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The "Bad Mother" in Law and Literature: A Problem of Representation

by

MARIE ASHE*

Introduction

Among the challenges that face clinical law professors acquainting students with various areas of practice is that of giving accounts to our students of the reasons why we engage in particular kinds of representation and why we have chosen to serve the particular clients whom we represent. Students are often keenly aware of their own reservations about particular categories of clients well before they encounter, as student-attorneys, any member of the class or classes they feel inclined to exclude from their zealous advocacy. It is not unusual, for example, for a clinician to discover that a student coming into a poverty law clinic has reservations about representing tenants in housing cases, about representing debtors in bankruptcy cases, or about representing disability benefits claimants. Sometimes students express their reservations by advancing the proposition that the law in such areas unfairly "tilts" in favor of the potential clients and that the public policies rationalizing the law are unsound. As often as not, however, students detect—or anticipate that they will detect—moral deficiencies in the tenant, the debtor, the disability claimant, or other kind of client. They imagine or expect that the client may wrongly "take advantage" of the law, "misuse" the legal process through dishonesty, or pursue a claim because of some unworthy motivation. And it is the student's perception of the client's moral deficiency that supports the student's aversion to representing the client.

In the course of my practice and clinical teaching, the category of clients that students and other practitioners seem most frequently reluctant to represent are parents who, in child dependency cases, allegedly have abused or neglected their children. The inclination to reject such clients is almost invariably expressed in terms of a conviction or feeling that such parents are morally abject. Students often speak of such parents with apparent horror and revulsion. Because my practice and my

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clinical teaching have involved extensive representation of parents—and especially of mothers—in abuse and neglect proceedings, I have attempted to identify writings that might introduce students to perspectives that could facilitate a more sympathetic approach to these clients. It seems to me that in this area, as in many areas of legal practice, the limitations of our own experiences can be partially transcended by our reference to literature.

In recent years, an increased awareness of the "law and literature" movement has developed, and discussion of what literature may be able to contribute to the practice of law has broadened. Many law schools now offer "law and literature" courses. This Article proposes that clinicians should encourage in our students at the beginnings of their legal practice the regular reading of literature and the broad consideration of its relevance to the practice of law. Such reading should be incorporated directly into the clinical curriculum as a means of raising students' and our own consciousness of the complex realities of clients' lives and of the contexts within which our clients' moral agencies are expressed in more or less free fashion.

Some recent American fiction has clear relevance for practitioners working in matters involving child abuse or neglect and can be helpful to students and other practitioners exploring the moral significance of their practices. In this Article I will focus particularly on one instance of such fiction, Toni Morrison's novel, \textit{Beloved}. While Morrison's writing is by no means the only instance of relevant fiction, I have chosen it as my focus because it engages the figure of the "bad mother" in her most extreme form, that of infanticide. \textit{Beloved} describes the treatment of the "murderous mother" by law and by a moral community challenged to construct some adequate interpretation of her destructive act. It thus engages directly with that which is problematic about the "bad mother." I suggest that careful reading of \textit{Beloved} can assist those of us engaged in legal representation of "bad mothers" to new understandings of our clients and of our own work.

In Part I I offer an overview of the ways in which law and literature have operated to define abusive mothers, making them the silenced \textit{objects} of legal and literary narratives. In Part II I turn to \textit{Beloved}, a text in which I see the destructive or "bad" mother as the \textit{subject} of narrative—that is, as a figure speaking in her own voice or voices. I propose a reading of the novel that considers its expression of the various understandings of the "bad mother" character as they occur in her own self-

\footnote{1. Toni Morrison, \textit{Beloved} (1987).}
interpretation, in the treatment of her act of infanticide by the law, and in the constructive interpretation of her act by the moral community that she inhabited at the time it occurred and from which she came to be excluded. In Part III I discuss emergent notions of narrative-as-theory, cite instances of narratives relevant to the experiences of some "bad mothers," and identify the reasons why I believe that fictive narrative presently operates as the narrative form most capable of assaulting the seemingly intransigent stereotype of the "bad mother." I identify, also, some issues that I see as effectively raised for legal practitioners by *Beloved* and by other related works of fiction. In conclusion I urge an increased incorporation into the clinical curriculum of literary texts relevant to our areas of legal practice.

I. The "Bad Mother": Her Figure in Law and in Literature

The "bad" or "unfit" mother has been a powerful figure in both Western law and Western literature, which identify the "bad mother" as the woman whose neglectful, abusive, reckless, or even murderous behaviors threaten or destroy her children. Her image in ancient Greek literature occurs, for example, in the murderous figure of Sophocles' Medea; in the maddened, murderous Agave, mother of Pentheus, in Euripides' *The Bacchae*; and in the fatefully destructive Jocasta, mother of Oedipus. The "bad mother" is a figure in the biblical account of Solomon's judgment, which is often cited as a quintessential instance of wisdom and of sound judgment.

