REGULATING THE SELF: AUTOBIOGRAPHICAL PERFORMANCES IN OUTSIDER SCHOLARSHIP

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In a word the self has two characteristics. It is unjust in itself for making itself centre of everything; it is a nuisance to others in that it tries to subjugate them, for each self is the enemy of all the others and would like to tyrannize them.¹

Blaise Pascal

WHAT is the meaning of the experiences for which human actors desire a legal remedy? Who prescribes that meaning? These are questions that women and people of color have pondered since they came to the legal academy, bringing with them experiences different from those of the white men who hired them. Over the past decade or so, outsider² legal scholarship has flour-

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² “Outsider” is the term that feminist, critical race, and gay scholars use to identify themselves. See, e.g., Patricia J. Williams, The Alchemy of Race and Rights: Diary of a Law Professor 7, 89 (1991); William N. Eskridge, Jr., Gaylegal Narratives, 46 Stan. L. Rev.
ished, with many of its authors seeking to forge collective solutions for harmful experiences women and people of color have suffered. As the various outsider projects have come of age, many outsider scholars have concluded that legal discourse, with its reliance on purportedly objective truth-finding methods, impedes their social-political agendas and predetermines the range of their cognitive analyses. In particular, they complain that conventional legal scholarship lacks a language to articulate the social inequities that outsiders endure. Rather than giving outsiders a voice, they maintain that the form of discourse conventional scholarship employs only further legitimizes racial and gender stereotypes.

Faced with the barriers of conventional scholarship, these scholars have embarked on an urgent strategic mission. Instead of adhering to traditional forms, they must develop alternative methods and languages that will include their distinctive perspectives. By developing alternative forms of discourse, outsiders hope to repair the partial accounts of outsiders' lives embedded in conventional scholarship, and, ultimately, to supersede the type of self-effacing "objectivity" exemplified in current legal theory and practice.

Several prominent outsider scholars have offered what seems to be a simple solution: outsiders should start telling stories about themselves. Storytelling, they claim, has a radical transformative

607, 608 & nn.1-2 (1994); Lani Guinier, Of Gentlemen and Role Models, 6 Berkeley Women's L.J. 93, 96-97 (1991); Charles R. Lawrence, III, The Word and the River: Pedagogy as Scholarship as Struggle, 65 S. Cal. L. Rev. 2231, 2239 (1992); Margaret E. Montoya, Mascaras, Trenzas, Y Grenas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse, 17 Harv. Women's L.J. 185, 193 (1994). By now, "outsider" has hardened into a term of art that signifies the failure of law to include the perspectives of diverse members of the community. See Mari Matsuda, Affirmative Action and Legal Knowledge, 11 Harv. Women's L.J. 1, 1 n.2 (1988) (defining "outsiders" as the members of "various outgroups, including women, people of color, poor people, gays and lesbians, indigenous Americans, and other oppressed people who have suffered historical under-representation and silencing in the law schools"); see also Richard Delgado, Storytelling for Oppositionists and Others, 87 Mich. L. Rev. 2411, 2412 & n.8 (1989) (defining "outgroup" as "any group whose consciousness is other than that of the dominant one").

3 Like many of the terms that the outsider narrative project employs, objectivity is a complex concept that has more than one meaning. See Kent Greenawalt, Law and Objectivity 4 (1992) (describing four ways in which law might be objective); Maurice Mandelbaum, The Anatomy of Historical Knowledge 146-51 (1977). A working definition of objectivity, to which the outsiders might subscribe, refers to those accounts that claim to be "independent of the time, place, and personal attitudes of him who gives it." See Arthur C. Danto, Narration and Knowledge 32 (1985).
potential. If the experiences of African-Americans and women have been invisible to or misconstrued by lawmakers, then outsider law professors must use their positions of influence to communicate the intangibles of outsider experience, intangibles that are repressed by traditional legal doctrine, analysis and theory. By telling stories about their individual experiences and pain, outsiders strive to transform the legal academy and legal scholarship, the law itself, and ultimately the larger culture. This proposal has proved to be invigorating for both outsider and insider scholars. Outsiders have begun including autobiographical narratives in their law review articles and books, and insiders have responded with praise and criticism, and also with some stories of their own.4

For outsiders, autobiography would seem to be a foolproof strategy for recuperating marginalized experience. It is politically interventionist and theoretically disruptive, and yet at the same time flexible, sensitive, and immediately accessible. What harm can outsiders do by telling their own stories? At best, their stories will disturb and then persuade insiders that law should reflect the reality of outsider experience. At worst, the insiders will not listen or will mishear. In either case, storytelling should reinforce outsiders' commitment to a resistant scholarship and inspire other outsiders to offer their own autobiographies in support of the cause.

These claims on behalf of storytelling deserve serious scrutiny. Outsider scholars—or, for that matter, insider scholars who also employ autobiography—must consider whether and in what sense this form of representation achieves the goals of outsider scholarship. To what extent does outsider autobiography rescue formerly ignored experiences and points of view, or permit the author to break through the cultural limitations of legal discourse? If the law is to comprehend its social obligations through the perspective of the individual storyteller, the tactic affirmed by the autobiographical project, then it is imperative to clarify and evaluate the nature of the perspectives that storytellers construct.

In this paper, I will argue that autobiography is not simply a transparent medium through which the self may give voice to what

4 The latter development may reflect a conversational move, which personal stories sometimes provoke, in which the storyteller's listeners respond, "Enough about you, let's talk about me." See Laura Marcus, "Enough About You, Let's Talk About Me": Recent Autobiographical Writing, 1 New Formations 77 (1987).
it alone knows. Nor is autobiography an unconditioned mode of representation that opens up subjective spaces hitherto unexplored. For one thing, an autobiographical narrative makes the same ontological commitments to readers as legal discourse. Autobiography places limitations on the range of available meanings similar to those imposed by law. In addition, many literary critics and historians have suggested that autobiography and the experiences it constructs are shaped by the same cultural values reflected in law. Far from eluding the constraints of legal discourse and cultural bias, therefore, autobiography may lead outsiders to become the unwitting proponents of the very values they most want to resist.

Perhaps more crucially, the outsiders' intention to liberate discourse from dogmatic or culture-bound types of objectivity is threatened by the possibility that their works will merely achieve a simple reversal of academic orthodoxy. By celebrating individual perspectives, reliance on autobiography may establish authorial subjectivity as the new form of unassailable dogma, the new tale that wags our legal discourse.

Despite its potential complicity in a culture the outsiders decry, storytelling is an attractive enterprise because it is remunerative. Yet this feature of outsider storytelling raises additional questions about the role of these ostensibly resistant texts, particularly the meaning that context imposes on them. The scholars who tell the stories receive material rewards for publishing them. The authors are also lawyers or, at least, critics of the law, whose purpose in offering the stories is instrumental to some end. By recounting painful, personal experiences to an audience willing to pay for them, the authors use themselves and their suffering as a market commodity. Similarly, because the storytellers want lawmakers to recognize and remedy their suffering, they must make their stories intelligible (and in some sense marketable) to the audience whose understanding and intervention they seek, even as they rebuke it. Thus, the storyteller is never free from the constraints imposed by her audience's expectations. While autobiographies may possess a transformative power, one must wonder what they transform. Will the practice of telling one's own stories transform legal culture, as the outsiders claim? Or will that practice more likely transform the self who tells the story?
These are questions that outsiders must confront if their social reform platform is to be successful. Before exploring tentative answers to such questions, I want to clarify my intentions in taking up this project. A protracted debate is taking place in the academy over appropriate standards by which to evaluate the narratives outsiders offer as a form of legal scholarship.\(^5\) I do not intend in this paper to participate directly in that debate. My critical judgments are guided, not by the standards for scholarship imposed by members of the mainstream academy, but by the objectives identified by the participants in the autobiographical project. Those who lead reform movements should be magnanimous enough to tolerate, even if they do not always welcome, engaged criticism.\(^6\) This is so because the stakes in the outsider project are so high—nothing less than reshaping the lives that people of color and women "can live today and will be able to live tomorrow."\(^7\)

The outsiders' use of autobiographical material creates a practical obstacle for potential critics, however, even (or, perhaps, especially) when the critic shares the storyteller's political vision. The problem goes well beyond the concern raised by Professors Daniel Farber and Suzanna Sherry over the plight of the critic who doubts the accuracy of an outsider's autobiographical story.\(^8\) While it would be distressing to discover and discomfiting to report that

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\(^6\) Cf. Cary Nelson, Men, Feminism: The Materiality of Discourse, in Men in Feminism 153, 163 (Alice Jardine & Paul Smith eds., 1987) ("[W]omen in feminism have been harder on one another than they have been on men, just as at other times they offer one another greater support and encouragement.").

\(^7\) Id.

\(^8\) Farber & Sherry, Telling Stories, supra note 5, at 835-38.
another scholar was publishing lies about her personal experiences, the critic faces a painful task even where she concludes that the autobiographer has been scrupulously honest, because any critical judgment of an autobiographical performance may be interpreted as a negative assessment of its author's character. Whatever other work it accomplishes, autobiography is a representation (although often oblique, indirect, and even sometimes unconscious) of its author. Therefore, "[i]f part of the function of criticism is to judge (and surely it is), then it is not just a joke to say that judging an autobiography to be 'bad' is very nearly the same as judging a life to be 'bad.'" This paper reflects, in part, an inclination to essay the limits of that warning.

I. THE OUTSIDER NARRATIVE PROJECT

Many different kinds of law review articles now contain autobiographical narratives, perhaps reflecting a larger trend towards

9 Although autobiography invariably creates in readers a desire to test the authenticity of the author's representations, see infra notes 156-60 and accompanying text, it is improbable that critics will discover that an author has been, as Farber and Sherry put it, "doctoring data to fit [her] thesis." Farber & Sherry, Telling Stories, supra note 5, at 834.


11 James Olney, Autobiography and the Cultural Moment, in Autobiography: Essays Theoretical and Critical, supra note 10, at 3, 24; see Elizabeth W. Bruss, Autobiographical Acts: The Changing Situation of a Literary Genre 13 (1976) ("[T]here is no way the autobiographer can evade personal responsibility for the shape of his work—even conventional choices reflect his individual identity, perhaps as a man with little need or talent for originality."); Roy Pascal, Design and Truth in Autobiography 182 (1960) (arguing that because an autobiography reveals the quality of its author's soul, "criticism of the work is criticism of the author"); see also Williams, supra note 2, at 92 (describing a colleague as speculating that "my writing necessarily involves the reader's passing judgment on me"); Baron, supra note 5, at 260 ("The more personal the tale, the more difficult it can be to criticize it without seeming to engage in a personal attack on its author.").

