual prostitution and of patrilocalty of wives, see MIEKE BAL, *LETHAL LOVE* (1987).

contradiction, Solomon articulates his first speech-act, the order and command, in which meaning cannot be separated from power: "Bring me a sword."

In order to break the impasse of disputation, Solomon invoked and displayed before the nameless women, and before the attendant observers, a show of his power, accompanied by a threat of violence, indeed of murder. And the effect of that show of power is the erection of a particular truth. The display of violence commanded from the nameless women utterances which, the text asserts, disclosed their true natures. One woman is, by her utterance, disclosed to the reader as the "true mother"—self-sacrificing, nurturant, protective of the male child. The other, by her utterance, is disclosed as "non-mother"—assessor to violence, endorser of infanticide. In textual omniscience, the writer assures that the true mother was constrained from her original selfish assertion, her proprietary claim, by a particular "yearning of her bowels."

That phrase, the "yearning of her bowels," signals its own significance. The assertion that the woman yearned, and how she yearned, might seem, necessarily, interpretations, extrapolations from the woman's words, readings of the woman in which the reader/writer of the Biblical text was himself active. But the text itself, by its inscription of causality, defines the text-writer's act not as "interpretation," not as "construction"—but as statement of Truth. Indeed, it is written that it was *because* of her bodily yearning that the one woman was willing to sacrifice her own self-definition as mother. That "yearning"—a yearning tied to self-subjugation; a yearning expressing a limited and utterly non-transgressive eroticism detached from tendencies toward possession and power; a yearning profoundly self-abrogating in its willingness to surrender self-definition; a highly circumscribed and specified yearning—is honored and valorized by the Solomonic judgment.

The two women judged, then, are defined not only by utterances but by the bodily process to which those utterances are determined to be attached. The "true mother" reveals herself in her biology as well as in her comporting words—she is "mother" by nature as well as by culture. The true mother exists as the true mother because of her true biology—it would be "unnatural" if either her biological drives or her words appeared to consent to destruction of the child's life. The Solomonic text constructs a "shall be" echoing the "shall be" of Genesis: "Thy desire shall be to thy husband."<sup>20</sup> It decrees that the erotic yearning of the true mother *shall be* altruistic, self-sacrificing, and deferential to the well-being of her (not incidentally male) child. The judgment valorizes as "natural" a non-transgressive and highly acculturated activity.

Solomon's judgment, the text records, established the king's power through "all Israel." And upon his judgment, people "feared the king: for they saw that the wisdom of God was in him, to do judgment."<sup>21</sup> That is, Solomon's determination was seen as expressing the power and the wisdom of God; his

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20. *Genesis* 3:16.

21. *1 Kings* 3:28.

determination became Truth—not as construct but as manifestation of divine wisdom, an edict uttering truths of human nature and, especially, of female nature. The interplay of word and sword contributed significantly to the elaboration of a particular discourse of gender and sexuality. And the phallic sword-blade somehow seems to operate, here, not as the instrument of sheer force, which it is, but as the mirror of nature. How has that happened?

That question is itself perhaps best answered by the raising of two conjoined inquiries: What questions are answered by Solomon's judgment? And, what questions are suppressed? In raising the question of how Solomon's first judgment contributes to establishing a particular discourse relating to women, we inquire into its operation in defining and limiting the scope of what we are able to say, what we are able to think. Reading Solomon, we find a single question posed: Who is the true mother? And the answer offered is: She who yearns in her bowels and utters in her words a willingness to sacrifice self and to constrain self-assertion in order to preserve the well-being of her son. She is the "natural," the "real," the "true" mother. And, by implication, in a culture in which motherhood was the obligation of every woman, she is true "woman."

Like every judicial determination, Solomon's act forcibly transformed ambiguity and indeterminacy into decidability. In his "reading" of the women, Solomon rejected complexity and ambiguity. Limiting their discourse to paradigmatic contradictions, to bipolar oppositions, to mutually exclusive propositions, Solomon simplified his own task of judgment. There were alternatives. He might have directed the women's discourse out of contradiction by inviting their self-narratives, their own accounts of the history which brought them before the king. It is interesting to speculate how a different agency of fact-finding—a "jury of their peers," perhaps—might have tried the nameless women. Might they have read other meanings from the relative familiarity of the child with each woman's body; from the similarities in the odors of child and either woman; from the accommodations of the child's suckling; from the handling able to comfort and relax the crying infant? If they had invited such accounts, might they have heard fuller, non-adversarial stories of underlying griefs and losses? Might they have recognized the infant's recognition of his mother's face? The question is whether an alternative body of fact-finders might have possessed different, body-based knowledge that could have permitted a different process. We cannot know that, of course, and we cannot resummon the women from their dismissal to the margins or beyond.