In practice lawyers and student-attorneys consistently encounter the "bad mother" image, which operates in "private" custody disputes that arise between parents (or among other relatives) as well as in "public" matters in which the state intervenes to interrupt, either temporarily or permanently, a woman's knowledge of and contact with her children. The image of the deficient, dangerous, and evil mother confronts lawyers

4. For discussion of the operation of the image in "private" custody disputes, see PHYLILIS CHESLER, *Mothers on Trial: The Battle for Children and Custody* 66 (1986) (reporting a study indicating that "good enough" mothers lost custody 70% of the time in such contests).
5. The "public" matters, often referred to as "dependency proceedings," include proceedings in which a parent or other custodian who allegedly abused or neglected a child may be temporarily deprived of the child's custody while custody is entrusted to a state agency that arranges for placement of the child away from the parent. They also include "termination"
in every area of law relating to children and their relationships with their mothers. Its sources and its expressions have been discussed in anthropological, psychological, and psychoanalytic theory, as well as in literary theory. Feminist theory has engaged directly with the stereotype, often identifying it as a central impediment to the effort to overcome oppressions of women.

The task of identifying and attacking the stereotype in the prevalent cultural consciousness and unconsciousness has been, and continues to be, onerous. But the challenge of confronting the “bad mother” figure in contexts where it is unquestionably clear that a mother has caused harm to her children has been even more difficult. Feminist theory, with certain notable exceptions, has been far more silent than might have been hoped in the face of such troubling realities.

It is, I believe, a common experience in abuse and neglect matters that anxiety and ambivalence concerning the mother-child relationship are experienced by lawyers, social workers, and judges—as well as by clients. These deep feelings work to frustrate lawyers’ efforts to re-present, in full and various accounts, the realities of their clients who are stereotypically represented as “bad mothers.” Operating within the consciousness or the unconsciousness of the individual lawyer, the “bad mother” image may have immediate impact on the legal practitioner in a number of ways. First, the image can lead the lawyer to exaggerate the harmfulness of a mother/client’s alleged behavior. The pervasiveness of the gender based stereotype can frustrate the attorney-client relationship.
itself, to the degree that the relationship is marked by the lawyer's own acknowledged or unconscious ambivalences about motherhood. It will do this by encouraging the lawyer's too-ready acceptance of the prosecutor's characterization of a great variety of maternal behaviors as directly harmful to a child.\(^9\) It will discourage the lawyer's critical inquiry into whether in fact a child is being harmed at all and whether harm, if it is occurring, should be seen as caused by the inadequacy of socioeconomic, physical, and emotional supports for the mother.

The image also may interfere with the lawyer's recourse to prevailing interpretations of "zealous advocacy" which emphasize that the attorney-client relationship must be "client-centered." It can lead the lawyer to feel comfortable substituting his or her own judgment for the client's judgment. This interference will occur to the degree that the stereotype, through its moral devaluation of the client, leads or encourages the lawyer to devalue the goals defined by the client and to regard them as having lesser moral worth than goals defined by other kinds of clients. The operation of the "bad mother" image in both these ways may tend, further, to undermine the zeal of the advocate and to encourage the lawyer's unconscious collusion in the silencing of the mother/client by the law. It may discourage the full exercise of the lawyer's critical capacities and the lawyer's ability to imagine effective defenses for the mother/client.

These considerations suggest that the "bad mother" stereotype may work to create an appearance of "badness" in mother/clients where in fact such "badness" is not present. But what of cases in which the acts alleged and likely to be proven do in fact strike the lawyer as unquestionably "bad," that is, as clearly harmful or destructive to the children? If the lawyer's self-definition depends, to any degree, on an identification with the client's moral worthiness, how can the lawyer justify as in some sense "good" the representation of clients nearly universally perceived as very "bad"?

Rejecting the "hired gun" model of advocacy and believing that, as lawyers, we cannot act in ways that we find morally satisfactory when we do not perceive moral worth in our clients,\(^{10}\) the remainder of this Arti-

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9. Two works discussing this reality are CHESLER, supra note 4 at 64-89 (arguing that, "[n]o mother can embody the maternal ideal perfectly enough to ensure her custody in a battle"), and JANE SWIGART, THE MYTH OF THE BAD MOTHER: THE EMOTIONAL REALITIES OF MOTHERING 24-26 (1991) (arguing that "maternal impotence," the inability to provide for the needs of children, arises as a consequence of a "culture that condones the manipulation and exploitation of those close to you—even children").

10. Charles Fried's now classic consideration of the model of zealous advocate as "lawyer/friend" explores the moral justification of the attorney-client relationship. Fried argues...
cle suggests that such moral worth does exist in "bad mothers," that it has begun to be very effectively expressed in contemporary fictive narrative, and that Toni Morrison's novel, *Beloved*, can be a major resource for lawyers struggling to understand and to interpret our "bad mother" clients.

II. The "Bad Mother" as the Subject of Narrative: Toni Morrison's *Beloved*

Toni Morrison's novels have manifested a persistent preoccupation with that which is problematic in women's relationships with their children. Much of her writing involves complex female characters struggling to inhabit or to escape maternal situations constructed and constrained by the particularities of American culture at various historical periods. While images of murderous or otherwise destructive mothers abound throughout her writing,11 Morrison's *Beloved* may constitute the most fully developed rendering of the "bad mother" in American fiction.

