

STORYTELLING AND POLITICAL RESISTANCE: REMEMBERING DERRICK BELL (WITH A STORY ABOUT DALTON TRUMBO)

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My first impressions of Derrick Bell posed a puzzle. In person, he was gentle, soft-spoken, funny, and playful. In writing, he was searing, tough, provocative, and serious. During his visits to Harvard Law School during his Deanship at the University of Oregon and then after his return to the Harvard Law School faculty, most memorable were his warmth and gentleness—and his interest in the new crop of assistant professors that included me. His scholarship unsettled students and colleagues with assaults on conventional views, including conventional views of racial justice. No view was immune from critique. For example, he argued that the institutional interests of organizations like the NAACP Legal Defense and Educational Fund elevated school integration over school quality despite the contrary preferences of the organization’s actual clients.² That concern is now familiar and indeed contributed to intensive research about what were and what should have been the goals of the NAACP.³ When he first made the claim, however, it was bold and shocking.

Perhaps it was the combination of his personal gentleness with his scorching intellectual critiques that led Derrick Bell to inaugurate the use of fictional stories as a form of legal scholarship and advocacy. His parables and narratives introduced provocative ideas. What if visitors from a distant star arrived on Earth and offered gold and materials to undo pollution in exchange for all the African Americans?⁴ What if, rather than advancing the interests of African Americans, optimistic law reform impedes those interests?⁵ And how would a fictional female black law pro-

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1. Dean of the Faculty and Jeremiah Smith, Jr. Professor of Law, Harvard Law School.
 2. DERRICK A. BELL, JR., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 *YALE L.J.* 470 (1976).
 3. See MARTHA MINOW, IN *BROWN’S WAKE: LEGACIES OF AMERICA’S EDUCATIONAL LANDMARK* 9–32 (2010).
 4. DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* 158 (1992) (adapted by Trey Ellis as part of the anthology *Cosmic Slop* (HBO television broadcast Nov. 8, 1994)); see Trey Ellis, *My Sci-Fi Connection with Derrick Bell*, *THE ROOT* (Oct. 9, 2011, 12:19 AM), <http://www.theroot.com/views/my-sci-fi-connection-derrick-bell>.
 5. Richard Delgado, *Derrick Bell and the Ideology of Racial Reform: Will We Ever Be Saved?*, 97 *YALE L.J.* 923 (1988).

fessor take on Derrick Bell and other race relations theorists?⁶ With these works, Bell inaugurated the debates and story-telling efforts in a new movement in academic work, Critical Race Theory. Perhaps here he also pursued Frederick Douglas's advice: "At a time like this, scorching irony, not convincing argument, is needed."⁷

He offered ironic perspectives and critiques, yet Derrick Bell was always a man of action. He used his own self to take stands; leaving his position at the Department of Justice when forced to choose between that job and his affiliation with the NAACP, resigning from his deanship at the University of Oregon over a personnel decision, and waging a protest and then giving up his tenured post when Harvard Law School failed to hire a female African American professor.⁸

Fundamentally, Derrick Bell was a teacher and here the puzzle is solved. No personal action of his produced more enduring effects than his loving mentorship of generations of students whose aspirations, perspectives, and lives changed with his guidance and support. His students knew and felt his love even as he challenged their assumptions and their goals. From his work on the front lines of legal argument in the civil rights movement to his path breaking teaching and scholarship on civil rights and racial justice issues, Professor Derrick Bell inspired and challenged generations of colleagues and students with imagination, passion and courage.

In his memory, I consider the puzzle posed by another man's life. He may seem remote from Derrick Bell, yet Dalton Trumbo, an award-winning novelist and screenplay writer, was also a storyteller who pursued resistance through questions and action. Examining Trumbo's experience offers the opportunity to examine this unusual combination that also characterized Derrick Bell.

During the Red Scare period when the U.S. government investigated Communism, the House Un-American Activities Committee ("the HUAC") summoned many artists to testify about their own political affiliations and those of others. Dalton Trumbo, a successful white American author and screenwriter, refused to answer the Committee's questions, but also refused to assert his Constitutional right against self-incrimination. In so doing, he risked conviction for contempt of Congress, jail time, loss of his economic prospects, and social ostracism. Indeed, Trumbo was eventually convicted and incarcerated for his refusal to testify. Along with others, Trumbo was fired by the Motion Picture Association and forever deemed a member of "the Hollywood Ten." What was Dalton

6. DERRICK BELL, *AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE* (1987); *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* (1992); *GOSPEL CHOIRS: PSALMS OF SURVIVAL IN AN ALIEN LAND CALLED HOME* (1996); and *AFROLANTICA LEGACIES* (1998).