In posing these possibilities I do not intend to suggest that judgment can be free of violence. What I do propose is that particular kinds of judgments and particular processes in judging disclose more or less fully the implicit force by which they operate. To have heard fuller narratives might have made more difficult the reduction of women to models of good and evil. Fuller hearings

of the self-narratives of women might make judges more aware of the violence that necessarily operates in the operation of law; might make judges perhaps more modest, more able to see the various shapes which even a necessary violence may assume. Fuller hearings might make judges more determined—and therefore more able—to remember, to imagine, or to invent limitations of that violence. They might make, in short, for “wiser” judgments.

Finally, then, what question is suppressed? What question is erased by the narrative? I raise this inquiry from a persuasion that the question suppressed is often the “telling” question. I suggest that the question suppressed is this: What if the wild and raving woman who *appeared* to assent to the death of the child, the one who declined to self-address the judge in entreaty or in prayer, the one who spoke in stunning boldness not to the judge-king but to her sister-harlot—what if *she* is the true mother? What if she was misjudged? The question strikes us almost as unthinkable. It seems to propose an unnatural possibility. But, what if? What if true mothers—and, by definition, “true women”—are capable of extremities and violence?

That question—and the anxieties it evokes—underlie every controversy surrounding “reproductive rights.” Although, as in the Solomonic judgment, the question and its attendant or original anxiety are suppressed, they threaten to rupture through the surface of judicial discourse that seldom interrogates its own sources in epistemology and in feeling.

Such rupture threatens when a male judge considers whether Mary Beth Whitehead is “unfit” because in a moment of extremity she spoke of killing herself and her child;<sup>22</sup> when male judges determine—heedless of the story she might have told, had they inquired—that the body of a dying woman named only by the initial letters of her name, “A.C.,” should be sliced and entered in a District of Columbia hospital in order to rescue from her bowels her “unborn child;”<sup>23</sup> when, on each occasion when the issue of abortion is decided, law regulates in any way the self-determinations of women; when law finds problematic, in a world in which women live surrounded by violence, the limited exercise of violence by women.

The rupture threatens when law depends upon or assumes some “essential” woman or “true” mother in determining the proximity or degree of attachment that will exist between any child and the woman or women who assert “mother-hood” relative to that child.<sup>24</sup> It threatens when law imposes unwanted and permanent attachments upon women by failing to make abortion accessible to all women; when judges appoint lawyers to represent fetuses as guardians ad litem; when judges jail or otherwise destroy pregnant women in

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22. *In re Baby M*, 525 A.2d 1128 (N.J. Super. 1987), *aff'd in part, rev'd in part*, *Matter of Baby M*, 537 A.2d 1227 (N.J. 1988).

23. *In re A.C.*, 533 A.2d 611 (D.C. App. 1987), *vacated and reh'g granted*, 539 A.2d 203 (D.C. App. 1988).

24. For a general discussion of this issue as it arises in “surrogacy” cases, see Marie Ashe, *Law-Language of Maternity: Discourse Holding Nature in Contempt*, 22 *NEW ENG. L. REV.* 521 (1988).



order to “protect” fetuses; when, in controversies surrounding “surrogacy” arrangements, courts make custody determinations informed by sexism, as well as by racism and classism. The destructive consequences of the anxiety surrounding motherhood are experienced particularly onerously by women distinguished by non-dominant variables other than gender. Poor women and women of color are particularly affected when, for example, state law, through insurance regulations, mandates payment of costly reproductive-technological procedures for economically privileged women (and their male mates),<sup>25</sup> while federal law tolerates or mandates the denial of access to every reproductive option—including even conversation about abortion—for poor women.<sup>26</sup> It is experienced differentially when, in court-ordered obstetrical interventions—instances of court-ordered Caesareans or other regulations of pregnancy—more than eighty percent of women affected are women of color, non-English-speaking women, women economically dependent upon public assistance.<sup>27</sup>