Set in the period immediately following the Civil War, *Beloved* gives account of the murder by a runaway slave woman, Sethe, of her daughter, and tells, also, the physical and spiritual consequences of that murder for Sethe and the moral communities that surround her. In stating the moralizing or demoralized responses to Sethe's act by various moral communities—including the law, white abolitionists, and other former slaves—the novel inquires into the moral interpretations and imaginings of people who have been variously victimized. It manifests the utter inadequacy of the "bad mother" stereotype in its treatment of Sethe as well as in its treatment of the character Ella, who, herself implicated in the death of her own young child, appears in the novel as a powerful voice of moral agency. Indeed, the novel can be read as inquiring how the experiences of victimization and oppression underlie what can properly be called moral agency and ethics. Specifically, it demonstrates inquiry into

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for the lawyer's "amoral ethical role" and purports to justify the lawyer's disregarding of the interests of "abstract others" by valorizing the client's "autonomy" and the lawyer's commitment to that value. See Charles Fried, *The Lawyer as Friend: The Moral Foundation of the Lawyer-Client Relationship*, 85 YALE L.J. 1060 (1976). It is my belief that student-attorneys and other practitioners working in the area of child dependency find that model inadequate for the reason that they—and most people—are unable ever to fully experience the children involved in such matters as "abstract others."

11. Examples are: the troubling rejection of the child Pecola by her mother Pauline, in *TONI MORRISON, THE BLUEST EYE* (1970); the mother Eva's murder by fire of her adult son Plum in *TONI MORRISON, SULA* (1973); the troubled relationship of Milkman and his mother in *TONI MORRISON, THE SONG OF SOLOMON* (1977); and the lack of mothering of the character Jardine in *TONI MORRISON, TAR BABY* (1981).
certain realities of the “bad mother”: who she is; what motivates her; what are the consequences of her acts or omissions; what is the moral value of her acts?

*Beloved* involves many fully imagined characters. Among these, Sethe is most central, but her struggle is paralleled by that of other major characters—Paul D, Denver, and Ella. Each character struggles to achieve spiritual as well as physical survival and wellness, to escape psychically, as well as physically, the brutalization and degradation that have left them spiritually and emotionally enslaved in spite of their having escaped from the institution of slavery. In its major theme—infanticide—the novel raises with no sentimentality and in enormous complexity the issue of the moral significance of an act of murder committed by a “bad” and apparently unrepentant mother.

In its scope, as well as in the quality of its language, *Beloved* is unquestionably a major work of American fiction. To read it is to experience a singular kind of writing. The novel has been read and interpreted variously by critics who have explored its location within traditions of African-American and feminist literature specifically, and within American fiction in general. My focus in this discussion will be on Morrison’s treatment of the mythic image of the “bad mother.”

To state the story told in *Beloved* as a chronology is already to misrepresent it, for the story is told by Morrison through a circling and looping narrative that moves continuously from present to recent to remote past and back again. While the opening chapter defines events that occur in Cincinnati in 1873, well after the abolition of slavery and eighteen years after Sethe’s murder of her infant daughter, the novel’s process involves its characters’ increasing and deepening rememberings. It moves the reader into and through Sethe’s and Paul D’s recollections of their earlier life experiences as slaves on a Kentucky farm called “Sweet Home” and of their lives since their departures. It also carries the reader into the more remote past through the reflections of the haunting and haunted figure of the ghost of Sethe’s murdered child, known throughout as “Beloved.”

When Paul D comes to Cincinnati in 1873 and rejoins Sethe, whom he has not seen in the eighteen years since they were separated from one another and from “Sweet Home,” Sethe and Paul D together begin to remember a past too painful for either of them to have remembered

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alone. After having devoted herself to mind numbing routines, which she has valued precisely because they assisted her "serious work of beating back the past"13 and her "keeping the past at bay,"14 Sethe begins to recall her history in Paul D's company, finding it for the first time "bearable" because "it was his as well—to tell, to refine and tell again."15 Between them, Sethe and Paul D engage in "trust and rememory,"16 recalling the histories of their individual lives and the lives of the other members of the "Sweet Home" community. In the connection that they begin to establish with one another, Sethe and Paul D begin to tell one another their buried memories of events that had been entirely too destructive and painful to deal with except through forgetting. Morrison expresses in the many-layered reflections of Sethe and Paul D, as well as in the other characters, the complex meanings and implications of the experiences recorded in the historical slave narratives that she examined incident to her writing of the novel. Her familiarity with those narratives permits Morrison's pondering, probing, and interrogating them in a method that lays bare their fullest moral significance.

Sethe's memories include her early separation from her own mother, who was not permitted to nurse her; her learning of her mother's experiences of sexual assault; the knowledge of her mother's infanticides—killing babies she had borne as a consequence of sexual violence; the understanding that her mother had chosen to keep Sethe and had named her for her father; her remembrance of fragments of stories told in some forgotten language by Nan, the slave woman who cared for her in her own mother's stead; her recollection of the marking of a cross and a circle burned into her mother's flesh; and her memory of her mother's dead body cut down from the tree on which she had been hanged.