12 While it would be an exaggeration to claim that everybody is doing autobiography, certainly many law professors, insiders as well as outsiders, have made in their scholarship explicit references to their personal experiences. See, e.g., Stephen L. Carter, Reflections of an Affirmative Action Baby (1991); Charles L. Black, Jr., The Lawfulness of the Segregation Decisions, 69 Yale L.J. 421, 424 (1960); Paulette M. Caldwell, A Hair Piece: Perspectives on the Intersection of Race and Gender, 1991 Duke L.J. 365; Susan Estrich, Rape, 95 Yale L.J. 1087 (1986); Barry Friedman, Dialogue and Judicial Review, 91 Mich. L. Rev. 577, 680-82 (1993); Melissa Harrison, A Time of "Passionate Learning": Using Feminism, Law, and Literature to Create a Learning Community, 60 Tenn. L. Rev. 393
"getting personal in criticism" that Professor Nancy Miller has identified. Indeed, one might adapt Nietzsche's observation and claim that every work of legal scholarship, whether or not it makes explicit reference to the life of its author, is "the confession of its originator, and a species of involuntary and unconscious auto-biography." Certainly, outsiders should value Nietzsche's remark; once we "acknowledg[e] the autobiographical character" of writ-

13 Nancy K. Miller, Getting Personal: Feminist Occasions and Other Autobiographical Acts 1 (1991); see Elspeth Probyn, Sexing the Self: Gendered Positions in Cultural Studies 10 (1993) ("[T]he question of who am I?, has already generated a small industry as, increasingly, theorists turn to their own difference, to the 'I', occasionally trying to explicate the world metonymically from their own situation, at times merely embroiled in the exigencies of their own locales."); Marcus, supra note 4, at 77 ("There is something of a vogue for autobiographical writing within the left and feminism at present."); see also Adam Begley, The I's Have It: Duke's "Moi" Critics Expose Themselves, Lingua Franca, March-April 1994, at 54, 54 (claiming that autobiography "has become one of the distinguishing marks of current academic writing"). Other authors writing at other historical moments identified similar tendencies on the part of their contemporaries; for example, as one critic of autobiography has remarked, Carlyle characterized his era as "these Autobiographical times." Gail B. Griffin, The Autobiographer's Dilemma: Ruskin's Praeterita, in Interspace and the Inward Sphere: Essays on Romantic and Victorian Self 107, 107 (Norman A. Anderson & Margene E. Weiss eds., 1978).

14 Nietzsche's actual remark is: "It has gradually become clear to me what every great philosophy up till now has consisted of—namely, the confession of its originator, and a species of involuntary and unconscious auto-biography." Friedrich Nietzsche, Beyond Good and Evil 10 (Helen Zimmern trans., George Allen & Unwin Ltd. 4th ed. 1923); see also Sidonie Smith, A Poetics of Women's Autobiography 19 (1987) ("Since all gesture and rhetoric is revealing of the subject, autobiography can be defined as any written or verbal communication."); Margo Culley, What Piece of Work is "Woman"! An Introduction, in American Women's Autobiography 3 (Margo Culley ed., 1992) ("[C]riticism is, after all, autobiography."). As if to bear out Nietzsche's observation, Michel Foucault, surely one of the century's "great" philosophers, remarked in an interview two years before his death, "Each of my works is a part of my own biography. For one or another reason I had the occasion to feel and live those things." Rux Martin, Truth, Power, Self: An Interview with Michel Foucault, in Technologies of the Self: A Seminar with Michel Foucault 9, 11 (Luther H. Martin, Huck Gutman, Patrick H. Hutton eds., 1988) (discussing interview of October 25, 1982).

15 See Gusdorf, supra note 10, at 46.
ings about law, for example, then it would seem necessary to scrutinize (among other things) any pretensions to objectivity maintained by legal scholars. My inquiry, however, does not extend nearly as far as this suggestion would lead, nor even to all those works of legal scholarship that self-consciously and overtly record autobiographical details. Rather, my focus is limited to a group of outsiders who have eschewed traditional "objective" scholarship and, among other critical strategies, have offered autobiographical narratives as a means to advance their social agenda. Outsider autobiography can be distinguished from other forms of self-writing by the claims the authors make on behalf of their storytelling: by authoring texts that explicitly describe real events that occurred in their lives, outsiders argue that they have created the agents for the radical reform of legal discourse.

Although outsider storytellers pursue a variety of legal and political theories and goals, their texts share the following objective: each is concerned with exposing and ultimately overthrowing law's systematic preference for the interests of affluent white men over those of women and people of color. As they have pondered political strategies for breaking down that favoritism, the authors have become increasingly hostile towards solutions that emphasize an individual's responsibility for her own welfare and minimize the significant role of social and economic factors in predetermining

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16 Similarly, as Professor Donald McCloskey has argued, "even the most static and abstract argument in economics ... is part of 'that story of our own lives which we narrate to ourselves'. A scholar has a story in which the work in question is an episode: this is why seminars so often begin with 'how I came to this subject', because such a fragment of autobiography gives meaning to it all." Donald N. McCloskey, Storytelling in Economics, in Narrative in Culture 5, 15 (Christopher Nash ed., 1990).

individual success and failure. Outsider authors associate individu-
alist solutions with liberal political philosophy. Because traditional
legal discourse is a product of these and other liberal commitments,
outsiders have encountered within that discourse a variety of
obstacles to their program for achieving social justice.

Reacting to these limitations, some outsider authors have
decided that stories about their experiences can break down the
barriers of traditional scholarship and play a unique role in trans-
forming the content of legal discourse. For one thing, outsider
autobiographies disclose information about outsiders' lives that
lawmakers previously have ignored or misunderstood. As a result,
these stories have the potential to expand the body of knowledge
against which the system judges outsiders' legal claims. I do not
examine this important function of storytelling, in part because
others have amply and eloquently documented it elsewhere, but
more importantly because it does not, in and of itself, represent a
significant challenge to the conventional premises of legal dis-
course. By producing new evidence about outsiders' lives, story-
tellers are demanding "an enlargement of the picture, a corrective
to oversights resulting from inaccurate or incomplete vision," but
they are not necessarily seeking to revise the political commitments
of our legal system.

The outsider claims about storytelling that I examine do seek
such a revision, and for that reason outsiders label them "radical." Storytelling, it is claimed, presents a radical epistemological chal-
lenge through the proliferation of subjective perspectives de vel-
oped in the stories. Storytelling does not merely provide new facts
about outsiders' lives; rather, their stories refute the notion that we
may arrive at one "true" description of relevant facts. Instead, the
stories, and the outsiders' perceptions they contain, are fundamen-
tally inconsistent with insiders' perspectives. In addition, outsider
stories purportedly contribute to a radical political agenda. In par-

18 See, e.g., Caldwell, supra note 12.
19 Joan W. Scott, Experience, in Feminists Theorize the Political 22, 24 (Judith Butler &
20 Commenting on works authored by outsider historians that document "the lives of
those omitted or overlooked in accounts of the past," Professor Joan Scott points out that
such scholarship has been "highly successful" precisely because "it remains so comfortably
within the disciplinary framework of history, working according to rules which permit
calling old narratives into question when new evidence is discovered." Id.
ticular, it is claimed that outsiders' autobiographical stories have the power to heal the social divisions fostered by an indifferent, even negligent laissez-faire form of liberalism. Because such stories illuminate experiences insiders wish to deny, they should alert the larger community to its responsibility for outsiders' pain.

A key proposition that undergirds these radical claims is the notion that storytelling liberates outsiders to author a more authentic account of their experiences than traditional legal discourse permits. Outsider storytellers concede that traditional legal discourse depends heavily on the narration of real events, but they argue that the meaning a legal narrative may produce is constrained by epistemological premises and normative objectives that are antithetical to the outsiders' perspectives. For example, legal discourse purports to endorse objective truth-finding methods. That commitment is a ruse, however, and not only because doctrinal requirements predominantly determine which facts are reported and which are not. Building on insights developed by philosophers and literary and cultural critics, radical scholars maintain that there is no objective position from which to describe pertinent events because knowledge claims always are conditioned by the historical, cultural, and discursive situation of the person making the claim. Accordingly, the most that law, or any other discipline, may assert on behalf of one speaker's account is that the account "genuinely" records that speaker's experience, and perhaps the experience of others who occupy an historical and cultural

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22 See, e.g., Williams, supra note 2, at 3 ("[S]ubject position is everything in my analysis of the law . . . ."); Delgado, supra note 2, at 2440-41 ("Traditional legal writing purports to be neutral and dispassionately analytical, but too often it is not."); Lawrence, supra note 2, at 2252-53 ("social reality" cannot be described objectively because it always is determined by a "positioned perspective"); Kim Lane Schepppele, Foreword: Telling Stories, 87 Mich. L. Rev. 2073, 2088-91 (1989) (asserting that objective view is not "point-of-viewless").

location similar to that of the speaker. Legal discourse may claim more on behalf of its narratives, but that claim obfuscates an implicit decision to privilege one point of view above others, which outsiders suspect is the point of view of the affluent white men who construct and administer law.

Having discovered institutionalized preferences for white male perspectives, the narrative scholars also dispute the claim that legal discourse reflects universal truths about the nature of the human self and its experiences. In this context, the outsiders compare traditional accounts of their lived experiences to the reports provided by outsiders themselves. This exercise is damningly revealing: law consistently adopts accounts that best serve the political and economic interests of white men, even though those accounts often conflict (radically) with the outsiders’ perspectives. Therefore, to the extent that legal discourse rejects the out-

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24 A speaker from a different time or culture, or from a different community within a culture, may provide a different, but nonetheless genuine, description of the same event. See Delgado, supra note 2, at 2417-18.

25 Professor Alex Johnson has noted, for example, that most federal judges are affluent white men. “As to whom President Bush is picking, consider that 89.6% of his appointees are male, 95.8% are white, and ‘the proportion of millionaires appointed by Bush reached one-third, an increase over the proportion for the Reagan appointees, which, in turn, had been a dramatic increase over the Carter proportion of millionaires.’” Alex M. Johnson, Jr., The New Voice of Color, 100 Yale L.J. 2007, 2057 n.211 (1991) (emphasis omitted); see also Judith Resnik, Ambivalence: The Resiliency of Legal Culture in the United States, 45 Stan. L. Rev. 1525, 1531 (1993) (citing data showing that “[t]he higher echelons of most judiciaries remain filled with white men”); Robin D. Barnes, Politics and Passion: Theoretically a Dangerous Liaison, 101 Yale L.J. 1631, 1652 (1992) (reviewing Stephen L. Carter, Reflections of an Affirmative Action Baby (1991) and Patricia J. Williams, The Alchemy of Race and Rights (1991)) (“Of the nearly 150 appointments to the U.S. Courts of Appeals by Presidents Nixon, Ford, Reagan, and Bush, ninety-seven percent were white and ninety-three percent were white men. No women of color were appointed.”).

26 See Lawrence, supra note 2, at 2253.

27 See Williams, supra note 2, at 104-06; Delgado, supra note 2, at 2417-35; West, Hedonic Lives, supra note 17, at 101-03; see also Caldwell, supra note 12, at 395-96 (arguing that the elimination of discrimination cannot be accomplished as long as courts and theorists create “narrow, inflexible definitions of harm . . . that fail to reflect the actual experience of discrimination”). Although her writings do not narrate autobiographical details, Professor Catharine MacKinnon has illustrated the problem succinctly in the context of rape prosecutions: “When the reality is split—a woman is raped but not by a rapist?—the law tends to conclude that a rape did not happen.” Catharine A. MacKinnon, Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence, 8 Signs 635, 654 (1983); see also Catharine A. MacKinnon, Feminism Unmodified 127-33 (1987) (comparing Linda Marchiano’s account of experience making the film Deep Throat to cultural and legal accounts of pornography); Eskridge, supra note 2 (comparing gay
siders' accounts on the ground that they do not correspond to universal human experience, that discourse conceals its own selfish interests and its profound antagonism to the political interests of marginalized groups. This invocation of the universal in traditional legal scholarship has had a significant practical effect on the store of knowledge about outsider experiences because it denies the truth of outsider perspectives that are inconsistent with the cultural stock of racist and sexist stereotypes.  

For purposes of my inquiry, it is important to pause here and connect the outsiders' condemnation of law's "stock narratives" about human experience to their critique of liberal political theory. While outsiders do not identify all of the aspects of liberalism that they find objectionable, nor agree upon an alternative...
political philosophy, they have expressed hostility towards the normative definition of human nature constructed by a liberal individualist ideology. Thus, it is fair to say that the authors object to those strands of liberalism that describe the human actor as an autonomous character who is able to overcome, through the rational use of his personal resources, material obstacles to social and economic success. The liberal image of individual experience is unfair to outsiders' lives, yet law holds it fast and rejects as untrue outsider experiences that do not support its premises.

