Why Haven’t the Crits Deconstructed Footnotes?

Arthur D. Austin*
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Abstract

A crit is a self-empowered deconstructionist of legal scholarship.
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A crit is a self-empowered deconstructionist of legal scholarship. Critics brag about freeing the text from the tyranny of the author and then showing how the text embarrasses itself. Every topic has been deconstructed—torts, contracts, gender, etc. You name the topic and a crit has "freed" it from capitalist imperialism. As a crit once boasted: it's a "real-life revenge of the nerds." There is, however, a major glitch in the nerds' revenge. They have not deconstructed one of the most influential fields in law—footnoting.

How can critics, dedicated to the subversion of legal education and the legal system, ignore footnotes? Every professor knows that it is the adroit use of footnotes that tilts the tenure decision. Lawyers are always trying to slide in an extra argument in a footnote at the bottom of a brief while law students are tortured by having to master the Bluebook. Here we have the ideal target for deconstruction and the critics missed it! It's incredible. Are they brain dead from drinking Thunderbird or from the fumes emanating from those Jaguars they wheel? The self-proclaimed "best and brightest" either do not comprehend, or choose to overlook the fact that a footnote is the best expression of deconstruction.

Such a concept has its genesis in the deMan vision which postulates that deconstruction undermines, subverts, transgresses and demystifies the "privileged" interpretation of a text or a phrase. "Privilege" is a term of art

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I have concluded that the most efficient way to protect the reader and the environment from the footnote plague is to rely on the market system. It is a simple plan: none of the references or citations are printed in the usual location. Instead, a monetary value is printed with each note. This is the value that I have assigned that particular note. Readers may obtain any note, or all the notes, by sending me, in a self-addressed envelope, the appropriate amount of money, indicating the footnote desired. Even Richard Posner has not thought of selling footnotes.

1. This is a cheapo: $25.
2. Id. (as to price). Only a crit would read, or write, this article.
3. Id. (as to price). Not much better than n.2.
4. Id. (as to price). A lot of good old venom in this piece.
5. Etc. is like buying an old trunk at an auction. $17.
6. I like this quote; citation to the source will cost you $1.00.
7. These are self-cites to my work and therefore go at $2.50. These babies got press in the Wall Street Journal and New York Times.
that serves as a symbol for corrupt establishment views. Hence, in all legal forms of writing, the text dominates the page and dictates meaning. According to deconstruction terrorism, the text is "privileged" in the hierarchical sense of the term. It is elitist.

On the other hand, footnotes are deposited at the bottom of the page, published in small, almost unreadable print. Along with critics, women, minorities, people who live in Cleveland, and the homeless, footnotes are the "oppressed." Footnotes are victims of text. Articles condemn the use of footnotes while legal scholarship attacks with ruthless abandon. Some go so far as to say that footnotes are an "abomination" that serve "devotional purposes." Even though text gravely push text up near the top of the page, they remain small print and at the bottom. Whatever the circumstances, footnotes are at the mercy of the hierarchy.

It was Jacques Derrida—the master of indeterminacy, the Dirty Harry of Aperitif—who recognized that the privileged meaning of the text is a form of oppression. It oppresses by concealing other values and meanings. The "privileged" meaning purposely distorts and displaces the real meaning, which resides in "a marginal zone where the particular, the unique, and the inseparable may reside in autonomy from the broader system that threatens to assimilate, absorb or reduce them." The next step for the Derrida technique was to go to the "marginal zone" (the oppressed source) and "free" a new and competing interpretation. Thus, a decoy—but not the nerdy crit—would go to the "marginal" zone of footnotes for a new interpretation. It would be an interpretation that would dispute the validity of the privileged view. It would question the text's privileged position at the top of the page. Likewise, marginalizing notes by forcing them into small print would be challenged. Another strategy is to recognize that the text in legal scholarship is a form of "phallocentrism." The text is obviously masculine: it is rational, analytical and objective. It is written to place men in a hierarchical position over women—politically, sociologically and philosophically. The text thus expresses patriarchal values.

8. Quality guaranteed. $3.60.
9. A deal at $3.5.
10. Has a nice ring to it—printed at $2.58.
11. You are on your own for this one.
12. This costs more because I actually had to read this decoy crap. $3.00.
13. You can have this one free. You won't understand it anyway.
14. This is a sipra so it's only $1.0. (The original was $2.25.)

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On the other hand, footnotes bear traditional feminine qualities: they are nurturing, empathic, flexible, and speak in "another voice." They "care" for the reader. Now it becomes obvious; the deconstructive analogy demonstrates that as the white male legal system oppresses women and minorities, so the text marginalizes footnotes. Under phallocentrism, the text treats footnotes like women—as a supplement, a helpmate—something made out of a text rib.