Sethe's memories also include her arrival at age fourteen at the Kentucky farm. At "Sweet Home" Sethe met with kindliness from the other slaves who lived on the farm. The young men who worked as farm hands honored Sethe's autonomy and dignity while they awaited her choice of one of them as her mate. Within a context in which family ties of slaves were ordinarily violated with ruthlessness, Sethe chose Halle to become her husband. Although aware of her own mother's separation from her, and of her mother-in-law's forcible separation from the first seven of her eight children, Sethe gave birth at "Sweet Home" to three children and defined her identity in terms of her mothering of them.

13. MORRISON, BELOVED, supra note 1, at 73.
14. Id. at 43.
15. Id. at 99.
16. Id.
Life at "Sweet Home" changed when its relatively moderate master died and was replaced by one known to the slaves—because of his habits of measuring and recording—as "Schoolteacher." The new master's habits evidenced his perception of the slaves as a nonhuman species, and the cruelty of his treatment of them mirrored his "scientific" perceptions. This changed reality led the slaves to attempt a mass escape. Sethe successfully smuggled her three children across the Ohio River to safety with her mother-in-law, who had been freed when her son Halle had performed extra labor as the price of her freedom. Before accomplishing her own escape, however, Sethe, in an advanced state of pregnancy, experienced a brutal sexual assault perpetrated by Schoolteacher's nephews. She reached the security of her mother-in-law's home only after an extraordinary journey across the Ohio River, during which she gave birth to her youngest daughter, whom she named Denver in honor of the young, poor, white woman who assisted her in the birthing. The male slaves, including Halle and Paul D, were unsuccessful in their escape attempts and were murdered, tortured, or scattered from one another.

Reunited with her mother-in-law, Baby Suggs, in Cincinnati, Sethe cared for her four children, lavishing upon them all the sweetmesses of "good" mothering. Herself cared for by Baby Suggs, who bathed, bandaged and comforted her, Sethe greeted her children with delight and love. She lavished kisses on her sons. "She kept kissing them. She kissed the backs of their necks, the tops of their heads and the centers of their palms . . . ." She filled both her daughters with the sweetness of mother-milk.

This time of grace—lacking only because Sethe was uncertain of the whereabouts and fate of her husband and her other "Sweet Home" friends—lasted for twenty-eight days, but was terminated by the arrival at Baby Suggs' home of Schoolteacher, who had come to reclaim Sethe and her children as fugitive slaves. Seeing the slavemaster approaching and recalling her own brutalization, Sethe gathered up her children and fled to the woodshed. There, with a handsaw, she cut the throat of her older daughter, killing her, and attempted to kill her other children.

Observing Sethe's apparently deranged condition, Schoolteacher declined to take her into his custody. Covered with the "red baby blood" of her older daughter and nursing her youngest child, Denver, Sethe was arrested and charged with murdering her child. She was represented by a white abolitionist lawyer named Bodwin, who spoke to the judge in chambers and "managed to turn infanticide and the cry of savagery
around, and build a further case for abolishing slavery."\textsuperscript{18} Sethe spent three months in jail and was then released. She returned, with her baby daughter, Denver, to the home in which her mother-in-law had continued to care for the two young sons.

Sethe found Baby Suggs utterly demoralized by the horror of Sethe's act and in despair at the cruelty that had provoked it. Convinced that "there was no grace,"\textsuperscript{19} Baby Suggs gave up all hope. "Her faith, her imagination and her great big old heart began to collapse . . . ."\textsuperscript{20} She took to bed for several years and died in the keeping-room of her house.

After her mother-in-law's death, Sethe stayed on in the house, living estranged from the rest of the community, which repudiated her for her "pride" and for her failure to acknowledge her murderous act as "evil." Indeed, Sethe consistently characterized the murder as "good"—as an act of love—for the daughter on whose tombstone she had had engraved (paying for the engraving by submitting to an act of sexual violence) the single word: "Beloved."

Within her own house Sethe attempted to create a moral community among herself and her living children, a community able to support her naming of the murder of Beloved as "good." Outside the house, the larger moral community of other former slaves, guided largely by Ella, the woman who had greeted Sethe and her newborn child upon their crossing of the Ohio, repudiated Sethe, naming her act as "bad." Sethe's family-community lived disturbed by the visitations and troubling hauntings of Beloved's ghost, which frequently manifested itself in pools of blood-red light, in overturned slop jars, or in gusts of sour air. That community was reduced by the flight of Sethe's two sons, each of whom left home upon reaching adolescence.

At the time of the novel's opening chapter in 1873, Sethe lives alone with her youngest child, Denver, who has severed all connection with the community because of her complex feelings of shame about her mother's extreme act. Shortly after Paul D's arrival at Sethe's house, he, Sethe, and Denver begin to be confronted by the in-the-flesh appearance of Beloved. Sethe's murdered daughter appears as a young woman of the age she would have been had she lived. Without stating with clarity where she has come from, Beloved takes up residence in Sethe's home, requiring Sethe, Denver, and Paul D each to recall the reality of her murder—an act that she has not forgiven and will not forgive—as well as of their own past and present sufferings.

\textsuperscript{18} Id. at 260.
\textsuperscript{19} Id. at 89.
\textsuperscript{20} Id.
Paul D’s encounter with the reality of the murder leads to his condemnation of Sethe. While he has been able to do certain remembering in her company, he proves unable to sustain her in remembering her murder of Beloved. He is similarly unable to understand the gravity of the sexual assault she has experienced. Paul D shatters the beginning of the new community that he and Sethe had begun by his condemnation of her “too thick love” of her children, by his definition of Beloved’s murder as an other-than-human act, and by his assertion of moral superiority manifested in his separation from Sethe.