Through an understanding of human nature firmly grounded in insider values, legal discourse obscures the source of outsiders' suffering and imposes on them individually, rather than on the community, the obligation to remedy the effects of past discrimination. For example, now that law has largely removed superficial sexist and racist barriers, liberal ideology holds that women and people of color are as well-equipped as white men to compete for available resources. When they fall short, as overwhelming numbers of them must, law pronounces that they "have chosen, and therefore deserve, to be poor." The implications for

Rev. 461, 462 (1993); see also Johnson, supra note 5, at 813 (arguing that storytelling "challenges the hegemony of liberalism").

30 See Johnson, supra note 25, at 2062 (concluding that the narrative project implicitly supports communitarianism, but calling on the outsider storytellers further to explore and clarify the political and moral theory underlying their work).

31 See Williams, supra note 2, at 25 (criticizing students for arguing that America is "the land of opportunity and everyone who works hard can get anything they want"); Jerome McCristal Culp, Jr., You Can Take Them to Water But You Can't Make Them Drink: Black Legal Scholarship and White Legal Scholars, 1992 U. Ill. L. Rev. 1021, 1024; West, Hedonic Lives, supra note 17, at 90-92 ("The liberal claim that human beings consent to transactions in order to maximize their welfare may be false."); see also Derrick Bell, Faces at the Bottom of the Well: The Permanence of Racism 5, 25-26 (1992) (discussing, in dialogue, the perception that the success of middle class African Americans reinforces insider views that poor African Americans are poor because they refuse to work).

32 See Johnson, supra note 5, at 840 & n.162.

33 Williams, supra note 2, at 28; see id. at 23-24, 60, 101, 102-04; Delgado, supra note 28, at 105-09; Richard Delgado, Zero-Based Racial Politics: An Evaluation of Three Best-Case Arguments on Behalf of the Nonwhite Underclass, 78 Geo. L.J. 1929, 1936-37 (1990); see also Caldwell, supra note 12, at 392-93 ("Blacks are thus the cause of their low socioeconomic status rather than victims of that status."); Johnson, supra note 25, at 2044-52 (discussing responsibility for continuing harms in society); Richard Delgado, Enormous Anomaly? Left-Right Parallels in Recent Writing About Race, 91 Colum. L. Rev. 1547, 1554-55 (1991) (book review) (discussing arguments that periodic advances such as Brown v. Board of Education and the Civil Rights Act of 1964 reinforce the view that poor blacks are responsible for their predicament). Cf. West, Hedonic Lives, supra note 17, at 92-93
outsiders are grim: not only are outsiders constrained by a normative vision of human nature that they did not create and that refuses to relieve their social, economic, and intellectual subjugation, they also are taught by that vision to aspire to a way of life that their material circumstances ensure they will be denied. This critique of liberalism suggests a task that I find compelling: the construction of a self and its connection to the social that avoids the liberal individual.

In the course of pursuing normative and methodological strategies that will convince law to recognize and remedy their individual suffering, a number of outsider scholars have made an important discovery: storytelling is the special domain of outsiders. Women (maintaining that liberal theory leaves much of women's suffering "beyond criticism" by labeling the conditions that create it "consensual"). Professor Regenia Gagnier makes a similar observation when she remarks that "the shared assumption of support for 'equality' defined as merely theoretical access to the procedural freedoms is by and large enough to satisfy the social justice of both centrist and right liberals." Regenia Gagnier, Subjectivities: A History of Self-Representation in Britain, 1832-1920 at 21 (1991); see also Delgado, supra note 2, at 2421-22 (criticizing accounts that focus on procedural fairness rather than the substantive harms suffered by people of color).

34 See West, Hedonic Lives, supra note 17, at 92 (describing the "disastrous implications" of liberal political theory for women).

35 Cf. Probyn, supra note 13, at 119 ("Roughly speaking, the problem is how to get to the self without going through the individual.").

36 According to Catharine MacKinnon, feminism's "methodological secret" consists of "believing women's accounts of sexual use and abuse by men." MacKinnon, Feminism Unmodified, supra note 27, at 5; see also Deborah L. Rhode, Feminist Critical Theories, 42 Stan. L. Rev. 617, 621-26 (1990) (discussing the use of narrative to convey women's experiences); West, Hedonic Lives, supra note 17, at 118 (discussing the tendency of some feminist narratives to avoid, for whatever reason, certain aspects of women's experience). Edward Rubin disputes the outsiders' claim that the use of narrative constitutes a methodology distinct from that employed by mainstream scholars. As Rubin sees it, "[feminist and critical race theory in practice tend to deploy their norms to offer alternative analyses of substantive issues rather than a new methodology.") Rubin, supra note 5, at 954.

37 Recently, Professors Farber and Sherry examined this premise and concluded that feminist and critical race scholars have not yet offered sufficient evidence to support it. See Farber & Sherry, Telling Stories, supra note 5, at 810-19; see also Randall L. Kennedy, Racial Critiques of Legal Academia, 102 Harv. L. Rev. 1745, 1749 (1989) (arguing that scholars of color "fail to support persuasively their claims of racial exclusion or their claims that legal academic scholars of color produce a racially distinctive brand of valuable scholarship"). I am inclined to agree with Farber and Sherry that significant additional research must be undertaken before we endorse claims that narrative is the special domain of outsiders. There is substantial disagreement over the nature of narrative as a form of communication; for example, critics from other disciplines have suggested that "far from being one code among many that a culture may utilize for endowing experience with
and people of color (and, possibly, other outsiders)\textsuperscript{38} are said to employ stories about personal experiences as a distinctive method for generating and supporting political arguments.\textsuperscript{39} Outsiders eschew the objective, abstract, neutral, and ahistorical analyses that they associate with white men\textsuperscript{40} in favor of stories that are personal, concrete, emotionally evocative, and contextualized.\textsuperscript{41}

This assertion gives rise to the double attack embodied in the so-called “different voice” thesis. First, outsider scholars maintain that the experiences outsiders bring to law are qualitatively different from those of white men. Second, these scholars argue that outsiders represent these experiences in a distinctive rhetoric that privileges the voice and its variable arrangements, registers, and nuances as a palpable extension of the suffering self.\textsuperscript{42} As a result,

meaning, narrative is a meta-code, a human universal on the basis of which transcultural messages about the nature of a shared reality can be transmitted.” Hayden White, The Content of the Form 1 (1987). Building on the writings of Hegel, Professor White argues that the self-consciousness underlying historical narrative is defined with respect to “the social system and the law that sustains it,” and that the impulse to narrate is produced by a culture “interest[ed] in law, legality, and legitimacy.” Id. at 13-14. Similarly, Professor Georges Gusdorf believes that the desire to narrate one’s own life is “not at all universal,” but is the product of a specific culture. Gusdorf, supra note 10, at 29. Gusdorf’s views, however, are in tension with the outsiders’ key claims because he believes the autobiographical impulse “is the late product of [Western] civilization,” id., while the outsiders assert that their autobiographical performances subvert the liberal values of Western culture.

38 See, e.g., Scheppele, supra note 22, at 2074 (implying that outsiders consist of all “those with life experiences far different than those of... lawyers”).
39 See Lawrence, supra note 2, at 2255-56, 2265-66, 2273-74, 2278; Derrick Bell, The Final Report: Harvard’s Affirmative Action Allegory, 87 Mich. L. Rev. 2382, 2394 (1989); Culp, supra note 17, at 542-43 & n.12; Delgado, supra note 2, at 2414, 2435-37; Menkel-Meadow, supra note 23, at 290; Scheppele, supra note 22, at 2074; Robin West, Jurisprudence and Gender, 55 U. Chi. L. Rev. 1, 15-16 (1988). Cf. Karl Johnson & Ann Scales, An Absolutely, Positively True Story: Seven Reasons Why We Sing, 16 N.M. L. Rev. 433, 445 (1986) (encouraging the use of “song” in legal pedagogy because “song” is a medium through which subordinated people “def[y] the voice of domination” and resist oppressive stories told by law); Matsuda, supra note 2, at 14 (explaining that the “best sources I have found for an indigenous voice are poems” and “[a]boriginal writers, coming from a rich oral tradition and finding themselves excluded from academic writing, have become powerful poets and fiction-writers”).
40 See Johnson, supra note 5, at 803, 823.
41 See, e.g., Williams, supra note 2, at 4-6; Delgado, supra note 2, at 2440-41; Lawrence, supra note 2, at 2246-47, 2278, 2281; Toni M. Massaro, Empathy, Legal Storytelling, and the Rule of Law, 87 Mich. L. Rev. 2099, 2099 (1989); Matsuda, supra note 2, at 8-9; Matsuda, supra note 27, at 2368; West, Hedonic Lives, supra note 17, at 90.
42 See Farber & Sherry, Telling Stories, supra note 5, at 809-10. Many of those who support or describe the “different voice” thesis take its title from and look for support for
outsiders possess a “different voice” that distinguishes their autobiographical writings from insider texts. It is important to note that the outsider scholarship does not clearly identify the unique cognitive claims that outsiders have on the storytelling method, nor does it clearly articulate the motivations that propel women and people of color to resort more often to storytelling than white men do. All we are told is that outsiders “just do rely on narrative, anecdote and story more than” insiders do.

An unexplored implication of the different voice thesis might suggest that not only law, but the very language(s) law employs, could never contribute to a program for social change. The dilemma, according to the premises of the different voice thesis, is not simply that traditional legal narratives are incapable of registering the experiences of the socially marginalized, but that insiders and outsiders are deaf to each other’s stories. In essence, each group tells its own stories to its own atomized group of willing lis-

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By contrast, Alex Johnson offers a reason why white men avoid storytelling. As he sees it:

“[W]hite males do not employ the narrative, storytelling style because to do so would result in their talking about their dominance . . . . [T]o emphasize their dominance and dominant position would demonstrate the fact that the meritocracy they believe in is not really a true meritocracy, but rather a system providing them with built-in advantages.”

Johnson, supra note 25, at 2047 n.170. Among other things, I am concerned by Johnson’s suggestion that we should attribute to white men, but not to blacks or women, a kind of “essential” or “monolithic” voice. See id. at 2010, 2015-39. Johnson’s remarks obscure the way in which class assignments shape the lived experiences of white men and deny to a substantial number of them the social advantages that Johnson assumes they enjoy. Cf. Lucie E. White, Subordination, Rhetorical Survival Skills, and Sunday Shoes, 38 Buff. L. Rev. 1, 16-17 & nn.63-64 (1990) (describing the findings of legal anthropologists that white working class men use “powerless” verbal styles characteristic of women and other subordinated groups).

