
RESPONSE

HUMANITY AND LAW

MICHAEL SEROTA[†]

In response to Christine Stark, Memoir, *Run*, 158 U. PA. L. REV. 1575 (2010).

*“Humanity and law—not two, but one.”*¹

The *University of Pennsylvania Law Review*'s 2010 symposium issue on “Trafficking in Sex and Labor”² begins with a personal memoir, entitled *Run*, by writer and visual artist Christine Stark.³ *Run* is creative writing at its finest—an engaging and insightful first-person narrative depicting the author's experience as a sex trafficking victim. Notwithstanding *Run*'s artistic value, however, its placement in a law review is most unusual. Law reviews are not known for their creativity or willingness to experiment when it comes to the words they print, especially when the words are those of an artist. Thus, the *University of Pennsylvania Law Review*'s decision to publish *Run* is a noteworthy attempt to integrate creative writing and legal scholarship in a meaningful way.

[†] J.D. 2010, University of California, Berkeley (Boalt Hall). The author would like to thank Michelle Singer, Ethan Leib, Robert Dolehide, Jennifer Chang, Catherine Curlet, and Christine Stark for their helpful comments. Thanks also to Haley Bolin Shellito, Frank Blechschmidt, and the entire PENNumbra Team for their superb editing. This article is dedicated to my mother, Gail Serota, whose heartfelt commitment to public service and her community is a model toward which I strive.

¹ K.N. LLEWELLYN, *THE BRAMBLE BUSH: ON OUR LAW AND ITS STUDY* 128 (1951).

² Symposium, *Trafficking in Sex and Labor: Domestic and International Responses*, 158 U. PA. L. REV. 1575 (2010).

³ Christine Stark, Memoir, *Run*, 158 U. PA. L. REV. 1575 (2010).

In this Response, I argue that the experiment was successful. By opening with a powerful, victim-oriented narrative, the *University of Pennsylvania Law Review* achieved a unique synthesis of humanity and law that gave context, relevance, and immediacy to the human trafficking articles that followed. After analyzing the interaction between the creative and analytical forms of expression in the 2010 symposium issue, I suggest that there is material value in this form of hybrid publication, and I encourage other law reviews to experiment with similar creative means of communication to complement the scholarship they publish.

This Response proceeds in three parts. Part I provides a brief introduction to the relationship between law and creative writing. Part II then presents a narrative exposition of Ms. Stark's *Run*. Part III highlights *Run*'s unique contribution to the 2010 symposium issue, demonstrating that creative writing has a meaningful role to play in the world of legal scholarship.

I. LAW AND CREATIVE WRITING

Legal reasoning primarily emphasizes the objective world; its province is the observable and quantifiable.⁴ Creative writing, on the other hand, has the unique ability to capture the subjective, internal experiences of those to whom the law applies.⁵ Like the profound feelings, emotions, and reflections Ms. Stark communicates in *Run*, these experiences are hidden from the outside observer and are not easily reducible to words. Indeed, although logical reasoning and rational analysis—the touchstones of legal scholarship—can effectively communicate many things, those tools also have their limitations.⁶ Creative writing can offer perspectives, provide insights, and evoke an emotional response from the reader that logical reasoning and rational analysis cannot.

Effective communication of these internal experiences, however, requires a special toolset—a level of self-awareness and creativity that

⁴ See Daniel A. Farber & Suzanna Sherry, *Telling Stories Out Of School: An Essay On Legal Narratives*, 45 STAN. L. REV. 807, 811 (1993) (noting the “abstract, objective, and empirical” nature of legal reasoning).

⁵ See Robert F. Seibel & Nancy Cook, *The Inaugural CLEA Creative Writing Contest*, 4 T.M. COOLEY J. PRAC. & CLINICAL L. 179, 182 (2001) (“Literature brings us closer to the things that matter. Because of that, because fiction and poetry can strike at the soul, the heart, or the funny bone of a person, they have a closer relationship with truth than many—perhaps most of our cases and legal texts have.”).