When Paul D leaves Sethe’s house, Beloved is further empowered. She rejects and overcomes Sethe’s explanations and excuses concerning the murder and begins to consume and devour her mother. Beloved increases in size as Sethe diminishes and wanes. At this juncture, Denver determines, on her own behalf and for her mother’s survival, to seek the assistance of the larger community of black women, occasioning a confrontation of the two moral communities.

Interestingly, this confrontation engages two “bad mothers,” for the leader of the group of women who go to Sethe’s house to exorcise Beloved is Ella, who had herself rejected and permitted her child to die, a child to whom she had given birth as the consequence of sexual assault. Ella’s determination to reverse her repudiation of Sethe and to attempt the freeing of Sethe from her spiritual and physical enslavement by Beloved’s ghost, is motivated by the recognition of her likeness to Sethe and her perception that their likeness outweighs their differences.

What distinguishes Ella from Sethe is Ella’s having never forgotten the almost unthinkable sexual violence she had experienced over the course of a year in which she had been kept in captivity.21 Her refusal to forget and her recollection of the child whom she had delivered “but would not nurse, a hairy white thing,”22 had enabled Ella’s strength and spiritual health, and allowed her to lead the community of women to Sethe’s house where they were able, by a magically powerful ululation, to free Sethe from her haunting by Beloved.

Listening to the women’s voices, in a wave of sound, Sethe perceives the arrival of the white abolitionist, Bodwin, who is both the owner of her house and the lawyer who had defended her. Bodwin’s arrival revives in Sethe her memory of Schoolteacher’s arrival eighteen years before. Bodwin-the-abolitionist is portrayed as deeply implicated in racism, as a person who hated slaves although he “hated slavery worse,”23

21. Id. at 119.
22. Id. at 258.
23. Id. at 137.
and as, perhaps, a model of white liberal law. Upon seeing Bodwin, Sethe, while caught in a kind of posttraumatic flashback, does not attempt to kill her child in repetition of her actions eighteen years earlier. Rather, she attempts an attack upon Bodwin, the model of the oppressive legal order that even in its more benign manifestations perpetuates oppression. Psychically liberated by the sustaining community of the black women led by Ella, Sethe directs her rage and anger outward rather than against herself through her child.

Her release from the haunting by Beloved, however, does not leave Sethe spiritually whole. She takes to bed—repeating the desperate and demoralized turn that had been taken earlier by her mother-in-law. Her previous moral structures shattered by Beloved's coming and going, Sethe slips into a deathly resignation, mourning the loss of Beloved as the loss of her "best thing." She is summoned out of that hopelessness only by the ministrations of her youngest daughter, Denver, and by a new connection with her lover.

Paul D has accomplished some healing of his own through his confrontation with the memory of Sethe's infanticidal act. That healing enabled his turning away from his earlier utter rejection of Sethe as morally contemptible for committing that act. Paul D becomes able to return to Sethe and to begin the reconstruction with her of both their lives. "He wants to put his story next to hers."24 Paul D is able, through his new connection with Sethe and through his commitment to forming a moral community that will include her and the larger group, to summon Sethe to a recognition that she is in herself a source of goodness, that this "bad mother" is, indeed, her own "best thing."

Beloved constitutes a powerful refiguring of the "bad mother" image. In this novel, at least two women who might in other contexts be reduced to stereotypical "bad mothers"—because of their extreme, reckless, or murderous acts—come to express voices of moral agency. Morrison requires our serious consideration of Sethe's claim that her murderous act was a good act, an act of love, and of Ella's apparently guiltless survival of her own experiences of victimization and of destruction. Beloved offers no simple ethic, no single moral, reducible to a general principle or rule. What it does offer is an insistence and a strongly persuasive account of the complexities of certain maternal experiences out of which apparent "bad mothers" may emerge and act. It works to raise complex and compelling questions which make it impossible to classify a stereotypical "bad mother" as a person unworthy of serious

24. Id. at 173.
consideration or, when she appears in the context of legal proceedings, as a client undeserving of our representation and advocacy.

Morrison's novel is not alone in exploring this new theme. Writings of Marge Piercy, Mary Gordon, and Sue Miller come readily to mind as other powerfully engaging novels in which law students and other practitioners can find new figurings of the "bad mother." The specific issues that writings like Beloved raise for legal theory, and the ways in which the raising of these issues can facilitate the work of "good lawyers" for "bad mothers," are useful to consider.

III. The "Bad Mother" in Fictive Narrative and in Legal Theory

Among the major projects of postmodernist criticism has been a new examination of the relationships that may exist between writing that has traditionally been called "narrative" and that which has traditionally been identified as "theoretical." This issue has been explored by many writers and has recently emerged as a consideration for writers exploring jurisprudential questions. Some commentators of the "law and literature" movement have argued that the usefulness of literary narratives to law and to legal theory is limited. That argument, however, depends upon an unsophisticated or nostalgic notion of what "theory" can presume to be and to accomplish in the present period of broad awareness of multicultural realities and visions. Contemporary expressions of "philosophy" in the United States and Europe have articulated perceptions of the power and significance of narrative in the present time. Within such expressions, the old foundations upon which "theory" relied appear to have vanished.