7. Frederick Douglass, *What to the Slave is the Fourth of July?: An Address Delivered in Rochester, New York (July 5, 1852)*, in 2 *THE FREDERICK DOUGLASS PAPERS: SERIES ONE: SPEECHES, SPEECHES, DEBATES AND INTERVIEWS, 1847-54*, at 388 (John W. Blasingame ed., 1982).

8. Caroline M. McKay, *Derrick Bell, First Tenured Black Professor at HLS, Dies*, *HARV. CRIMSON* (Oct. 7, 2011), <http://www.thecrimson.com/article/2011/10/7/law-school-bell-black/>.

Trumbo's story, and what does it reveal about resistance and sacrifice for principle?⁹

I. HOW THE RED SCARE AND MCCARTHYISM PRODUCED HARD CHOICES

The "Red Scare"¹⁰ and "McCarthyism"¹¹ are terms that characterize a period in American history when the government and business leaders found Communist influence so fearful that they used formal and informal means remove it from American life, even at the cost of individual privacy, freedom of speech, and freedom of association. Remnants of the World War II alliance between the United States and what was then known as the Soviet Union ceased; during what emerged as the Cold War, the Soviet Union and Communism became external enemies, over fears that they would infiltrate the United States.

Federal and state officials initiated a requirement that employees to sign loyalty oaths—sworn statements declaring loyalty to the United States and asserting no personal involvement with the Communist Party or any other similar organization. Government officials undertook investigations of people suspected to be Communists or sympathizers. The United States Congress established the Senate Internal Security Committee, with an investigative subcommittee headed by Senator Joseph McCarthy, and the House Un-American Activities Committee; each launched investigations and hearings focused on individuals it deemed to be disloyal, subversive or dangerous due to their political beliefs and affiliations. The HUAC issued subpoenas, compelling people to appear and answer questions. The targeted individuals included then-current members of the Communist Party, people who had in the past been members of the Communist Party but had withdrawn, some who had been sympathetic but never joined the Party, and others who had no connections to the Communist Party. The HUAC pressured witnesses to name colleagues associated with Communist activities and often made vague and sweeping accusations, assuming an individual's guilt. Witnesses who refused to answer were cited for contempt of Congress, which carried prison terms. Some were prosecuted for violating federal law prohibiting

9. The discussion that follows grows from research under my supervision by Angela Brooks during her time as a student at Harvard Law School.

10. Fears of global communism spread throughout the United States government and businesses between 1918 and 1924 and again during the late 1940s and 1950s. During these periods, public and private officials harassed individuals suspected of affiliations with the Communist Party. See KENNETH D. ACKERMAN, *YOUNG J. EDGAR: HOOVER AND THE RED SCARE, 1919–1920* (2011); ALBERT FRIED, *MCCARTHYISM, THE GREAT AMERICAN RED SCARE: A DOCUMENTARY HISTORY* (1996).

11. "McCarthyism: a mid-20th century political attitude characterized chiefly by opposition to elements held to be subversive and by the use of tactics involving personal attacks on individuals by means of widely publicized indiscriminate allegations esp. on the basis of unsubstantiated charges," named for Senator Joseph McCarthy who launched the Congressional hearings that had this character. WEBSTER'S SEVENTH NEW COLLEGIATE DICTIONARY 506 (1971). It is also known as the second Red Scare, taking place between 1947 and 1956, when federal and state government officials persecuted people involved with or allegedly involved with the Communist Party—and a period marked by false and hysterical claims against a political minority.

teaching, advocating, or supporting anyone who taught or advocated forcible overthrow of the U.S. government.¹²