⁶ See Farber & Sherry, *supra* note 4, at 811 (noting “the individualized context and the emotional aspect missing from most legal scholarship”).

brings these experiences into the world. That the vividness and intensity of these experiences is rarely communicated speaks not to their obscurity, but to the ability of the internal to defy the strictures of language. Ask the scholar trained in logical reasoning and rational analysis to apply her craft to explaining the experience of love, and her response will inevitably fall short. Ask the artist, however, and she may write a poem, paint a picture, or play a song that comes far closer to capturing the stunning depth of those feelings. In this way, the artist has the unique ability to serve as a conduit between law and humanity, providing the scholar with a glimpse into the internal experiences of others.

To be sure, the idea that a jurist or legal scholar should look to the humanities for a better understanding of the law and of those to whom it applies is not new. More than eighty years ago, Judge Learned Hand spoke to the Juristic Society at the University of Pennsylvania Law School and noted the importance of judges' having "at least a bowing acquaintance with Acton and Maitland, with Thucydides, Gibbon and Carlyle, with Homer, Dante, Shakespeare and Milton, with Machiavelli, Montaigne and Rabelais, with Plato, Bacon, Hume and Kant . . ." ⁷ Since then, there has been a proliferation of movements trumpeting the intersection of law and literature, including law in literature, ⁸ law as literature, ⁹ the law of literature, ¹⁰ and law as influenced by literature. ¹¹

⁷ LEARNED HAND, *THE SPIRIT OF LIBERTY: PAPERS AND ADDRESSES OF LEARNED HAND* 81 (1952); see Jack M. Balkin & Sanford Levinson, *Law and the Humanities: An Uneasy Relationship*, 18 *YALE J.L. & HUMAN.* 155, 156 (2006) ("[T]he lawyer or legal scholar called upon to discuss and analyze legal questions cannot do so by looking merely within the confines of traditional legal materials . . . Instead, he or she needs assistance and edification from other sources . . . to be found not in the natural sciences or the social sciences, but in subjects that we customarily call 'the humanities.'"); see also LLEWELLYN, *supra* note 1, at 128-29 ("Go, then, and read—in the law and out. By all means read. Work at your art, your science, your philosophy—work even at your Mencken, if you must, or Heywood Broun. But bring the work home again, and merge it with your law.").

⁸ See Thomas Morawetz, *Empathy and Judgment*, 8 *YALE J.L. & HUMAN.* 517, 518 (1996) (book review) (defining "law in literature" as "the depiction of lawyers, judges, and legal practices in fiction").

⁹ See *id.* (defining "law as literature" as "the application of theories and techniques of understanding, borrowed from literary criticism, to legal texts and activities").

¹⁰ See *id.* (defining "the law of literature" as the "consideration of the legal norms that shape and limit literary activity and attitudes").

¹¹ See *id.* (defining "law as influenced by literature" as the "examination of the role of literature in affecting legislation, judicial practice, political attitudes, and so on").

Within the law and literature movement, however, few strands have had more of an impact on legal scholarship than “legal storytelling,” or the use of personal narratives to argue for legal conclusions.¹² A formidable group of scholars eschews conventional analytic methods and places an emphasis on the aesthetic and emotional dimensions of narration in order to share “stories from the bottom”—that is, stories from women and people of color about their oppression.¹³ Beginning with early examples of legal storytelling, such as Susan Estrich’s groundbreaking 1986 article *Rape*—which opens with a graphic depiction of the author’s own experience as a victim of sexual abuse and then proceeds with her legal analysis¹⁴—narrative in legal scholarship has been employed in an array of subject matter areas and through a variety of techniques.¹⁵ These scholars use their own experiences as a means of creating the normative ground on which their legal prescriptions are based.¹⁶

But while a *mélange* of personal narratives has been published over the past few decades, they have generally been written by law professors,

¹² Kenji Yoshino, *The City and the Poet*, 114 YALE L.J. 1835, 1840 (2005).

¹³ Farber & Sherry, *supra* note 4, at 808.

¹⁴ Susan Estrich, *Rape*, 95 YALE L.J. 1087, 1090 (1986) (explaining that her legal analysis “examines rape within the criminal law tradition in order to expose and understand that tradition’s attitude toward women”).