Much major antifoundationalist critical work has occurred in the contributions of French writers such as Michel Foucault, Jacques Derrida, and Julia Kristeva, each of whom has begun to be seriously con-

31. JULIA KRISTEVA, DESIRE IN LANGUAGE: A SEMIOTIC APPROACH TO LITERATURE AND ART (Leon S. Roudiez ed. & Thomas Gora et al. trans., 1980); JULIA KRISTEVA, Pow-
sidered by legal scholars in the United States. Each of these writers has explicitly—often by “style” as well as by “substance,” to the degree that those can be differentiated—valorized narrative. These French postmodernists have demonstrated the present impossibility of “grand theory,” and their demonstrations have opened up space for new narratives. Foucault, Derrida, and Kristeva—among others—have contributed to the development of smaller narratives.\(^{32}\)

While the profoundly critical perspectives of Foucault, Derrida, and Kristeva have worked to deconstruct foundations, they have seemed, to some readers, to invite a stasis in moral relativism to the degree that they have failed to propose and justify criteria by which various “little narratives” might be evaluated.\(^{33}\)

The more recent writing of Jean-Francois Lyotard\(^{34}\) and, in the United States, the accessible writing of Richard Rorty,\(^{35}\) explicitly address the question of relativism in ways that further valorize narrative, including fictive narrative. A consideration of what they can tell us is useful for an evaluation of the contribution that writing such as Toni Morrison’s can make to moral—and, thereby, to legal—theory. It also sheds light on why narrative, and especially literary narrative, is of particular importance to displacement of the “bad mother” stereotype in ways that can be sustaining for lawyers representing such women.

Among American philosophers, Richard Rorty is perhaps the writer whose work has most fully engaged with the antifoundationalist themes of postmodernist European thinkers. Apparent throughout Rorty’s work is a high valuation of “little narratives,” as opposed to metanarrative or grand theory. Rorty writes of the need for “narratives of increasing cosmopolitanism,”\(^{36}\) by which he means narratives that are “ever more in-

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The task of achieving such narratives, Rorty suggests, lies in the work of narrators whom he characterizes as "agents of love" and "connoisseurs of diversity." The work of moral progress, he urges, will derive from the contributions of "historians, novelists, ethnographers, and muckraking journalists, for example," rather than from the writings of theologians or philosophers. Such writers will facilitate the "gradual expansion of the imagination of those in power, their gradual willingness to use the term 'we' to include more and more different sorts of people." Thus, Rorty's work suggests the strong value that literature can have for moral development.

Rorty is not alone among major American philosophers in proposing such value for literature. Philosopher Martha Nussbaum has considered the relationship between literature and moral philosophy and has proposed a conception of ethical understanding that will be most appropriately expressed and stated in "certain forms usually considered literary rather than philosophical." Nussbaum argues that the conception of moral philosophy must be broadened to include such literary texts. Both Rorty's and Nussbaum's work support the proposition that narratives, including literary narratives, deserve to be explored as references for moral philosophers and ethicists.

A serious consideration of narrative has become apparent in legal theory as well as in philosophy. In recent years, narrative has been particularly important within feminist critical jurisprudence and critical race theory. The lawyer representing a "bad mother" is, however, unlikely to find significant support in the narratives articulated within or invoked by such theory. Legal theory, including feminist legal theory, has thus far appeared to avoid the contextualizing narratives of "bad mothering" that have begun to emerge within other disciplines. Indeed, recent instances of legal theory focusing on client narratives have manifested some tendency to support the stereotypical "good mother" figure.

An example of how feminist legal theory has thus far avoided bad mothering narratives developed in other disciplines is its having largely

37. Id. at 219.
38. Id. at 206.
39. Id. at 207.
40. Id.
41. MARTHA C. NUSBAUM, LOVE'S KNOWLEDGE: ESSAYS IN PHILOSOPHY AND LITERATURE at ix (1990).
42. For discussion of this trend, see Kathryn Abrams, Hearing the Call of Stories, 79 CAL. L. REV. 971 (1991).
ignored Linda Gordon's study of child abuse and other family violence. In this study of the practice, the prevalence, and the possible sources of family violence, Gordon depends upon narratives recorded within social workers' "case histories" to present richly textured accounts of the lives of "bad mothers" (as well as of abusive fathers, husbands, and other family members). It may be that certain attributes of Gordon's work—her refusal to oversimplify, her constant emphasis of the ambivalences and conflicting impulses that may give rise to child abuse, and her refusal to reduce the analysis of child abuse to produce a simple moral vision—render her work difficult for assimilation by theory that is less than profoundly critical.

Quite recently, a focus on client narrative has developed within legal theory. This focus has provided a very valuable critique of lawyer practices that work to silence or disable clients. Theory incorporating client narratives can operate powerfully to encourage lawyers' self-criticisms, awareness of our own identities and of our own professional roles. It typically has operated this way by juxtaposing two narratives: the first being one that the lawyer—constrained by real or imagined doctrinal or role limitations—would likely offer concerning the client; the second being the self-account actually given to a tribunal by the client in ways that violate the constraints that the lawyer would have honored.