For this proposition, Professor West cites, but does not explicate or identify the relevant portions of, Carol Gilligan’s book, In a Different Voice. Id. But see Johnson, supra note 5, at 812-13 (“Narrative is a methodological form of scholarship that Euro-American males have cited for generations.”).
Regulating the Self

The dilemma that the different voice thesis exposes, but also reinforces, is that we seem to lack, and may even may feel obliged to denigrate, a shared language for debate. If the edifice of legal narrative appears monologically limited in terms of class, race, and gender, the different voice thesis would seem to establish the incorrigibility of this condition. No matter what voice, register or language law ultimately were to adopt, faith in the logical extension of the different voice thesis would prevent outsiders and insiders from having a meaningful dialogue about precisely those experiences for which outsiders seek social and legal redress.\footnote{See Farber & Sherry, Telling Stories, supra note 5, at 825-26. Comments by some of the scholars interested in outsider narratives suggest that insiders and outsiders sometimes do exist on opposite sides of an unbridgeable experiential and epistemic chasm. See Milner S. Ball, The Legal Academy and Minority Scholars, 103 Harv. L. Rev. 1855, 1856 (1990); Richard Delgado, Pep Talks for the Poor: A Reply and Remonstrance on the Evils of Scapegoating, 71 B.U. L. Rev. 525, 536-37 (1991); Lawrence, supra note 2, at 2261, 2275; West, Hedonic Lives, supra note 17, at 95-96, 144; White, supra note 43, at 8-9; see also Steven L. Winter, The Cognitive Dimension of the Agon Between Legal Power and Narrative Meaning, 87 Mich. L. Rev. 2225, 2253-55, 2258 (1989) ("A slight divergence of culture between narrator and audience can sometimes make miscommunication inevitable."). A fascinating nineteenth-century example of the distances that may divide men from women in some cultures is provided by the memoirs of Herculine Barbin, a hermaphrodite who was assigned at birth to the female gender and who lived for twenty years in convent schools for girls. Herculine Barbin: Being the Recently Discovered Memoirs of a Nineteenth-Century French Hermaphrodite (Richard McDougall trans., 1980). When Barbin was twenty-one, ill health prompted a medical examination; what the doctor discovered led him to conclude that Barbin should be classified as a man, rather than a woman, and legal proceedings were instituted to rectify Barbin's gender on the "civil status registers." Id. at 89. Once his "true sex" was discovered, Barbin initially was intrigued by the prospects of "see[ing], from a new perspective, a world I had never imagined." Id. at 90, 85. However, with his "deep inexperience of men and things," Barbin was unable to adjust to his new, "true" gender identity, and he was found dead, a suicide, at the age of twenty-five. Id. at 89, 115. One of the painful discoveries that Barbin reported was his conclusion that he would make a "detestable husband" because, having experienced life as a woman, he would be able to plumb the depths of his wife's secrets, as no man ever could or, if he would be happy with a wife, should. Id. at 106-07.}

The outsider autobiographical narratives in which I am interested shun the pessimistic vision to which the different voice thesis might commit them. These texts do not depict outsiders standing forever outside, lacking tongues to persuade those inside to make reparation. Rather, most of these scholars cherish an optimistic respect for the ameliorative influences of law and the ministrations
of the academy.\textsuperscript{46} Law can be freed from the influence of white patriarchy, we are assured, so that it may eradicate the conditions that have condemned people of color and women to impoverished, thwarted, and incomplete lives. We may yet inhabit a society that nourishes human diversity by investing legal and economic resources in our dream of equal social dignity.\textsuperscript{47}

Moreover, these texts furnish a "blueprint for progress."\textsuperscript{48} By telling stories about their own personal experiences, outsiders seek to belie the faulty stereotypes that condemn them to marionette performances in stock roles. Feminist legal scholars direct women to "flood the market with our own stories," that is, with "true stories of women's lives."\textsuperscript{49} Similarly, critical race scholars have prescribed stories as the "cure" for the social and legal subordination of people of color.\textsuperscript{50}

\textsuperscript{46} Indeed, Robin West invokes a "utopian" vision in which "all forms of life will be recognized, respected and honored," West, supra note 39, at 72, and Patricia Williams dreams of a society that "give[s] [rights] away. Unlock them from reification by giving them to slaves. Give them to trees. Give them to history. Give them to rivers and rocks. Give [them] to all of society's objects and untouchables . . . ." Williams, supra note 2, at 165; see also Jerome McCristal Culp, Jr., Voice, Perspective, Truth, and Justice: Race and the Mountain in the Legal Academy, 38 Loy. L. Rev. 61, 61-62 (1992) (maintaining that scholarship of color gives scholars of color "the freedom . . . to be themselves and to make law live up to its transformative potential"); Richard Delgado, The Imperial Scholar Revisited: How to Marginalize Outsider Writing, Ten Years Later, 140 U. Pa. L. Rev. 1349, 1355 (characterizing white male scholars who give minority authors appropriate recognition as "the Road to Damascus group, for they have seen the light").

\textsuperscript{47} See Jerome McCristal Culp, Jr., Toward a Black Legal Scholarship: Race and Original Understandings, 1991 Duke L.J. 39, 93, 104-05 ("My article is about starting a conversation about that process so that blacks in legal situations can truly have their day—in order to make the American dream include black people and their ambitions."); Richard Delgado, Campus Antiracism Rules: Constitutional Narratives in Collision, 83 Nw. U. L. Rev. 343, 386-87 (1991) (claiming that judges and legislators could remedy hate speech and "make good on our promises of equal citizenship"); Matsuda, supra note 27, at 2325 ("[P]rogress [in this area] can lead to a just world free of existing conditions of domination."); West, Hedonic Lives, supra note 17, at 85-86 (arguing that understanding womens' voices will allow society to "change the conditions which cause [women's pain] through legal tools").

\textsuperscript{48} Cf. Culp, supra note 47, at 95 (criticizing Patricia Williams for failing "to provide a blueprint that would allow [blacks] to progress" in their effort to "contribute their own perspective to law and legal scholarship").

\textsuperscript{49} West, supra note 39, at 65, 64; see West, Hedonic Lives, supra note 17, at 96.

\textsuperscript{50} See Delgado, supra note 2, at 2414; see also Lawrence, supra note 2, at 2256-59 (outsider histories achieve "therapeutic-results" by bringing to light cultural role models, whom racist historians have ignored).
The scope and intensity of the political claims made on behalf of storytelling are themselves cause for wonder, yet the claims are offered urgently and sincerely. For example, stories about women's experiences will "dislodge legal theorists' confidence that they speak for women" and convince lawmakers to invoke the (feminine) values of intimacy, empathy, and nurturance rather than the classical liberal patriarchal values of autonomy, rationality, and encumbered individualism. Outsiders' stories will "subvert" the dominant ideology, "shatter complacency[,] and challenge the status quo." Stories can persuade insiders that their "way of seeing the world is . . . not] inevitable, natural, just, and best," and that the time has come to reallocate power and, presumably, social and economic assets to outsiders. In this view, law and culture may be transformed if we include within our scholarship and teaching fictional narratives, dialogues, parables, and chronicles about the experiences of outsiders, as well as (if we are daring enough) autobiographical stories that communicate "how it was for me."

Why do outsiders conclude that stories about their personal experiences, rather than other forms of legal rhetoric, possess this transformative power? Why are stories the stuff that simultane-

51 See Sacvan Bercovitch, The Rites of Assent: Transformations in the Symbolic Construction of America 23 (1993). Bercovitch wonders why (what he calls) "oppositionalist" critics are "so intent on asserting the regenerative powers of literary studies (their own) that [are] not only inaccessible but unintelligible to society at large?" Id. at 16, 23.

52 West, supra note 39, at 64-65.

53 Delgado, supra note 2, at 2413-14; see also Lawrence, supra note 2, at 2270 (arguing that outsiders tell their "stories" to "subvert the closed, coherent, noncontradictory world that makes us objects"); Massaro, supra note 41, at 2104 (stories have the power to "bridge," "explode," "mask," "devalue," "suppress," "consolidate," "validate," "heal," "fortify," and "maim").

54 Delgado, supra note 2, at 2413-14, 2439; see also Baron, supra note 5, at 267 ("Stories and storytelling techniques can be used to change the way power is exercised."); Menkel-Meadow, supra note 23, at 303-05 (claiming that by "making real" for readers the painful experiences of outsiders, narrative may make "all of us . . . take some greater moral accountability for" the conditions that cause such pain).

55 Delgado, supra note 2, at 2411-14; see Williams, supra note 2, at 91, 93; West, Murdering the Spirit, supra note 17, at 1781; see also Lawrence, supra note 2, at 2250, 2253, 2255-56, 2265-66 (arguing that outsiders must reclaim their voices through narrative, and that insiders can participate meaningfully through open and honest dialogue). Professor Jerome Culp encourages insiders, as well as outsiders, to use their autobiographies in their scholarship and teaching in order to "illuminate gray areas and to change what our students see as reality." Culp, supra note 17, at 559.
ousely reveals and repairs the epistemological, social, political, legal, and material distances that divide outsiders from insiders? The liberating potential for law of outsiders’ stories, it is argued, resides both in their content and their form, and their ameliorative influence extends to outsiders and insiders alike. By now, the value of storytelling in outsider consciousness-raising is an article of faith in outsider scholarship, and yet the claims on behalf of consciousness-raising have not been examined critically by outsider law professors. The additional assertion that the narrative scholars make, which also must be investigated, is that storytelling opens “exceptional windows to experience,” which enlighten not only outsiders, but insiders as well.

When we scrupulously parse the various arguments on behalf of outsider storytelling, they resolve into several key, interrelated claims, each of which assumes that storytelling will emancipate

56 See Delgado, supra note 2, at 2435-40.
57 See Johnson, supra note 5, at 810 (“Critical Race Theorists ... have advanced a jurisprudential approach that explicitly challenges the analytical form or methodology of traditional scholarship as well as its content.”)
58 See, e.g., Delgado, supra note 2, at 2437 (maintaining that among other things, “stories help oppressed groups ... through their effect on the oppressor”).
59 Storytelling is said to have assisted outsiders in exploding the legal and social definitions that ensure their subordination, and outsiders have forged a political consciousness by recounting and listening to their own stories of the painful personal experiences that law has trivialized, neglected, and mystified. See, e.g., Delgado, supra note 2, at 2435-38; West, Hedonic Lives, supra note 17, at 85-86, 122-23; see also Patricia A. Cain, Feminism and the Limits of Equality, 24 Ga. L. Rev. 803, 844 (1990) (“[C]onsciousness raising is the cornerstone of feminist method. Consciousness raising is about giving voice to the unknown in women's experience. Consciousness raising makes available stories that are personal and private. Consciousness raising brings new understanding by making known the unknown.”).
60 By contrast, theoreticians from other disciplines argue that “[e]ncounter groups and consciousness raising seem[ ] most pertinent to a privileged few, largely white and middle-class, who [are] lucky enough to be able to put to one side issues of race and class and who, by extension, ha[ve] access through income and education to the somewhat esoteric discourses of psychotherapy and psychology.” Andrea Stuart, Feminism: Dead or Alive, in Identity: Community, Culture, Difference 37 (Jonathan Rutherford ed., 1990). According to these critics, consciousness-raising may produce a feminist “movement side-tracked by a peculiarly narcissistic dimension of ‘the personal is the political.’” Id. For similar reasons, Kobena Mercer and Isaac Julien observe that the consciousness-raising “model ‘works’ mainly in a culture that prioritises individual, rather than collectivist, strategies and solutions.” Kobena Mercer & Isaac Julien, Race, Sexual Politics and Black Masculinity, in Male Order: Unwrapping Masculinity 97, 122 (Rowena Chapman & Jonathan Rutherford eds., 1988).
61 Massaro, supra note 41, at 2105, 2110.
legal discourse from its mechanical and reflexive modes of thinking. First, storytelling is a personalized discourse that is unconstrained by law's commitment to objectivity and universal truth. Storytelling frees outsiders to consult and represent to law not a universal liberal self, but "the true self," which is their "own experiential knowledge." Thus, in stories, the outsiders recount a more authentic version of their experiences; indeed, stories represent the outsiders' "life as it is versus how we [insiders] talk about it." Second, storytelling permits outsiders to elude stock performances, especially the role of victim, to which they are endlessly relegated by law. Even civil rights litigation victimizes outsiders because it brings them to law as supplicants, and thereby vindicates the ideology of the dominant group. By contrast, storytelling empowers outsiders to speak in their own voices and to secure not merely an isolated legal outcome, but also the fracturing of the hegemonic ideology of white middle class men that is said to support the legal edifice. Third, unlike the "coercive discourse" used by courts and legal scholars to force one view of reality on their participants, stories are said to institute a collaborative dialogue between teller and listener in which the teller's vision of reality is

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62 Williams, supra note 2, at 63; see West, Hedonic Lives, supra note 17, at 90, 115-16 (unlike legal (i.e., "male") discourse, narrative permits women to represent their different experiences, and those experiences should be the primary source of feminist norms because they are the "truth"); cf. Lawrence, supra note 2, at 2246-47, 2250, 2253, 2256 (noting other advantages of storytelling).