The poverty of legal theory relating to reproduction was crystallized in the *Roe v. Wade*<sup>28</sup> opinion authored by Justice Blackmun. As is well-known, Blackmun spent the summer of 1972, before writing the *Roe* opinion, in the medical library of the University of Minnesota. Following the Solomonic paradigm, Blackmun declined to seek answers in the realities of women’s experiences. He focused instead on the labyrinth of embryology, in an attempt to uncover some scientifically-defined “truth” that might determine the issue of abortion, that might justify the stinginess of the abortion entitlement actually afforded by *Roe*. The approach that Blackmun chose to take in *Roe*—an avoidance of women’s subjectivities and other realities—itself contributed to the process that has culminated in the current enormous threat to women’s lives that Blackmun has bemoaned in the *Webster*<sup>29</sup> decision. And it further elaborated a law and a legal theory that impeded solidarity among women. Just as no ethic can be adequate that does not take into account situation and context, no legal theory relating to sexuality and/or reproduction can be adequate that fails to recognize the realities of women’s lives and women’s motivations.

There are striking similarities that can be identified between the challenge faced by Solomon and the challenges faced by present judiciaries. The unifying and stabilizing purposes of judgment and the challenges to such functions continue to operate; the interplay of word and of force persists, probably necessarily. A difference, however, has emerged.

What has altered is that a different and more critical consciousness permits

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25. See, e.g., MASS. REGS. CODE tit. 211, §§ 48.01-.05 (1986).

26. *Rust v. Sullivan*, 111 S. Ct. 1759 (1991).

27. See E.B. Kolder, Janet Gallagher & Michael T. Parsons, *Court-Ordered Obstetrical Interventions*, 316 NEW ENG. J. MED. 1192 (1987).

28. *Roe v. Wade*, 410 U.S. 113 (1973).

29. *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989).

a recognition of the sword, most clearly, as a sword. A more critical consciousness permits its operation in judgment to be recognized as a horrifying truncation, a ruthless descending of power upon women's bodies. It has become possible to recognize judicial discourse relating to reproduction—judgments concerning “frozen embryos,” concerning so-called “surrogacy,” and concerning abortion—as themselves abortive, as silencing the varied, multi-voiced, and highly nuanced narrations that women assert as truths.

Recent feminist writings, in jurisprudence as well as in every other discipline, have begun to bring into public discourse insistent, urgent, searching, and stunning accounts of women's own lives and experience.<sup>30</sup> These persistent and new female narratives may well pose the strongest of contemporary challenges to judicial abortions of narrative.

American philosopher Richard Rorty has described the inadequacy of the old “disciplines”—of science as well as of theology and philosophy—to bind human beings together and to eliminate cruelty.<sup>31</sup> At a time when we have lost faith in those old disciplines, he proposes, we need to discover new sources of theory constitutive of human community. Those sources, he argues, are located in “the disciplines which specialize in thick description of the private and idiosyncratic . . . .”<sup>32</sup>

Rorty insists that narrative—novels and ethnographies, for instance—must take up the task that old theories were supposed to accomplish. What are needed are writings that sensitize us to the pain of those who do not speak the dominant language. Such thickly descriptive writings will have to accomplish the work that “demonstrations of a common human nature were supposed to do.”<sup>33</sup> The construction of community, Rorty insists, cannot rely on false essentialisms but “. . . has to be constructed out of little pieces.”<sup>34</sup>

Just as what Rorty calls “solidarity” cannot be founded on any recognition of a “core self” or a human essence, neither can it rest on notions of a female essence, or a maternal essence. Solidarity or community will instead depend upon our ability—in Rorty's words—“to see more and more traditional differences . . . as unimportant when compared with similarities with respect to pain and humiliation . . . .”<sup>35</sup> So, writings expressing the particularities—and the commonalities—of women's various lives may constitute the major contemporary feminist contribution to cultural moral

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30. For a discussion of feminist narrative in jurisprudence, see Kathryn Abrams, *Hearing the Call of Stories*, 79 CAL. L. REV. 971 (1991); see also Joan C. Williams, *Dissolving the Sameness/Difference Debate: A Post-Modern Path Beyond Essentialism in Feminist and Critical Race Theory*, 1991 DUKE L.J. 296, 316-17 (treating both feminist legal narrative and other expressions of what Mari Matsuda has designated as “outsider-scholarship”).