This interpretation explains why the oppressors from the text seek to extend the reach of phallocentrism even further into the footnote bone. They have relied on several tactics. First, there is the Bluebook, a masculine instrument of order and rationality created by white male law review editors to maintain phallocentrism in a field that could be "free" if the voices of women were allowed to circulate. Nit-picking technicalities smother female improvisation and nurturing. Second, until recently, the privileged view was that only initials be used to identify the author's first name. The objective was obvious and insidious—marginalize women even in footnotes by refusing to recognize gender and thereby convey the impression that only males produce scholarship. After complaints by women, the most recent Bluebook changed the system to require the use of first names. A small victory for the oppressed in an environment of oppression at the bottom of the page.

What makes the crit oversight of footnotes an aberrational topic for writers is that deconstruction contains the ideal remedy for footnote marginalization. It wouldn't make sense to reverse the positions with notes on top and text below. A reverse missionary position merely changes the orientation of privileged status. Nor would the famous "footnote revelation" work. No, the best resolution is a Derrida "Double Session."

It is a visual technique designed to alienate, challenge, and force the reader to appreciate the essence of deconstruction, i.e., that words do not have meaning. In Glas, Derrida puts quotations from Hegel on one side and Genet on the other. While reading one column you are reminded

15. If you don't know this bellefinz cote then you deserve to pay a "fine" of $2.00.
16. A feminist who doesn't know this cote should have to take a class from Camilla Paglia.
17. The author tries to combine tendentious with political correctness and comes up looking foolish. It's yours for $3.40.
18. This is a "negative" cote, bound to get you attention. Excellent for a promotion and news article. A good price—$3.00.
19. This is a cote to several examples of my double session technique. These are works of art, make a bid.
20. This is a cote to Derrida. Only critics read the gleez of deconstruction, therefore not much of a market. $3.7.
that serves as a symbol for corrupt establishment views.\textsuperscript{8} Hence, in all legal forms of writing, the text dominates the page and dictates meaning. According to deconstruction terrorism, the text is “privileged” in the hierarchical sense of the term. It is elitist.

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8. Quality guaranteed: $3.60.
9. A steal at $3.5.
10. Has a nice ring to it—priced at $.38.
11. You are on your own for this one.
12. This costs more because I actually had to read this decon crap. $3.00.
13. You can have this one free. You won’t understand it anyway.
14. This is a supra so it’s only $.10. (The original was $.25.)

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15. If you don’t know this boilerplate cite then you deserve to pay “a fine” of $2.00. A feminist who doesn’t know this cite should have to take a class from Camille Paglia.
16. The author tries to combine tenderness with political correctness and comes up looking foolish. It’s yours for $.40.
17. This is a “fugitive” cite, bound to get you attention. Excellent for a promotion and tenure article. A good price—$3.00.
18. This is a cite to several examples of my double session technique. These are works of art, make a bid.
19. This is a cite to Derrida. Only critics read the guru of deconstruction, therefore not much of a market. $3.7.
Dear Paul: Language Tips Questions and Answers

Paul Morris

Once again, it is time to answer the plethora of inquiries I receive monthly re: language tips.

Dear Paul: What does “plethora” mean and what is it’s proper use? Signed, MJWCM, Kendall.

Dear MJWCM: First of all, you have way too many initials, so I will simply refer to you as “M”, or as all good appellate practitioners would state, the symbol “M” will be used to refer to MJWCM. M, you should know that “plethora” is one of several words which tell the reader: “Hey reader, look how I can use an impressive word instead of a simple word.” The other words are death, cavil, deluged, and re. (By the way, I think “plethora” refers to a small fish that hangs around sharks for leftovers. Sort of like associates in a law firm.)

ATTENTION READERS: Notice how M suffers from the dreaded disease of apostrophitis. M should have used "its", not "it's". More about this later.

Dear Paul: Let me ask you something. Which is more better, pled or pleaded? Signed, F.L. Bailey, Trial Lawyer.

Dear F.L.: Let me ask you something. Where are you from, Long Island or what? Do us all a favor and stick to litigation. But you do ask a good question. The best way to answer your question is by illustration. Here is an example of the correct usage of “pled”: “Through his motion for attorney’s fees, the attorney pled the opposition dry.” Now notice the difference in the proper usage of “pleaded”: “The court reporter appeared in a well-pleaded skirt.” (NOTE: I am not gender biased. By this last example, I am not suggesting that all court reporters are female. Therefore, please feel free to substitute the following illustration: “The court reporter appeared in a well-pleaded kilt.”

* Paul Morris is a sole practitioner in Coral Gables, Florida specializing in civil and criminal state and federal appeals. He has written and lectured on behalf of the Florida Bar and various state and national organizations. He writes a monthly column entitled "Appellate Tips" in the Dade Bar Bulletin.

20. A good book on deconstruction. $1.50.
21. Id. as to cite. Two for the price of one.
22. Notice that I privileged footnotes, i.e., "footnote" precedes "text."
23. Another fugitive note. $3.00.
24. This one costs $0.67. I can give you a real nasty criticism of law review editors, a fugitive cite from an Old Village Voice. $4.00.
25. It’s a bad joke, probably politically incorrect, so take it free.