¹⁵ See, e.g., Paulette M. Caldwell, *A Hair Piece: Perspectives on the Intersection of Race and Gender*, 1991 DUKE L.J. 365, 365-66 (using a personal narrative to introduce an article about race and gender); Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2418-22 (1989) (using first-person dialogues to demonstrate the power of narrative); Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 15-19 (1991) (using narratives to discuss the topic of domestic violence); Charles J. Ogletree, Jr., *Beyond Justifications: Seeking Motivations to Sustain Public Defenders*, 106 HARV. L. REV. 1239, 1260 (1993) (describing the author’s decision to be a public defender in light of his sister’s murder). See generally STEPHEN L. CARTER, REFLECTIONS OF AN AFFIRMATIVE ACTION BABY (1991) (describing the author’s personal experiences with affirmative action).

¹⁶ See Kathryn Abrams, *Hearing the Call of Stories*, 79 CALIF. L. REV. 971, 984-85 (1991) (explaining that the personal narrative Professor Estrich proffers in *Rape* creates “the normative ground from which [she] examines the elements of rape and the use of discretion in its enforcement”); cf. Nancy Levit, *Reshaping the Narrative Debate*, 34 SEATTLE U. L. REV. 751, 758-59 (“Creating a storyline is fundamental to how humans comprehend and remember events. The brain is structured, or ‘wired,’ to detect patterns[,] and encoding ideas in story form is a better way than simply conveying facts to encourage . . . the recognition of new patterns and relationships among objects and ideas. People retain about one-fifth of what they read, but will remember about four-fifths of the images they form in their minds. Stories are recalled much better than sterile facts because stories are essentially remembered as symbols or images. . . . Stories don’t just entertain, they provide a structure for organizing and understanding a chain of events.” (internal citations omitted)).

whose legal background and academic pedigree provide them with the authority to voice their perspectives in the pages of a law review.¹⁷ *Run*'s placement at the beginning of the 2010 symposium issue, then, is unique—it is more than just a continuation of the law and literature or legal narrative tradition; it is a new voice (that of a non-lawyer) articulated through a novel approach (creative writing). The *University of Pennsylvania Law Review* provided Ms. Stark with a unique opportunity to share her craft and perspective with the legal community, and moreover, allowed her depiction to inform the scholarly articles that followed. As I explain in the rest of this Response, the integration of the two components is immediate and impactful, making a compelling case for future experimentation with this form of hybrid publication.

II. FIRST ENCOUNTER

I read *Run* for the first time aboard an Amtrak train creeping down the Pacific coast from Portland to Los Angeles. After a few hours of watching the array of swirling colors and natural formations passing outside the observation car's large window, I opened an electronic version of the 2010 symposium issue on my computer. As I started to read, I noticed the symposium's articles were introduced by a piece entitled "Memoir." Intrigued, I opened the document, expecting to find conventional opening remarks on the topic of human trafficking delivered by a legal academic or practitioner. Instead, I encountered *Run*, a short but powerful work of creative writing that presents a chilling exposition of rape, captivity, and prostitution in just under two thousand words.

Run consists of two thematic parts: the first depicts the author's perspective as an abuse victim in the first person, while the second connects her experience to those of other abuse victims through the use of the third person. *Run* begins on a typical day in the life of Ms. Stark, who happens to be "driving up north to teach . . . a group of unassuming (and mostly uninterested) students the finer points of oratory."¹⁸ However, the chains on a truck sharing the highway jolt her mind, disrupting the normalcy of her day and evoking memories of her experience as an abuse victim. She writes:

¹⁷ See Anne M. Coughlin, *Regulating the Self: Autobiographical Performances in Outsider Scholarship*, 81 VA. L. REV. 1229, 1234 n.12 (1995) (noting that "many law professors, insiders as well as outsiders, have made in their scholarship explicit references to their personal experiences"); see also sources cited *supra* note 15.

¹⁸ Stark, *supra* note 3, at 1575-76.