63 Massaro, supra note 41, at 2105; see Lawrence, supra note 2, at 2238-39; West, Murdering the Spirit, supra note 17, at 1781-82; see also Johnson & Scales, supra note 39, at 450 (claiming that "[s]ong . . . creates a reality, and changes other realities in the process"). Jerome Culp makes a similar point when he states that autobiography illuminates "[w]ho we are . . . as much as what we are and what we think." Culp, supra note 17, at 543 (emphasis omitted); see also id. at 559 (claiming that law professors' use of their autobiographies will change what "students see as reality").

64 See Delgado, supra note 2, at 2429; see also Derrick Bell, And We Are Not Saved: The Elusive Quest for Racial Justice 51-74 (1987) (using an allegory to discuss the substantive ineffectiveness of civil rights litigation); Williams, supra note 2, at 155-56 ("I learned to undo images of power with images of powerlessness[,] . . . to cast [victims of power] as defenseless supplicants . . . .").


66 Delgado, supra note 2, at 2415; see Williams, supra note 2, at 8-9, 104-06; Johnson, supra note 5, at 828; see also Ball, supra note 45, at 1860 (characterizing traditional legal writing as "d disembodied voices, uttering propositions strung together as coercive arguments").
tested against and enriched by her audience's perspectives. In this way, stories forge a community of understanding in which storytellers and their readers participate together in the production of meaning, and from that "new collectivity" emerges a shared vision for a better world.

These claims suggest that autobiographical storytelling is a subjective and detached enclave—"a room of one's own," as Virginia Woolf might say—in which an author may experience and represent herself free of the epistemological and ideological constraints that culture ordinarily exerts on other discourses. We are meant to believe that, unlike legal scholarship, autobiography constitutes a space unoccupied by culture, within which outsiders may define who they are and represent what their experience has been by consulting only their own subjective perceptions. Then, they may use the truth that the self produces to liberate law from its limited perspective in adjudicating the grievances of outsiders, its hardened belief in the rational subject, and its privileging of the self-sufficient and responsible individual.

Clearly, autobiography does perform an emancipatory function by conferring a voice on those whom culture has silenced. For example, as Professor Henry Louis Gates, Jr., has demonstrated, autobiographical discourse has provided African-Americans the opportunity "to register in print the existence of a 'black self' that

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67 Williams, supra note 2, at 6-8; Delgado, supra note 2, at 2434-35, 2439-40; Johnson, supra note 5, at 828-29; see also Menkel-Meadow, supra note 23, at 294 (arguing that Williams's narrative scholarship invites readers to participate in the interpretation of the text, unlike traditional legal discourse "where the reader passively takes up a specific message created by the dominant writer").

68 See Williams, supra note 2, at 7-8; Delgado, supra note 2, at 2414-15, 2438; Johnson, supra note 5, at 828-29 ("Narrative requires readers to employ a different interpretative heuristic that places them in an active, even interactive role. Narrative attempts to situate readers within the context of the story by involving them in the events related to the story . . . ."); see also Culp, supra note 47, at 40-41 & n.1 ("Black scholars will demand justice with equality and nonblack scholars will understand.").

69 See Delgado, supra note 2, at 2438; see also West, supra note 39, at 65-66 (elaborating on what such meanings should consist of and on her vision of a better world).

70 See Johnson, supra note 5, at 813, 817, 821-22.

71 Robin West makes this point perhaps most forcefully when she argues that the erotic pleasure (some) women experience in sexual submission is a form of "truth" that reminds us of the "limits . . . of the fruits of liberal individualism." West, Hedonic Lives, supra note 17, at 131.

72 See Williams, supra note 2, at 191 ("The world is full of black women who have never really been heard from.").
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had transcended the limitations and restrictions that racism had placed on the personal development of the black individual.\textsuperscript{73} Feminist literary theorists have explained that autobiography has performed a similar service for women.\textsuperscript{74} Early female autobiographers transgressed religious and social injunctions that forbade women to speak, and thereby appropriated for women "the self-creative power patriarchal culture has historically situated in the pens of man."\textsuperscript{75}

Before we press our autobiographies on the side of a movement with radical political aspirations, however, we must be sure we have identified the politics of autobiography and the individual self that it privileges. My thesis is that autobiography does not provide a way for the self to step outside of liberal culture. Rather, autobiography is embedded in precisely the same cultural practices reproduced in legal and scholarly discourse that outsiders suggest their autobiographical acts elude. Recourse to autobiography may provide very little room for the self to communicate to law a new conception of what life is—i.e., how the self has experienced its own lived existence versus how that experience has been reproduced in law—unless we understand that the conventional demands of autobiographical discourse, no less than those of law, may coerce the autobiographer into producing a self that culture already has prepared for her.\textsuperscript{76}

\textsuperscript{73} See Henry Louis Gates, Jr., Introduction to Bearing Witness: Selections from African-American Autobiography in the Twentieth Century 3, 3 (Henry Louis Gates, Jr. ed., 1991); see also David L. Dudley, My Father's Shadow: Intergenerational Conflict in African American Men's Autobiography 195 (1991) (arguing that African American autobiographers "have, through the act of writing, emerged from the 'invisibility' so long imposed upon them"); Olney, supra note 11, at 15 ("[B]lack history was preserved in autobiographies rather than in standard histories and . . . black writers entered into the house of literature through the door of autobiography.").

\textsuperscript{74} See, e.g., Nancy K. Miller, Subject to Change: Reading Feminist Writing 55 (1988) ("Writing—for publication—represents entrance into the world of others, and by means of that passage a rebirth: the access through writing to the status of an autonomous subjectivity beyond the limits of feminine propriety . . . ."); Culley, supra note 14, at 11 ("[T]he act of writing for a public audience [stood] in some tension with the prevailing [Puritan] idea of woman" because it "defied the traditional injunction to silence for women").

\textsuperscript{75} Smith, supra note 14, at 28, 43; see Felicity A. Nussbaum, The Autobiographical Subject: Gender and Ideology in Eighteenth-Century England 86 (1989); Culley, supra note 14, at 11.

\textsuperscript{76} See Linda H. Peterson, Victorian Autobiography: The Tradition of Self-Interpretation 2 (1986) (noting the "curious paradox" that "autobiography, apparently the most personal
II. THE CONSTRAINTS OF THE NARRATIVE FORM

Far from being discomforting, let alone subversive, the story these ostensibly resistant texts tell about the relationship between the self and law is surprisingly consistent with the guiding tenets of liberalism. These texts describe the individual self, its material needs, and psychological desires as central concerns of law. At the same time, the texts provide evidence of the satisfactions the self achieves by earning its way independently of the various forms of social assistance law might afford. Since this story is difficult to distinguish from the stock legal narratives the outsiders oppose, we must consider whether narrative conventions, like those of legal discourse, have a tendency to manipulate the storyteller into affirming the status quo.

Curiously, although outsiders' stories contest the mechanisms through which law and other cultural institutions evaluate and (thereby) produce truth claims, none of the storytellers has pondered the role that the narrative form plays in shaping the meaning of the activities, relationships, and feelings being narrated. On the contrary, the storytellers are, in general, unselfconscious and unreflective with regard to the potential of narrative to guide and even predetermine the experiences they report. Instead, as I argued above, they insist that autobiography furnishes a transparent window onto experience. If we believe, however, that

and individual of literary genres, is in fact a highly conventional, even prescriptive form, and that its generic conventions shape our ways of thinking about the most private aspects of our lives); William C. Spengemann & L.R. Lundquist, Autobiography and the American Myth, 17 Am. Q. 501 (1965); cf. Darrell Mansell, Unsettling the Colonel's Hash: "Fact" in Autobiography, in The American Autobiography 61, 71 (Albert E. Stone ed., 1981) ("[T]he autobiographer, in trying to make his material answer to his vision, his purpose, his conception, is likely to be influenced by the demands of formal 'conventions[;]' there are 'patterns' in autobiography.").

77 See, e.g., Williams, supra note 2, at 13-14, 21-28.
78 See Williams, supra note 2, at 9.
79 To be fair, Professor Richard Delgado has remarked that "reality comes to us not as a given but in terms of narratives, mindsets, or stories—interpretive structures by which we construct and come to terms with the world of reality." Delgado, supra note 46, at 1370. However, Delgado never elaborates on the implications of that insight for the narrative project, nor does he apply it critically to his own or other outsiders' stories. Thus, he never uses the insight to explore the questions of how and in what sense the outsider scholars may be offering "radically new" stories to law. See id.
80 See Massaro, supra note 41, at 2105; see also Johnson, supra note 5, at 813 n.53 ("Storytelling or Narrative . . . is the vehicle through which practical knowledge is gained
actual lived experiences and narratives of those experiences occupy different orders of existence—perhaps, because the form in which lived events present themselves to us is not identical to the form in which they are represented in the narrative vehicle\(^81\)—then we must examine the inevitable ways in which narrative arranges, orders, elaborates, and filters (through additions and subtractions) the original experience. That outsider autobiographical narratives are refined, rhetorically adroit mediations of experience further complicates the claim that these representations are purer, or more authentic, than other kinds of mediating discourse. Thus, one question on which we must focus “is not ‘What does any given story mean?’ but rather ‘What does narrative itself (or narrativizing a text) mean?’ ”\(^82\)

It may be that reliance on the narrative form is problematic for those pursuing a radical social agenda, for some theorists have argued that narrative is made possible by and inevitably reinforces without actually going through the experience.”). According to Professor Joan Scott, some historians of difference make this same assumption, namely, that “[w]riting is reproduction, transmission—the communication of knowledge gained through (visual, visceral) experience.” Scott, supra note 19, at 24.

\(^81\) See Michael Bell, How Primordial is Narrative?, in Narrative in Culture, supra note 16, at 172, 174-76 (arguing that the analogy between narrative and life is meaningful only if we recognize that “narrative has to be a different kind of a thing from lived temporality”). As one philosopher of history has put it, historians must avoid “foolhardy” definitions of truth that “confus[e] a written work with those events to which the work refers.” Mandelbaum, supra note 3, at 153; cf. McCloskey, supra note 16, at 18 (“[P]hysics is not about the world but about what we as human beings can say about the world.”).

\(^82\) Seymour Chatman, Story and Discourse: Narrative Structure in Fiction and Film 24-25 (1978). I do not agree with Alex Johnson’s assertion that “the definitional aspects of Narrative are rather obvious and not worthy of extended definition.” Johnson, supra note 5, at 809. As one author has remarked, “indifference to the debate about words is usually the accompaniment of a confusion of ideas on the matter.” Paul Veyne, Writing History ix (Mina Moore-Rinvolucri trans., 1984). A significant problem with much of the outsider narrative scholarship is that its key terms, including “narrative,” “story,” “storytelling,” “myth,” and “experience,” are not carefully defined, if they are defined at all, or the terms are used so expansively that it is difficult to know what particular meaning the author has in mind with any given reference. See, e.g., Delgado, supra note 5, at 666, 675 (asserting that scholarly criteria for evaluating stories are “themselves only stories”). These terms are not “new” in the sense that they are completely foreign to readers of legal scholarship; nevertheless, among others, “the term ‘narrative’ . . . require[s] . . . careful handling so that, for example, incompatible meanings are not treated as identical, or tautological conclusions taken for speculative novelty.” Bell, supra note 81, at 172.
the reigning system of law.83 Professor Hayden White has been particularly concerned with discovering the kind of meaning that narrative supplies when real events are recorded in the form of a story.84 As White argues, real events do not present themselves to us as stories, with the formal characteristics of coherent plot, or the “central subjects, proper beginnings, middles, and ends,” that we have come to associate with stories.85 Real events simply occur, waiting for an observer with the impulse to record them to select a form of representation and in the process impose order on reality, even create a culture-specific reality out of mere sequences of events.86

Our culture privileges the narrative mode of representation above other available forms, according to White, because narrative gratifies our desire to invest real events with moral and ethical meaning.87 For example, narrative contrives a sense of closure

83 Cf. Toril Moi, Sexual/Textual Politics: Feminist Literary Theory 2-8 (1985) (arguing that humanist narratives are produced by and reinforce patriarchal ideology).