America's entertainers drew particular attention. Perhaps due to visibility, perhaps because many notable members of Hollywood were immigrants and members of ethnic and religious minorities, or perhaps simply due to fear that Communists could place subversive messages into movies, the Hollywood-based film industry drew heightened suspicion and attention from government investigators.¹³ Ten members of the film industry refused to give testimony to the HUAC, as they believed the government was acting undemocratically and in violation of individual rights. As a result of this defiance, the HUAC held the ten in contempt of Congress.¹⁴ Acts of resistance like this refusal often led to assumptions of guilt or complicity. When the Motion Picture Association of America fired those ten individuals—known as the “Hollywood Ten”—the heads of major studios declared they would not knowingly employ Communists or others sympathizing with them, creating a “Blacklist” and essentially ruining the careers of hundreds of individuals suspected of being Communists.¹⁵

Among the Hollywood Ten was Dalton Trumbo, a successful author and screenwriter.¹⁶ Author of a highly successful novel entitled *Johnny Got His Gun*, Trumbo also authored screenplays for popular films including *Kitty Foyle* (1940), *Thirty Seconds Over Tokyo* (1944), and *Our Vines Have Tender Grapes* (1945). By the 1940s, Trumbo had become one of the highest paid writers in Hollywood, until 1947 when the HUAC summoned and accused Trumbo of being a member of the Communist Party.¹⁷

During the HUAC investigations, witnesses were routinely asked the standard question, “Are you now or have you ever been a member of the Communist Party?” When one witness declined to respond, a Committee member replied,

It is a very simple question. Anybody would be proud to answer it—any real American would be proud to answer the question, “Are you or have you ever been a member of the Communist Party”—any real American.¹⁸

12. JOHN JOSEPH GLADCHUK, *HOLLYWOOD AND ANTICOMMUNISM: HUAC AND THE EVOLUTION OF THE RED MENACE, 1935–1950* (2006).

13. *Id.* at 1.

14. *Id.* at 134.

15. *Id.* at 3.

16. Trumbo was nominated for an Academy Award for Writing: Adapted Screenplay, for *KITTY FOYLE* (1940). *The 13th Academy Awards (1941) Nominees and Winners*, <http://www.oscars.org/awards/academyawards/legacy/ceremony/13th-winners.html> (last visited April 11, 2012). Trumbo's 1939 anti-war novel, *Johnny Got His Gun*, won the Book Award (then known as the American Booksellers Award). BRUCE COOK, *DALTON TRUMBO* 140 (1977).

17. See PETER HANSON, *DALTON TRUMBO, HOLLYWOOD REBEL: A CRITICAL SURVEY AND FILMOGRAPHY* 1–9 (2007); COOK, *supra* note 16, at 174.

18. DALTON TRUMBO, *THE TIME OF THE TOAD: A STUDY OF INQUISITION IN AMERICA, AND TWO RELATED PAMPHLETS* 7 (Harper & Row 1972) (1949).

Dalton Trumbo later commented that the question had taken on “a connotation so terrible that even the asking of it, regardless of the answer given, [could] imperil a man’s career”¹⁹

Trumbo’s involvement in labor organizing and his prominence in the film industry drew the HUAC’s attention. Trumbo had indeed joined Communist Party in 1943, although he later drifted away from the Party. He did not view the decision to join as terribly significant.²⁰ People who observed Trumbo noted that organizational loyalty did not motivate him; instead, he was devoted to personal independence and adherence to his own word.²¹ He valued freedom and brotherhood; he wanted to resist fascism during the war; he did not especially believe in the theories of Karl Marx.²²

When Congress called Trumbo in as part of its investigation into Communists in Hollywood, he faced the choice of giving in to the intimidation of the government or being held in contempt of Congress for refusing to speak. Trumbo believed that that the entire inquiry into his personal beliefs violated his First Amendment rights. If Trumbo testified truthfully before Congress, he would have had to explain that he once joined the Communist Party, but dropped out in 1948. This admission could have cost him work in Hollywood and elsewhere and exposed him to the risk of prosecution and jail time. He might have avoided punishment if he “named names” of other members of the Communist Party and otherwise cooperated with the investigative Committee. Trumbo also had the option to appear before the Congress, but refuse to say anything, pleading the Fifth Amendment right against self-incrimination. This option carried the risk of being presumed a Communist—and hence losing reputation and work—and also the risk of being imprisoned on the basis of the testimony of others and evidence developed by the HUAC. If Trumbo refused to answer the questions posed by the HUAC, he could face jail, loss of employment, and social stigma. So what could someone in Trumbo’s position do, once presented with a subpoena demanding personal appearance and answers to questions before the HUAC?