While legal theory incorporating client narrative can be supportive of greater self-consciousness in the lawyer, and while it can sustain critical appreciation of the law, it is notable that some of the most striking instances of such legal theory have featured rather traditional images of "good mothers" and that none has focused on a more disturbing "bad mother." On the contrary, the "client-narrative" development in legal theory has featured the telling of appealing and sympathetic stories by "good mothers." Such work has enriched theory by its insistence that we not permit the complexity of clients' lives to be erased by our own

45. Martha Mahoney has proposed this possibility. Telephone Interview with Martha Mahoney, Associate Professor, University of Miami Law School (Nov. 1991).
47. Alfieri, supra note 46, at 2109-10 (featuring a nurturant foster mother seeking food stamps for her foster children); White, supra note 46, at 21-32 (featuring a proud black North Carolinian mother buying "Sunday shoes" to maintain her children's dignity).
collusion, as practitioners, with silencing tendencies that operate within legal practice. However, such theory has not demonstrated that self-narratives can undo deeply rooted stereotypes that arise out of the apparently universal experience of ambivalence about motherhood.

Like other legal theory, "client-narrative" accounts do not demonstrate the possibility of persuasive self-narrative by "bad mothers." Indeed, such theory does not reach the question of whether such narrative could occur nor whether it could enable the lawyer's self-interpretation as a "good lawyer" while engaged in serving persons nearly universally perceived as "bad."

So, while Rorty proposes the value of narrative for developing ethical theory, there has been a notable lack of writing on the "bad mother" able to sustain practitioners representing abusive women. Some of the reasons for this omission may be suggested by reference to a notion of Jean-Francois Lyotard, a writer who resembles Rorty in his rejection of metanarrative possibilities and in his advocacy of "little narratives," but who is far less sanguine and hopeful than Rorty about the possibility of including within "our" moral universe all those who have legitimate claims.

Considering what appear to be limits of cultural inclusiveness, Lyotard, by use of an analogy that will resonate for lawyers, has distinguished between the term *litige*, translated as "litigation," and the term *differend*, for which there is no precise translation into English.48 "Litigation," Lyotard proposes, is a term that applies to the case in which the contesting parties are in agreement concerning how the issues should be stated and what criteria should be applied to resolve them. In contrast, a *differend* is the case in which "a plaintiff is divested of the means to argue and becomes for that reason a victim."49

Lyotard defines the ethical task as that of "bear[ing] witness to the *differend*"50—that is, of producing narratives that, in paradoxical fashion, utter what is unutterable. Lyotard identifies Auschwitz as a model of the *differend*—the model of silenced victimization, "a damage accompanied by the loss of the means to prove the damage."51 The reality of Auschwitz, the suffering of the Holocaust victims, is such that at one and the same time there exists an impossibility of representing it and an ethical necessity that it be represented.

48. See generally LYOTARD, THE DIFFEREND, supra note 34.
49. Id. at 9.
50. Id. at xii (emphasis added).
51. Id. at 5.
Lyotard's model of Auschwitz carries us back to a consideration of *Beloved*. The project undertaken by Toni Morrison in *Beloved* is precisely what Lyotard prescribes as the ethical imperative: bearing witness to the *differend*. *Beloved* accomplishes two particular kinds of bearing witness: a bearing witness concerning the realities of slavery; and a bearing witness concerning the myth of the "bad mother."

The relationship of Morrison's work to narratives of the Holocaust is strongly suggested by the inscription on the dedication page of her book: "Sixty Million and more." These words remind the reader of the "six million" Jews murdered in the Holocaust, even while they refer directly to the "sixty million" slaves who lost their lives as a result of slavery.\(^5\) Morrison's work of breaking silence and remembering the stories of slavery has itself depended upon other narratives. Morrison has relied heavily upon black histories and slave narratives. In *Beloved*, she writes with authority, clarity, and detail, as a "specialist in particularity,"\(^5\) giving an account of the horrors of slavery that, precisely because of the language possibilities available in fictive narrative, is more nearly able to do justice to those realities than are historical narratives alone. Like recent narratives of Holocaust victims,\(^5\) testimonies given by people who spent time in Auschwitz and other labor camps and were eventually released, Morrison's work refuses to consider the event of "emancipation" or "liberation" as marking the end of suffering. Morrison appreciates and gives account of the ways in which the sufferings of slavery have persisted and will persist until they are adequately remembered.

Within and in addition to her narrative of slavery and of postslavery trauma, Morrison represents in *Beloved* a narrative that reclaimsthe "bad mother" as one of "us," and she does so in a way that exceeds all the tellings of the "bad mother" with which I am familiar. She does this by telling a story "cruel enough to stop the blood."\(^5\) Morrison achieves in *Beloved* a bearing witness to the *differend* in which the "bad mother" is a silenced, victimized party. The achievement of having given voice to Sethe, of having made the "bad mother" speak in words that we can hear, is a singular one.