84 See White, supra note 37, at 2. White refutes the notion that narrative is a universal code. As he argues, we can perceive that narrative is a local solution to the “general . . . problem of how to translate knowing into telling.” Id. at 1. For example, medieval historians did not narrativize the real events they recorded, but rather reported them in annal or chronicle form, and modern historiographers sometimes have refused the narrative form. Id. at 1-2, 4-22; see also Lawrence Stone, The Revival of Narrative, 85 Past & Present 1, 3, 4-8 (1979) (describing forms of historical writing that eschew narrative).

85 White, supra note 37, at 24-25; see McCloskey, supra note 16, at 18 (“nothing is given to us by the world in story form already”); see also Pascal, supra note 11, at 9 (autobiography “imposes a pattern on a life, constructs out of it a coherent story,” and thus is the “history” rather than the “annals” of a “life”).

86 White, supra note 37, at 2-5; see also Mānsell, supra note 76, at 69-70 (autobiographer “select[s] and alter[s] personal experience so as to create a structure of words that answers to an inner vision or purpose of some kind”); Olney, supra note 11, at 11 (“Is there such a thing as design in one’s experience that is not an unjustifiable imposition after the fact? Or is it not perhaps more relevant to say that the autobiographer half discovers, half creates a deeper design and truth than adherence to historical and factual truth could ever make claim to?”); Spengemann & Lundquist, supra note 76, at 500-01 (“Autobiography does not communicate raw experience, for that is uncommunicable. It presents, rather, a metaphor for the raw experience.”) Georges Gusdorf offers the following helpful illustration: “In War and Peace, Tolstoy has shown the immense difference there is between a real battle lived from minute to minute by the agonized participants largely unaware of what is happening . . . and the narrative of the same battle put in fine logical and rational order by the historian . . . .” Gusdorf, supra note 10, at 41.

87 White, supra note 37, at 23-25; see also J.M. Bernstein, Self-Knowledge as Praxis: Narrative and Narration in Psychoanalysis, in Narrative in Culture, supra note 16, 51, 69 (arguing that since “the various parts of our life are not mere givens, but elements awaiting assignment within the whole . . . the narrative of a life is always a moral narrative, a
through the author's selection of a point at which to conclude, which real events themselves stubbornly refuse to do. This closure, White argues, is produced by a human consciousness aware of its location within and dependence on a social system governed by law. For it is law that endows the historian with a conception of justice or morality, against which she distinguishes the real events worthy of being represented from those that are unworthy.

These speculations suggest that we must qualify, perhaps significantly, the outsiders' assertions concerning the revolutionary power of their narratives. Just like the legal discourse that the outsiders condemn, narrative "presuppose[s] some criteria of relevance" that guide the storyteller's selection, arrangement for emphasis, and causal reordering of the events to be included in the story. As one historian explains, "the narrative can be said to

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narrative whose general meaning is provided by some narrative schema, some proto-narrative whose intelligibility involves a mesh between normative and temporal terms"; McCloskey, supra note 16, at 14-15 (noting that the "sense of an ending" provided by a story imparts "moral weight," "meaning," or "worth").

88 White, supra note 37, at 23-24; cf. Mansell, supra note 76, at 70:
For there must have been other details that did happen during the experience but do not appear in the piece. Why are they absent?

Probably because they contributed nothing to, or even detracted from, the author's own sense of what her work ought to be like, a sense that could only be communicated, to the extent it could be communicated at all, by the details she chose (and created?).

Of autobiographical narratives, Georges Gusdorf remarks, "autobiography is condemned to substitute endlessly the completely formed for that which is in the process of being formed." Gusdorf, supra note 10, at 41.

89 White, supra note 37, at 13-14, 23. Professor Jacques Derrida makes a similar point: The narrational voice is the voice of a subject recounting something, remembering an event or an historical sequence, knowing who he is, where he is, and what he is talking about. It responds to some "police", a force of law or order ("What 'exactly' are you talking about?"): the truth of equivalence. In this sense all organized narration is a "matter of the police", even before its genre (mystery novel, cop story) has been determined.


90 White, supra note 37, at 13-14; cf. Gusdorf, supra note 10, at 42 ("[N]arrative confers a meaning on the event which, when it actually occurred, no doubt had several meanings or perhaps none. This postulating of a meaning dictates the choice of the facts to be retained and of the details to bring out or to dismiss according to the demands of the preconceived intelligibility.") (emphasis omitted).

91 Danto, supra note 3, at 114; see McCloskey, supra note 16, at 18-19 ("Stories, in other words, are selective. . . . We decide what matters, for our purposes, not for God's or Nature's." (emphasis omitted)); see also Pascal, supra note 11, at 10 ("Autobiography
determine the evidence as much as the evidence determines the narrative" because the “evidence only counts as evidence and is only recognized as such in relation to a potential narrative.”

Even if we reject White’s suspicion that the criterion that guides all narrative accounts of real events is “law, legality, legitimacy, or, more generally, authority,” his theory of narrative meaning still exposes the ambivalent political allegiances of the outsider autobiographies. In these texts, no less than in legal opinions or traditional legal scholarship, our system of law is enthroned as the “central organizing principle of meaning.” Law and the legal academy are the subjects that link together, indeed, call forth, each of the personal experiences recounted. The texts are not a desultory collection of personal reminiscences. Rather, they record only those events that support particular claims against or on behalf of law and the academy. For example, Professor Robin West describes her own promiscuity to support her charge that the definition of “consensual sex” applied by law in rape cases conceals the danger of violent male sexuality that women endure. Professor Patricia Williams elaborates the racist content of episodes from her

means ... discrimination and selection in face of the endless complexity of life, selection of facts, distribution of emphases, choice of expression.”). Professor Danto provides an amusing and instructive example:

Suppose I wish to know what happened at a court trial. I may ask my informant to leave nothing out, to tell me all. But I should be dismayed if, in addition to telling me of the speeches of the attorneys, the emotional attitudes of the litigants, the behaviour of the judge, he were to tell me how many flies there were in the courtroom, and show me a complicated map of the precise orbits in which they flew, a vast tangle of epicycles. Or mention all the coughs and sneezes. The story would get submerged in all these details.

Danto, supra note 3, at 131; see Veyne, supra note 82, at 34 (“What are we to choose? Which drama shall we prefer? One cannot speak of everything, neither can one tell the life story of all the pedestrians who pass each other in the street.”); McCloskey, supra note 16, at 18 (students asked “to fully describe a piece of chalk, to give every fact about it” found the task “impossible unless radically selective”); see also Pascal, supra note 11, at 62 (“Obviously, every autobiographer must leave out the humdrum details of everyday life.”).

White, supra note 37, at 13. For criticism of White’s broad position, see Nussbaum, supra note 75, at 17.

Cf. White, supra note 37, at 16 (citing the chronicle as the organizing principle and form of historical representation).

See West, Hedonic Lives, supra note 17, at 101-03.
life to create an occasion for her to display her intellectual prowess and professional accomplishments to an academy reluctant to admit African-American women.\textsuperscript{96} And Professor Richard Delgado recalls conversations in which senior colleagues warned him to avoid writing about "civil rights or other 'ethnic' subjects" to provide evidence of the jealous insularity and undemocratic character of the mainstream civil rights academy.\textsuperscript{97}

These texts reveal that the law and its specific institutional interests, both in practice and in the academy, already define the relevant points of intersection for the experiences recounted in the outsider narratives. In other words, the law and the academy implicitly supply the appropriate points of contention for outsider narrators. Just as legal doctrine determines the facts that judges will find, so the conventions, practices, and concerns of law and the academy furnish the space for debate and perhaps even produce the truth that outsider stories report by determining which events are significant (or real) enough to be represented. This is one of a variety of ways, then, in which the narrative form distinctly mitigates the subversive intention of outsider storytelling.

To be sure, each of these texts expresses dissatisfaction with law and the professional academy and offers suggestions for reform. Ironically, this criticism celebrates the power of law and reproduces law's indifference to the marginalized position that African Americans and women occupy within our culture no less forcefully than recourse to litigation would do. Contrary to Richard Delgado's assertion, the storytellers really do not propose to subvert law's authority;\textsuperscript{98} rather, they supplicate law to exercise its authority so that outsiders, no less than affluent white men, enjoy the same access to, and power to define, the good life. Among the many grievances they detail, law should be authorized to ease the suffering of the impoverished by advancing basic levels of food, housing, medical care, and education;\textsuperscript{99} to protect women from domestic violence and the injury of childbirth;\textsuperscript{100} to secure women's

\textsuperscript{96} See Williams, supra note 2, at 5, 37, 42.
\textsuperscript{97} Delgado, supra note 17, at 561, 566.
\textsuperscript{98} See Delgado, supra note 2, at 2429.
\textsuperscript{99} See Williams, supra note 2, at 25-26.
\textsuperscript{100} See West, Hedonic Lives, supra note 17, at 85, 142; West, supra note 39, at 66-67.
erotic pleasure just as it secures that of men;\textsuperscript{101} to support the African-American \textit{nomos} by financing African-American schools, while preserving the opportunity of African-Americans to attend white schools;\textsuperscript{102} to remedy the harms that hate speech causes;\textsuperscript{103} to relieve outsider employees from the grooming preferences imposed by corporate employers;\textsuperscript{104} and to assure that workplaces are safe for all employees.\textsuperscript{105}

Nor do the storytellers propose to tear down the academy. What they want (and have achieved) is to be welcomed within the academy's gates and to speak from behind its sheltering walls.\textsuperscript{106} Thus, the academy should "recruit" and "nurture" as scholars those whom culture has victimized,\textsuperscript{107} revise its traditional evaluative standards so as to count outsiders' special experiential wisdom as an intellectual credential,\textsuperscript{108} and bestow on them the customary professional titles, accoutrements, and perquisites.\textsuperscript{109}

\textsuperscript{101} See West, Hedonic Lives, supra note 17, at 89-90, 116-18, 122, 131, 137, 142.
\textsuperscript{102} See Alex M. Johnson, Jr., Bid Whist, Tonk, and United States v. Fordice: Why Integrationism Falls African-Americans Again, 81 Cal. L. Rev. 1401, 1401 (1993).
\textsuperscript{103} See Williams, supra note 2, at 110-15; Richard Delgado, Campus Antiracism Rules: Constitutional Narratives in Collision, 85 Nw. U. L. Rev. 343, 345 (1991); Richard Delgado, Words that Wound: A Tort Action for Racial Insults, Epithets, and Name-Calling, 17 Harv. C.R.-C.L. L. Rev. 133, 134 (1982); see also Matsuda, supra note 27, at 2321.
\textsuperscript{104} See Caldwell, supra note 12.
\textsuperscript{105} See Patricia J. Williams, Fetal Fictions: An Exploration of Property Archetypes in Racial and Gendered Contexts, in Race in America: The Struggle for Equality 430-32 (Herbert Hill & James E. Jones, Jr., eds., 1993).
\textsuperscript{106} As Richard Delgado frequently remarks, feminist and critical race scholars now "teach at the top law schools and publish in the best law reviews." Delgado, supra note 46, at 1350. Moreover, what these scholars desire, Delgado insists, is to be fully assimilated into the academy. See id. at 1350, 1355, 1358, 1360-61, 1368, 1372 (arguing that when insurgent scholars with "credibility and credentials" gain admission to the academy, they should "promptly [be] granted equal standing" and "integrated fully into" activities pursued by mainstream scholars).
\textsuperscript{107} See Jérôme McCristal Culp, Jr., Diversity, Multiculturalism, and Affirmative Action, 41 DePaul L. Rev. 1141, 1162-63 (1992); Delgado, supra note 5, at 675-76.
\textsuperscript{108} See Delgado, supra note 17, at 564 n.15 (offering "social science research" as a helpful example for legal academy because in that field "minority status constitutes virtually a presumption of expertise"); Ball, supra note 45, at 1861 (characterizing outsiders as "experts" whose stories can assist in bringing new perspectives to law).
\textsuperscript{109} See Delgado, supra note 65, at 767-68; see also West, supra note 39, at 65 ("a law school which employs, protects, and even compensates for [women's nurturance] will be a better law school").
By so grossly streamlining the storytellers' allegations, I do not intend to deride their contribution to our understanding of the practices that have relegated people of color and women to poverty, servitude, and obscurity. Rather, I offer it to emphasize that the storytellers' opposition to law concludes by reaffirming the core values of our legal system. Our appreciation of the injustices their narratives provoke is itself derived from the remedial authority of the law, and the cultural sense of justice the law provides is the context for our understanding.