II. FINDING A PATH OF RESISTANCE

Trumbo decided to ask the Committee his own questions and give his own statement. Rather than testify and assert his right against self-incrimination, Trumbo invented a third option in responding to the Committee’s demands; he challenged the Committee’s questions and approach. Trumbo did not simply wait for the questions from the Committee. Instead, he tried to offer his own statement, but the HUAC re-

19. *Id.*

20. F.X. Feeney, *Odd Man In: The Legacy of Dalton Trumbo*, WRITTEN BY, Feb. 2002, available at http://marlowesghost.com/yahoo_site_admin/assets/docs/Microsoft_Word_-_Odd_Man_In.5371545.pdf.

21. *Id.*

22. See DALTON TRUMBO, ADDITIONAL DIALOGUE: LETTERS OF DALTON TRUMBO, 1942–1962, at 435 (Helen Manfull ed., 1970); Petri Liukkonen, *Dalton Trumbo (1905–1976)*, AUTHORS’ CALENDAR (2008) <http://www.kirjasto.sci.fi/trumbo.htm>.

fused to accept his offering.²³ After his statements were rejected, he asked the Committee, "What it is that is in my statement that this committee fears be read to the American people?"²⁴ Trumbo tried, without success, to introduce 20 scripts he had written because "My work has been under attack."²⁵ He also unsuccessfully tried to introduce the "statements of General Arnold, of juvenile court judges, of the head of the Motion Picture division of the [United Nations Rehabilitation and Relief Agency], of the Naval Chaplain in charge of motion-picture projects for the United States Navy,"²⁶ and he registered his protest while proceeding to challenge the assumptions behind the Committee's questions. Trumbo objected to the HUAC's instruction that he answer questions only with a "yes or a no," and instead replied: "I shall answer 'Yes' or 'No,' if I please to answer. I shall answer in my own words. Very many questions can be answered 'Yes' or 'No' only by a moron or a slave."²⁷ When asked whether he was a member of the Screen Writers Guild, Trumbo responded:

The rights of American labor to inviolably secret memberships lists have been won in this country by a great cost of blood and a great cost in terms of hunger. These rights have become an American tradition. Over the Voice of America we have broadcast to the entire world the freedom of our labor.²⁸

The Chairman of the Committee objected that Trumbo was not answering the question. Nonetheless, Trumbo continued:

You asked me a question, which would permit you to haul every union member in the United States up here to identify himself as a union member, to subject him to future intimidation and coercion. This, I believe, is an unconstitutional question.²⁹

The HUAC investigator asked, "Are you now, or have you ever been a member of the Communist Party?"³⁰ Trumbo replied by asking for the chance to confront the evidence against him.³¹ The Chairman then dismissed Trumbo from the room.³²

The HUAC charged Dalton Trumbo with contempt of Congress, based on the charge that he had refused to answer the Committee's questions. Trumbo and the nine other members of the "Hollywood Ten" unsuccessfully appealed their contempt citations in court. Shortly after Congress'

23. *The Communist Infiltration of the Motion-Picture Industry: Hearing Before the H. Comm. on Un-American Activities*, 80th Cong. 329–41 (1947).

24. *Id.* at 330.

25. *Id.* at 332.

26. *Id.*

27. *Id.* at 331.

28. *Id.* at 332.

29. *Id.*

30. *Id.* at 333.

31. *Id.* at 334.

32. The committee investigator then presented a list of Trumbo's films, characterized as "anti-British and anti-war," evidence that Trumbo's novel was sold by Communist Party book shops, a statement that Trumbo had published in *New Masses*, a known Communist Party magazine, and a photostatic copy of a 1944 Communist Party membership card with Trumbo's name. *Id.* at 332–41.

decision to cite Trumbo and the rest of the Hollywood Ten for contempt, major producers met at the Waldorf-Astoria Hotel in New York to publicly announce that they would fire or suspend the ten men and not rehire them until they were acquitted or until they denounced their affiliation with the Communist Party. With this “Waldorf Statement” and the subsequent Blacklist, barring suspected Communists from jobs, Hollywood itself became an enforcer of the Red Scare tactics.

Fired from the movie studio Metro-Goldwyn-Mayer and imprisoned for nearly a year in 1950, Trumbo could not return to his writing career in Hollywood. He moved to Mexico with his family and began to write under pseudonyms. Producers unwilling to hire “Dalton Trumbo” nonetheless began to buy scripts he wrote—sold under other names for much less compensation than his prior rates.