31. RICHARD RORTY, *CONTINGENCY, IRONY, AND SOLIDARITY* (1989).

32. *Id.* at 94.

33. *Id.*

34. *Id.*

35. *Id.* at 192.

development and to legal theory attached to such moral development.

Women have already begun to speak and to write of judgment and of law in ways that are far more inclusive, in ways that are far more embracing and whole, than was the way of Solomon. In narratives marked by the "love and rage" that Robin West defines as the heart of feminist legal theory,<sup>36</sup> feminist writers in various genres have articulated careful, precise, and *public* accounts of the multitudinous, diverse, and true injuries suffered by real women. They have testified to the ways in which those injuries afflict bodies, hearts, and souls. A major instance of such work of "thick description" is Toni Morrison's novel, *Beloved*.<sup>37</sup>

In *Beloved*, Morrison takes up a theme close to that of the judgment of Solomon, treating and judging an instance of infanticide, the killing by a mother of her child, and the persistent, painful, and destructive haunting of the mother, Sethe, by that child's ghost, *Beloved*. Rejecting anything like a Solomonic approach, Morrison explores in detail the political and social surrounds, the realities of oppression within which the extreme and violent act of infanticide occurs. Morrison recognizes and valorizes the moral judgment of a community of black women, articulated through the voice of Ella, a woman whose method of "thinking it through" involves examination of all that she has come to know through a life-in-relationship.

Attachment to context does not leave Morrison, or any theorist, paralyzed by relativism. Morrison is able to make judgments and she does so. Acknowledging, through Ella, that "[y]ou can't just up and kill your children," Morrison recognizes also that, "[t]he children can't just up and kill the mama."<sup>38</sup> In so doing, Morrison locates morality in the subjectivity of a woman who might in another narrative be objectified as figuring the "murderous mother." The fullest ethical vision of the novel is expressed through Ella, a woman who not only permitted but indeed actively desired the death of her own offspring, a child to whom she had given birth as the consequence of rape and other sexual abuse.

In the figure of Ella, Morrison constructs a murderous mother as moral agent. The attributes of the feminist ethic that Morrison valorizes in Ella include an unsentimental practicality; a rejection of the kind of "cogitation that clouds things and prevents action;" a "thinking through" based upon Ella's own experiences of pain, humiliation, and survival; and an attachment to community that enables Ella to name the perpetrators of her own sexual humiliations as "the lowest yet."<sup>39</sup> In the figure of Ella, Morrison traces the outlines of a feminist ethic able to confront directly the moral disturbance surrounding the "murderous mother" that has consistently been expressed in

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36. Robin West, *Love, Rage, and Legal Theory*, 1 YALE J.L. & FEMINISM 101 (1989).

37. TONI MORRISON, *BELVED* (1987).

38. *Id.* at 256.

39. *Id.*

Western law and literature. Like some other major American feminist writers of fiction, Morrison has sketched the shape of an ethic far more adequate than the one implied, defined, and embodied in liberal law and in liberal legal theory.

Ella's experience, Morrison tells us, is that of a woman who has been beaten—"every way but down."<sup>40</sup> It is a particular expression of the common woman-story of oppression of which every woman can tell some portion—stories of what Gayatri Spivak has called "symbolic clitoridectomy"<sup>41</sup>—the systematic excision or reduction of our capacities for flourishing, for pleasure, and for being.

When women writers tell such stories, in fiction as in other modes, their truth exposes the inadequacy of "theory" that would ignore them. Through such tellings women demonstrate the truth of Audre Lorde's insistence that poetry is not a luxury.<sup>42</sup> Through such tellings, and through attention to such tellings, we refuse—in Morrison's words—to let past error take possession of the present.<sup>43</sup> Or of the future.

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40. *Id.* at 258.

41. GAYATRI SPIVAK, *French Feminism in an International Frame*, in *IN OTHER WORLDS: ESSAYS IN CULTURAL POLITICS* 134, 151 (1987).

42. AUDRE LORDE, *Poetry is Not a Luxury*, in *SISTER OUTSIDER* 36 (1984).

43. MORRISON, *supra* note 37, at 256.