Discussing Morrison's writing prior to the publication of *Beloved*, and focusing especially on her novel *Sula*,\(^5\) Marianne Hirsch has ob-

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56. MORRISON, *SULA*, supra note 11.
served that in the earlier novels the discourse of the "bad mother" is not always able to be voiced at all. She notes that when it is able to be articulated, it is always "repetitive, literal, hopelessly representational. It is rooted in the body that shivers, hurts, bleeds, suffers, burns, rather than in the eyes, or in the voice, which can utter its cries of pain." 57

Hirsch echoes a theme perhaps first expressed in a major American feminist work by Adrienne Rich, *Of Woman Born,* 58 emphasizing the critical importance of incorporating "bad mother" discourse into feminist theory:

Maternal knowledge . . . if it could be voiced, could enlarge a feminist analysis and reverse traditional conceptions of love and anger, of power and knowledge, of self in relation to other, of femininity and maturity, of sexuality and nurturance. . . . [I]f feminists want to "stop the blood" flowing from one generation to the next, we need to find ways of hearing and telling the stories of mothers—to politicize motherhood from within feminism . . . . 59

Such an accomplishment requires bringing into the discourse what has not yet been said, making the bad mother the *subject* rather than the *object* of narrative, or, in Lyotard’s terms, bearing witness to a particular *differend.*

Hirsch writes compellingly of the crucial importance for ethical theory of incorporating “maternal narratives.” She argues, in terms that will be relevant to legal practitioners, concerning the specific and general consequences that a breaking of the silence of "bad mothers" might effectuate:

Further consistent exploration of maternal discourse—whether in theoretical, fictional, or autobiographical writing—would reveal, I believe, notions of identity and subjectivity that correspond neither to the unified ego of ego-psychology, nor to the fluid boundaries of object-relations theory, nor to a subjectivity split against itself, as outlined by Lacanian psychoanalysis. What model or definition of subjectivity might be derived from a theory that begins with mothers rather than with children? Can we conceive of development as other than a process of separation from a neutral, either nurturing or hostile, but ultimately self-effacing “holding” background? I would suggest that if we start our study of the subject with *mothers* rather than with *children,* a different conception of subjectivity might emerge. Although it might be difficult to define, we might try to envision a culturally variable form of interconnection between one body and another, one person

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and another, existing as social and legal as well as psychological subjects.\textsuperscript{60}

While Hirsch clearly defines the importance of the task of reaching and uttering maternal narratives, recent writing by psychologist Dana Crowley Jack demonstrates the difficulty of bringing into speaking subjecthood persons or figures which have been excluded. Jack, in \textit{Silencing the Self},\textsuperscript{61} presents a study of depressed women. While she discerns in their lives patterns that make their depressions comprehensible and predictable consequences of having committed their energies to self-abnegation in the hope of attaining intimacy, Jack is struck by the degree to which these women's understandings of themselves are structured by prevailing psychological concepts that reflect a high valuation of individualism and autonomy and a low valuation of intimacy and connection. The prevailing discourse surrounding the notion of "selfhood" demands that the women giving self-narratives present themselves and their depressed conditions in negative terms. There is a sense in which Jack's work could be seen as a case study demonstrating the reality of the different as it implicates gendered experiences of self.

The limitations of self-narrative possibilities for Jack's depressed women pale in comparison to the barriers to self-narrations that might give us access to the moral sensibilities and experiences of "bad mothers." And it is perhaps for this reason that \textit{Beloved} is so remarkable in its "bad mother" account. Sethe truly embodies the bad mother as speaking subject. And her speaking, much of which is speech to the ghost of her murdered child and all of which is profoundly meditative and reflective, is speech that would be largely unintelligible to law.

Sethe's search for self-definition, her necessary reflection and meditation on her murderous act, discloses the moral nature of that act as far more complex than could be assimilated to, or even suggested by, any analysis that characterized it simply—whether as "good," as "evil," or as "insane." \textit{Beloved} reminds us that there is no "last word" by which we can dismiss the "bad mother"—whether that word be "unfit," "evil," "unnatural," or "insane." Neither the standard formulations of the law nor our own culturally induced resistances constitute a moral response that does justice to her reality and her conditions.

\textit{Beloved} is an account that does justice to affect by refusing to reduce feeling to cognition. In achieving this, it achieves a most extraordinary breaking of silence by and surrounding the "bad mother" figure. In letting the "bad mother" speak, \textit{Beloved} reminds us that when we hear her

\textsuperscript{60} Id. at 427-28.

we are required to pass from the comfort of easy judgment to the area of demanding ethical commitment. *Beloved* reminds us that the “bad mother” is a person whom we need to know, and that the opportunity to know her—and to represent her—is an opportunity to know ourselves.

**Conclusion**

While a turn toward narrative within many disciplines has been apparent in recent years, as well as development of notions of narrative-as-theory, it is in literary—fictive—narrative that we have, at the present time, the most adequate access to the experiences of “bad mothers.” Toni Morrison’s *Beloved* is a powerful instance of theory-in-narrative in its account of the subjectivities of some “bad mothers.” It is a remarkable instance of the significance of literature as a source of theory for practitioners. Legal education would be improved by the incorporation of reading literature as a method of expanding students’ understandings of clients often experienced as highly problematic.