In 1956, one of Trumbo’s scripts, *The Brave One*, won an Oscar award for best screenplay, but it was the fictional name “Robert Rich” that received credit for the honor. Trumbo used the occasion to protest the Blacklist. He appeared on live television, responding to hostile questions; he gave interviews in newspapers across the country, and he even offered to write screenplays without a fee, but only if he could use his own name.³³ Meanwhile, Trumbo and his family faced stigma and ostracism. His son, Chris Trumbo, later wrote that wherever his family went, people would recognize the link between their name and the governmental investigation of Communists and would treat the entire family with scorn or distrust.³⁴

Eventually, with the support of leading actor Kirk Douglas and producer Otto Preminger, Trumbo gained work, first anonymously, and then by name in two highly successful films, *Spartacus* and *Exodus*. These successes, combined with the courage shown by Trumbo and his friends, helped to dissolve the Blacklist. Eventually, Hollywood welcomed Dalton Trumbo back. He wrote scripts for many successful films, including *The Sandpiper*, *Hawaii*, *Papillion*, *The Fixer*, and the film based on his own novel, *Johnny Got His Gun*. In 1970, the Writers Guild presented Trumbo with its Laurel Award. Accepting the honor, he said:

The [B]lacklist was a time of evil . . . no one on either side who survived it came through untouched by evil . . . There was bad faith and good, honesty and dishonesty, courage and cowardice, selflessness and opportunism, wisdom and stupidity, good and bad on both sides . . . It will do no good to search for villains or heroes or saints or devils . . .³⁵

Later, Trumbo reflected:

33. Feeney, *supra* note 20.

34. Chris Trumbo was passed over for an English award in tenth grade solely because of his father’s reputation, and one day some of the students in his class locked him in a burning furnace. Mary Couzens, *Theater Review of TRUMBO* (2009), http://www.extraextra.org/Review_Trumbo_09.html (last visited Apr. 12, 2012).

35. Dalton Trumbo, Laurel Award Acceptance Speech Delivered to the Writers Guild of America West, *as reprinted in THE WRITERS GUILD OF AM. NEWSL.*, April 1970, in BRENDA MURPHY, *CONGRESSIONAL THEATRE: DRAMATIZING MCCARTHYISM ON STAGE, FILM, AND TELEVISION* 115 (1999).

The legal principles, which protect one against the force of the state, protect all. If a Communist comes first under attack and is overwhelmed, the breach opened by his fall becomes an avenue for the advance of the enemy with all his increased prestige upon you. You need not agree with the Communist while you engage in his and your common defense. You may, indeed, oppose him with every honorable weapon in your arsenal, dissociate yourself from his theories and repudiate his final objectives. But defend him you must, for his defeat in the Constitutional battle involves the overturn of principles, which thus far have stood as our principle barrier, short of bloodshed, against fascism.³⁶

III. DALTON TRUMBO AND DERRICK BELL

Before his ordeal, Trumbo wrote a pamphlet in 1941 to defend union leader Harry Bridges against deportation hearings. There, Trumbo quoted Supreme Court Justice Louis D. Brandeis: “The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well meaning, but without understanding.”³⁷ In that same pamphlet, Trumbo wrote that, “the great virtue of the democratic system is contained in the right—even the obligation—of Americans to freely criticize the actions of their government.”³⁸

In telling the story of Dalton Trumbo, I seek to echo Derrick Bell’s commitment to telling stories that challenge complacency. There are also intriguing parallels in the lives of the two very different men. In both his life and work, Derrick Bell tackled not only racism, but also complacency and lock-step thinking through his insistent questions and courageous protests, even when such challenges meant giving up his job. Dalton Trumbo and Derrick Bell each told stories that provoked and taught.³⁹ They pursued acts of resistance that now offer their own chapters in the storied struggles for freedom.

36. TRUMBO, *supra* note 18, at 60.

37. DALTON TRUMBO, HARRY BRIDGES: A DISCUSSION OF THE LATEST EFFORT TO DEPORT CIVIL LIBERTIES AND THE RIGHTS OF AMERICAN LABOR 1 (1941).

38. *Id.*

39. For an examination of the role of storytelling in political resistance efforts, see SHARI STONE-MEDIATORE, *READING ACROSS BORDERS* (2003).