At this point, I want to anticipate an objection that the storytellers and some of their readers may interject. The objection is this: the outsider storytellers are not merely identifying or trying to repair law's failure to make good on (among others) its promise of equal respect and equal opportunity for all persons regardless of race or gender. Rather, by conferring on law authority to intervene in and remedy a broader range of outsider grievances than liberal individualist ideology would seem to allow, they are producing a revolutionary vision of a human self that is dependent on external assistance for its well-being.

This objection might be a forceful one, particularly if the outsider project began to identify not only the legal mechanisms that consign women and people of color to dependence on social relief, but also those that dictate and support, even as they privilege, the identity of white men. Ultimately, however, the autobiographical self constructed by these texts overwhelms any alternative vision of human nature they might offer. When Richard Delgado identifies the storytellers' desire to elude the role of "supplicant" as one of the primary motivations underlying their project, he never remarks that such desire is produced by and understandable only within a system, such as liberal individualism, that condemns as failures those whose success, if not survival, is attributed to legal

110 Recently, commentators from other disciplines have begun to examine cultural definitions of masculinity and the social structures that have conferred authority on white men. See Anthony Easthope, What a Man's Gotta Do: The Masculine Myth in Popular Culture 7 (1990) ("The argument will demonstrate that masculinity is an effect, and a contradictory one. In so far as men live the dominant version of masculinity analysed here, they are themselves trapped in structures that fix and limit masculine identity. They do what they have to do."); see generally Male Order: Unwrapping Masculinity (Rowena Chapman & Jonathan Rutherford eds., 1988) (collecting essays regarding masculinity and the patriarchal order).
or social relief. Thus, even as they demand law's intervention on behalf of other outsiders—African Americans and women condemned to haunt the margins of a community committed to individual solutions\textsuperscript{111}—the storytellers are busy proving that they are not supplicants. They achieved their success the liberal way; they earned it. No less than insider texts, the outsider narratives instruct other outsiders that if they would succeed they too must do it by themselves. In the end, therefore, these stories mirror and support the liberal power relations the outsiders would dismantle.

III. THE CONSTRAINTS OF THE AUTOBIOGRAPHICAL CONTRACT

Participants in the outsider narrative project claim that they have introduced a "new genre" to the academy, indeed, that they have ushered in a scholarly "paradigm shift."\textsuperscript{112} While I am content here to assume that doing autobiography may be a fairly recent development within legal scholarship, it is clear that autobiography itself is not new. The term "autobiography" describes a literary performance—specifically, one in which the author undertakes to

\textsuperscript{111} As one author has remarked, the decision by law professors to use the term "outsider" to describe their own status suggests that we need to come up with a new term to designate the cultural location of other people of color and women. See Stuart, supra note 60, at 39 ("If I a black woman poet and writer, a professor of English, at State University, if I am oppressed then we need another word to describe a woman in a refugee camp in Palestine... or any counterpart in South Africa.") (quoting Pratibha Parmar, Other Kinds of Dreams: an Interview with June Jordan, Spare Rib, Oct. 1987); see also Elizabeth Fox-Genovese, Feminism Without Illusions: A Critique of Individualism 150 (1991) ("[S]urely, a privileged position in academia ought to make us all shrink from pretending that we are somehow the voice of the downtrodden."); Austin, supra note 17, at 545 ("Our positions as 'scholars' set us apart to some extent from the women about whom we write, and our work would be better if we acknowledged the distance and attempted to bridge it.").

\textsuperscript{112} See Delgado, supra note 65, at 758-60; see also Williams, supra note 2, at 5-8 ("I am trying to create a genre of legal writing to fill the gaps of traditional legal scholarship."); Delgado, supra note 46, at 1369 ("paradigm shift"); Jerome McCristal Culp, Jr., Posner on Duncan Kennedy and Racial Difference: White Authority in the Legal Academy, 41 Duke L.J. 1095, 1100 (1992) ("[B]lack scholars... add perspectives and redefine the appropriate legal paradigms."); West, Murdering the Spirit, supra note 17, at 1172-73, 1175, 1176 (describing Patricia Williams' narratives as presenting a "powerful and convincing argument" for changing the "worlds of race and class relations"); Coombs, supra note 5, at 683 (arguing that outsider storytelling is a "radically new form of writing," indeed, a "new genre").
write about her own self\(^{113}\)—that has existed for at least several centuries.\(^{114}\) Literary theorists characterize autobiography as a "wide-spread" form of literary expression.\(^{115}\) As James Olney has remarked, "Autobiography is both the simplest of literary enterprises and the commonest. Anybody who can write a sentence or even speak into a tape recorder or to a ghostwriter can do it ... . Recent publishing history offers plentiful evidence that it is practised by almost everyone."\(^{116}\)

Autobiography also is a literature to which groups other than the outsiders have laid a special claim.\(^{117}\) Significantly, more than one

\(^{113}\) See Smith, supra note 14, at 19 (claiming that autobiography is "written or verbal communication that takes the speaking 'I' as the subject of the narrative, rendering the 'I' both subject and object").

\(^{114}\) Some literary theorists identify the Confessions of Saint Augustine, written in 396 A.D., as the first autobiography. See Colin Morris, The Discovery of the Individual: 1050-1200 at 79 (1972); John Freccero, Autobiography and Narrative, in Reconstructing Individualism: Autonomy, Individuality, and the Self in Western Thought 16, 16 (Thomas C. Heller, Morton Sosna & David E. Wellbery eds., 1986). According to Mary Mason, "the first full autobiography in English by anyone" is The Book of Margery Kempe, which was produced around 1432 and records Kempe's spiritual conversion and subsequent religious vocation. Mary G. Mason, The Other Voice: Autobiographies of Women Writers, in Autobiography: Essays Theoretical and Critical, supra note 10, at 207, 209, 217-21; see Tambling, supra note 89, at 59 (The Book of Margery Kempe "is often taken as the first autobiography in English."). But see Fox-Genovese, supra note 111, at 134 (arguing that it is problematic to consider The Book of Margery Kempe an autobiography since "Kempe did not write her autobiography herself. She dictated it and invoked the first person only because of a special, divine mission, not because of her own subjective worth."). Other theorists object to these designations as anachronistic. Since the term "autobiography" was not coined until the late eighteenth or early nineteenth century, they suggest that it should be used only to identify those works that were written after that time. See infra notes 127-29.


\(^{116}\) Olney, supra note 11, at 3.

\(^{117}\) See Nussbaum, supra note 75, at xiv ("Eighteenth-century autobiographical writing, though spread across class divisions, was largely an activity of the middle class . . . ."); Stone, supra note 115, at 1 (noting that "no . . . mode of American expression [other than autobiography] seems to have more widely or subtly reflected" American experience); James M. Cox, Recovering Literature's Lost Ground: Essays in American Autobiography 11-12 (1989) (stating that "[a]utobiography has been important in [America]"); Griffin, supra note 13, at 107 ("[T]he Victorians were natural autobiographers. . . ."); Alfred Kazin, The Self as History: Reflections on Autobiography, in The American Autobiography, supra note 76, at 31, 32 ("[C]onstantly explaining oneself and telling one's own story—is as traditional in the greatest American writing as it is in a barroom."); A. Robert Lee,
literary theorist has remarked on the tendency of American autobiographers to offer their personal experience as the font of political wisdom. They have traced this impulse to Benjamin Franklin's articulation of a "philosophy of individualism" in his autobiography, however, and not to outsider communities or culture. Therefore, before we may be confident either that the use of autobiography is causing legal paradigms to shift or of the political direction in which they may be shifting, we should examine the history of autobiography to determine the extent to which the genre may serve (or limit) the outsiders' political objectives.

A scholar's inattention to the history of the autobiographical conventions and literary types with and within which she is working may lead her to make, at the least, ambiguous interpretational claims that in turn generate questionable theoretical positions. While a variety of errors—simple misunderstandings of textual history, unwarranted extrapolations from ambiguous facts, and

Introduction to First Person Singular: Studies in American Autobiography 7, 9-10 (A. Robert Lee ed., 1988) (describing autobiography as one of America's "principal literary forms"); Sayre, supra note 115, at 147 ("Autobiography may be the preeminent kind of American expression. Commencing before the Revolution and continuing into our own time, America and autobiography have been peculiarly linked.").

118 See Sayre, supra note 115, at 149 ("American autobiographers have generally connected their own lives to the national life or to national ideas.").


120 For additional discussion of the importance of Franklin's autobiography, see Philip Abbott, States of Perfect Freedom: Autobiography and American Political Thought 27-57 (1987); Mallini Johar Schueller, The Politics of Voice: Liberalism and Social Criticism from Franklin to Kingston 17-30 (1992); see also I. Bernard Cohen, The Empirical Temper, in Benjamin Franklin and the American Character, supra note 119 (arguing that Franklin's version of the "principle that all men are created equal" was "deduced" from his own experiences, as well as those of his fellow Americans); Meyer, supra note 119, at 52 ("Out of his experience Franklin created a pattern for later liberals . . . .").

121 In sharp contrast to the outsider storytellers' assertion that their narratives are the agents of radical legal reform, Professor Lawrence Stone has speculated that one of the causes of the revival of narrative in historical writing was "the decline of . . . commitment" to radical ideologies, such as Marxism, among western intellectuals. Stone, supra note 84, at 9.
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naivete about the power of conventions to predetermine meaning—mar the outsider narrative project, as they do any other scholarly endeavor, I will mention only some of those that raise fundamental questions about the political work the outsiders claim their autobiographical narratives may perform.

My first example focuses on evidence offered to support the prevalent and significant claim that outsider scholars bring to the academy a different voice. Drawing on what seems to be a simple fact and making what appears to be a reasonable, even self-evident deduction, Professor Jerome Culp performs an interpretive move that is endorsed by the participants in the narrative project. Culp claims that black scholars write and teach in a voice that is more consciously autobiographical than that of white scholars because “[b]lack people feel the need to justify who they are and to describe where they come from as part of the description of where they want to go.”122 Culp then traces black writers’ traditional reliance on autobiography to the personal narratives of Frederick Douglass.123 In particular, Culp points out that the subtitle of Douglass’s first autobiography includes “the words ‘written by himself,’” and he pronounces that Douglass “felt compelled” to adopt this subtitle in order to notify readers that the “narrative was in fact self-written” and thereby to claim for himself “a legitimacy that black people in his era could not claim.”124

Culp may be correct about the manner in which Douglass’s subtitle explodes (some) racist assumptions by identifying him as a literate black in an era when literacy among African-Americans was statistically disproportionate to other segments of the population.