Like that it is shattered. My mind reels, moves from shock, frozen time and space, Dad's ice cube Manhattans, my wrists caught, scrawny, tiny—almost baby wrists—yanking, pulling, the radiator, my mind snaps, it reels, it jumps, it moves, it stops midair, midsentence, midthought. A house. Sun. Summer. Men. Shouts. Moans. Laughter. Screams. Rape. Death.¹⁹

In the next paragraph, Ms. Stark narrates the details of her own horrific experience, revealing the terrifying isolation in which she was victimized and the surgical precision that her abusers employed to ensure that their crimes went unnoticed:

No one is going to hear, no one will come close; the drive is a long ribbon from the road, a tied-up dog barks, someone watches to make sure no one approaches; the tree, the beard of trees, my wrists, the snowmobile sleds; the heavy chains, so heavy, linked my wrists in a leather cuff, a tiny leather cuff someone obviously constructed to hold tiny wrists, almost baby wrists; they lined it with something soft and white and wooly, careful not to leave marks unless directed to do so, so careful they are, so thought out, so methodical; tiny leather cuffs for tiny wrists, linked to a radiator, linked to a snowmobile sled²⁰

Ms. Stark then unassumingly transitions her narration to the third person, as she explains the various ways in which her abusers reduced her to an inanimate object and treated her like their property:

Dogs are chained. Boats are chained. Wagons are chained. Doors are chained. Fences are chained. *Chain her*. Gates are chained. Snowmobiles are chained. Trailers are chained. Fish houses are chained. *Chain her*. No one wants to have to chase her, like they've done in the past. When they catch her some are meaner than others.²¹

Finally, Ms. Stark interweaves the details and circumstances of the similar abuses suffered by her American Indian ancestors, demonstrating the resilience that was passed down among generations of Stark women, and the shameful continuity of the abominable treatment they received:

This girl, she runs. She has their knowledge, her ancestors, land stolen, lives taken, smoldering fires stoked by white settlers as they moved in, greedy, wanting to own, own everything, wanting land, wanting livestock, wanting slaves, wanting gold. This girl, she has that knowledge, and her spirit thanks her ancestors, as she runs, tiny crow wings beating, sun on her back making her brown, she runs, this girl. Away from the men, this

¹⁹ *Id.* at 1576-77.

²⁰ *Id.* at 1577.

²¹ *Id.* at 1578.

time not soldiers, but it doesn't matter; they're the same, one hundred and thirty-six years later²²

This interweaving of past and present through the first and third person is a powerful rhetorical device, and Ms. Stark employs it to great effect. The reader is left feeling as though she has witnessed the shared suffering of not only Ms. Stark and her family, but also of generations of victims in a manner transcending time or place. In this way, *Run* imprints an indelible impression upon the reader, and, as will be explained in the next Part, alters the reader's perception of human trafficking in the articles that follow.

III. HUMANITY MEETS LAW

After finishing *Run*—with the thoughts and images it had evoked fresh in my mind—I began reading the symposium's articles. As I read, I noticed how *Run* changed my relationship with the words on the page. The experience of reading became more personal, and it acquired a pronounced sense of importance and immediacy. The rawness of *Run* and the events depicted therein permeated the articles that followed. I recognized a sense of awe and respect for the subject matter that compelling statistics and well-crafted legal arguments alone could not have evoked.²³

In *Run*, Ms. Stark provides the reader with a jarring look into the profound psychological and emotional suffering caused by one of society's most destructive problems. This is valuable information that helps the reader more fully comprehend the individual impact of human trafficking and its historical continuity. Rather than simply describing the circumstances of her abuse to the reader, Ms. Stark *shows* the reader by placing her in the victim's shoes. In this way, *Run* offers what Professor Kathryn Abrams describes as the "striking union of the revelatory and the corporeal . . . [achieved] by bring[ing] to light bodily experiences . . . that are not frequently discussed in public, let alone in the pages of law reviews."²⁴ Thus, *Run* helps the scholar understand what is at stake for a human trafficking victim and al-

²² *Id.* at 1578-79.

²³ Cf. Kaethe Morris Hoffer, *A Response to Sex Trafficking Chicago Style: Follow the Sisters, Speak Out*, 158 U. PA. L. REV. 1831, 1833 (2010) (recognizing "with inexpressible gratitude . . . the survivors whose words and spirits echo in my ears and propel me forward").

²⁴ Abrams, *supra* note 16, at 975.

lows the reader to carry that information with her as he explores the law and policy-related aspects of the problem.²⁵

In so doing, Ms. Stark also provides a unique historical-sociological perspective by demonstrating how the crimes of one generation are so easily perpetuated by those that follow. Ms. Stark is therefore able to connect her personal story with the “larger understandings of social structures [and historical contexts] within which those stories arise.”²⁶ This perspective is important because it can help with evaluating the multiple, and sometime conflicting, claims of victimhood that exist in every society.²⁷ Personal narratives that focus solely on the victim’s experience often ignore the larger, intertemporal aspects of a problem, and therefore fail to provide the reader with this broader understanding. In *Run*, however, Ms. Stark avoids both the myopia of the first person and the dehumanizing abstraction of the third person by placing her own experience in the context of generations of women who experienced the same, thereby integrating both perspectives into a coherent whole.²⁸

This aspect of *Run*—the manifestation of the universal in the particular—is especially valuable given the therapeutic function that telling personal stories can have. Psychological benefits redound both to the author, through the process of sharing her experience, and to those readers who have had similar experiences, through pathways of recognition and solidarity.²⁹ Thus, given the broad historical-sociological context in which Ms. Stark presents her experience, she provides an expansive tent of shared victimhood in which others can find refuge.

Finally, by introducing the symposium with *Run*, Ms. Stark intersects with the distinguished line of legal scholars who have sought to use their own stories of personal suffering to inform their jurisprudential insights. The interaction between Ms. Stark’s first-person narrative

²⁵ See Hoffer, *supra* note 23, at 1837 (noting that “[t]he life stories of girls and women who are prostituted in Chicago are stories that lay bare what the abuse of power looks like, that embody the abuse of positions of vulnerability, and that give real meaning to what is intended by the term exploitation”).

²⁶ Martha Minow, *Surviving Victim Talk*, 40 UCLA L. REV. 1411, 1437 (1993).

²⁷ See *id.* at 1437 (explaining how, for example, “the injury posed by certain kinds of hate crimes directed against historically oppressed groups . . . may well be more serious than hate crimes directed at individuals or groups without similar histories”).

²⁸ See *id.* at 1435 (“Individualized stories are essential to avoid the dehumanizing abstractions that allow people to forget or trivialize the suffering of others.”).

²⁹ See *id.* (“Telling stories of pain can be therapeutic; personal stories can also help mobilize people with similar experiences through a sense of recognition and solidarity.”).

and the symposium's articles is similar to that employed in narratives written by legal academics, but it is implemented through a division of labor wherein the legal analysis benefits from the creative writer's craft, and vice versa.³⁰ In this way, *Run* carries on the tradition of the legal narrative, but does so from the creative writer's perspective, combining the benefits of narrative with the special abilities of an artist.

CONCLUSION

In sum, *Run*'s placement in the 2010 symposium issue demonstrates how creative writing has the capacity to make a meaningful contribution to the world of legal scholarship by providing a sense of context, perspective, and immediacy otherwise lacking in conventional scholarly work. Using *Run* to introduce the symposium issue's human trafficking articles incorporated the victim's perspective through the voice of an artist and integrated that perspective with the policy and legal components that accompanied it. This integration was valuable not only because it facilitated a deeper understanding of the topic, but also because it exemplified the fact that "humanity and law [are] not two, but one,"³¹ thereby making a strong case for law reviews to continue experimenting with unique literary perspectives to inform the scholarship that they publish.

Preferred Citation: Michael Serota, Response, *Humanity and Law*, 160 U. PA. L. REV. PENNUMBRA 1 (2011), <http://www.pennumbra.com/responses/09-2011/Serota.pdf>.

³⁰ See, e.g., Estrich, *supra* note 14, at 1087 (providing an example of this interaction within a single article).

³¹ LLEWELLYN, *supra* note 1, at 128.