122 Culp, supra note 17, at 541.
123 See id. at 541–42 (“The work that begins this forward-looking approach to autobiography by black intellectuals is the autobiography of Frederick Douglass . . . .”). Although Douglass’s narrative is one of the best-known African-American autobiographies, it does not appear to have been the first. According to one literary theorist:

The beginning of African American autobiography may be fixed at 1760 with the publication in Boston of Briton Hammon’s impressively titled A Narrative of the Uncommon Suffering, and Surprizing Deliverance of Briton Hammon, a Negro Man,—Servant to General Winslow, of Marshfield, in New England: Who Returned to Boston, after having been absent almost Thirteen Years.

Dudley, supra note 73, at 11.
124 Culp, supra note 17, at 542 & n.10. The title of Douglass’s first autobiography is Narrative of the Life of Frederick Douglass, An American Slave, Written by Himself (David W. Blight ed., 1993) (1845).
The history of the word "autobiography," however, together with revelations by Douglass in his narrative, provide another explanation of Douglass's authorial intention. This explanation demands a more sensitive investigation of the different voice thesis than Culp bothers to pursue.

To begin, Culp's interpretation misses the fact that, at the time that Douglass composed his narrative, the word "autobiography" was new. Historians of autobiography claim that the word was coined at the end of the eighteenth century and, significantly, that the first work that was styled an "autobiography" was written by a gentleman named W.P. Scargill; it was published in 1834 and was called The Autobiography of a Dissenting Minister. If the historical data are accurate, the word "autobiography" was not used in book titles until 1834. Since Douglass's autobiography

125 Professor James Olney explains that the word autobiography "was fabricated toward the end of the eighteenth century at which time three Greek elements meaning 'self-life-writing' were combined to describe a literature already existing under other names ('memoirs' and 'confessions,' for example)." Olney, supra note 11, at 6. Professors Lemay and Zall claim that "the word autobiography ... first appeared in the English language in 1809 (although there was one earlier usage—as a burlesque neologism—in 1797)." J.A. Leo Lemay & P.M. Zall, Introduction to The Autobiography of Benjamin Franklin xvii n.1 (J.A. Leo Lemay & P.M. Zall eds., 1981); see Elizabeth Kaspar Aldrich, 'The Children of these Fathers': The Origins of an Autobiographical Tradition in America, in First Person Singular: Studies in American Autobiography 15,17 (A. Robert Lee ed., 1988) (noting that the Oxford English Dictionary first listed the term "autobiography" in 1809); see also John Pilling, Autobiography and Imagination 1 (1981); David Seed, Exemplary Selves: Jonathan Edwards and Benjamin Franklin, in First Person Singular: Studies in American Autobiography, supra, at 37, 38; Karl J. Weintraub, Autobiography and Historical Consciousness, 1 Critical Inquiry 821, 821 (1975).

126 Olney, supra note 11, at 5.

127 Olney takes pains to explain that, although we might find books today that first appeared prior to 1834 bearing the term "autobiography" in their titles, he is still correct to insist that Scargill's book was the first to be titled an "autobiography." At the time that Scargill's book was published, "a number of earlier works [were] republished under the new title of 'autobiography.' " Id. at 6 n.2. See James M. Cox, Recovering Literature's Lost Ground Through Autobiography, in Autobiography: Essays Theoretical and Critical, supra note 10, at 123, 123-24. A prominent example of a text that originally did not include the word "autobiography" in its title, but during the nineteenth century was republished under that title, is The Autobiography of Benjamin Franklin. Prior to the mid-1800's, when it first was titled an "autobiography," this text was published under a variety of titles, some of which signalled better than others its author's autobiographical intention. See Benjamin Franklin's Autobiography, supra note 119, at 361-62 (bibliography of key editions of the text); see also Seed, supra note 125, at 38 ("The Autobiography of Benjamin Franklin as the main standard title for Franklin's account of his life thus is a mid-nineteenth-century invention, first appearing in the 1840s.").
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was published in 1845, just eleven years after the term “autobiography” first appeared in a title, it is probable that the term was not widely known or used when Douglass wrote his book. At that time, any author who desired to signal that his text was (what we now call) an autobiography would have “felt compelled,” as Culp puts it, to use some descriptive phrase or word to so indicate. In the absence of a common usage of the term “autobiography” to indicate a piece of self-writing, Douglass’s selection of the phrase, “written by himself,” to designate an autobiographical text may be far less dramatic than Culp suggests, especially since the phrase was a conventional substitute for the term “autobiography.”

Thus on one level the meaning of the subtitle is unexceptional: Douglass simply was signifying through this code phrase his autobiographical intention at a time when the genre of autobiography was still evolving and not yet solidified to the extent that its nomenclature possessed wide audience recognition.

Given the care with which Douglass crafted his life story, however, it is not surprising to discover remarks in the narrative that illuminate his intention in selecting the phrase “written by himself” over other descriptive terms that would have identified his text as an autobiographical work. These remarks contradict Culp’s assertion that Douglass “felt compelled” to use that subtitle as a means of “justifying” his literacy to a white audience. In the narrative, Douglass discusses his acquisition of literacy, and his tone is not at all defensive, as Culp’s argument suggests. To the contrary, as Douglass well knew, the slave’s appropriation of literacy constituted a direct violation of his master’s rule, but he takes pleasure in announcing that his transgression was premeditated and in exposing its political implications. The law insisted that the black man remain illiterate because his ignorance was the foundation of “the white man’s power to enslave” him; thus, Douglass’s pursuit of lit-

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128 See Cox, supra note 127, at 123-24 (“[I]t was not until the middle of the nineteenth century that [the word ‘autobiography’] began to be widely used as a substitute for memoir and confession.”) (emphasis omitted).

129 For more on the use of the phrase “written by himself,” see infra notes 130, 138-39 and accompanying text.

130 In addition to the phrase “written by himself,” other such descriptive terms included “confessions” and “memoirs.” See Olney, supra note 11, at 6; Weintraub, supra note 125, at 821.

131 Douglass, supra note 124, at 57-58.
eracy was his first step on the "pathway from slavery to freedom."\textsuperscript{132} From these authorial revelations, we may surmise that Douglass selected the phrase "written by himself" as a badge of defiance. The phrase was a bold announcement of his will to flout the slaveholder's rule and thereby to abolish its power over him.

Despite its apparent challenge to the master's law, Douglass's selection of the phrase "written by himself" also signals a deep contradiction between the slave's acquisition of literacy and his desire to elude the master's bondage, a contradiction that Culp's interpretation obscures. Not surprisingly, since Culp identifies Douglass's life story as the founding instance of the different voice of scholars of color, this same contradiction surfaces within and threatens the success of the outsider narrative project. The contradiction is this: the freedom promised by literacy carried with it the potential "to imprison the slave even more thoroughly" than the master's rule.\textsuperscript{133} Literacy appeared to confer on the slave the authority to define for himself and articulate for the world who he was and what his experiences had been,\textsuperscript{134} but the language over which the slave gained mastery was an instrument of the master that, no less than the master's law, reproduced and supported the master's values.\textsuperscript{135} As Houston Baker puts it, literacy therefore exposed the slave to a new set of "intriguing restrictions."\textsuperscript{136}

Through conventions and methodology that confirmed a racist ideology, the master's language had the power to define the self

\textsuperscript{132} Id. at 58.


\textsuperscript{135} As Professors Peter Berger and Thomas Luckmann have observed, "language constitutes both the most important content and the most important instrument" in the process by which individuals internalize cultural values. Peter L. Berger & Thomas Luckmann, The Social Construction of Reality: A Treatise in the Sociology of Knowledge 133 (1966); see Weintraub, supra note 125, at 840 ("As the Greeks knew, it is 'idiocy' to conceive of personal development and well-being in atmospheric isolation, free of the impact of the social context. No one expresses his self in a language made by himself for this self but in a language inherited as the work of others.").

\textsuperscript{136} Baker, supra note 133, at 249; see also Cox, supra note 117, at 3 ("The very fact that autobiography was the chief form by means of which fugitive slaves could achieve both expression for themselves and acquire a hearing from cultivated society is evidence of the liberating as well as socializing function of the convention.").
and experiences that the slave could narrate, perhaps no less effec-
tually than the slaveholder had the power to define the self and
experiences that the slave could live. For Frederick Douglass,
the boundaries of literacy’s restrictions are marked out by the
phrase “written by himself.” The phrase did not originate in
Douglass’s subtitle; rather, the phrase was prepared for him by the
subtitles of other autobiographical texts that were popular when he
was drafting his narrative. Prominent among these texts was the
autobiography of the man who has long been “identified with the
American character,” Benjamin Franklin. In fact, Franklin’s
autobiography is believed to have directly influenced Douglass’s
narrative. In this light, the phrase “written by himself,” when
employed by an educated former slave in 1845, signals its author’s
decision to participate in an established literary tradition whose
conventions inevitably would condition and restrict, if not define,
the type of self that his hard-won literacy would permit him to be.
In short, if there is a meaning to decode, the phrase “written by

137 See James Olney, “I Was Born”: Slave Narratives, Their Status as Autobiography
and as Literature, in The Slave’s Narrative, supra note 133, at 148, 153-54; see also Dudley,
supra note 73, at 12, 28-29 (arguing that autobiographers, including Frederick Douglass,
“who wish to announce their freedom through the writing of their lives end up imprisoned
by the very structure they had thought would grant them personal emancipation”). Some
scholars insist that the influence exerted by language is not “poetic” or “fanciful,” but
“literal,” since the language we use reflects the way that we conceive of ourselves and of
our experiences, and “we act according to the way we conceive of things.” George Lakoff
& Mark Johnson, Metaphors We Live By 5 (1980); see also Spengemann & Lundquist,
supra note 76, at 514 (“Autobiography does not merely follow the cultural pattern, it is
clear; it contributes to that pattern by developing and formulating the very structure of
individuality.”). Certainly, the relationship between our ideas and our actions is far too
complex to be worked out here, but it seems fair to speculate, as Don Herzog does, that “at
least, ideas and action condition each other. In some contexts ideas matter more, in others
material circumstances matter more . . . .” Don Herzog, Happy Slaves: A Critique of
Consent Theory 13 (1989); see also Stone, supra note 84, at 8-9 (asserting that interactions
between ideas and material circumstances are “extraordinarily complex” and “two-way,”
and they “vary from time to time and from place to place”).

138 See Charles L. Sandford, Introduction to Benjamin Franklin and the American
Character, supra note 119, at v; see also Bercovitch, supra note 119, at 141 (Franklin’s
narrative “gives us ‘the pattern American’ ”).

139 See Dudley, supra note 73, at 19-20. The edition of Franklin’s autobiography that
“was the best-known and most frequently reprinted version” from the time it was
published in 1793 until 1868 was entitled Works of the late Doctor Benjamin Franklin:
Consisting of His Life Written by Himself, together with Essays, Humorous, Moral, &
Literary. See Benjamin Franklin’s Autobiography, supra note 119, at 361. It is likely that
this edition is the one with which Douglass was familiar.
himself" is a statement of authorial defiance, not self-justification, but its defiance is pierced with ambivalence. Contrary to Culp's suggestion, the phrase does not represent a claim to a different voice, but testifies to Douglass's conversion to the world of literacy and to his acceptance of the cultural limitations that literacy's conventions impose on the self and the meaning of its experiences.

Another blunder that impairs the narrative project may be traced to the outsiders' inattention to the conventional expectations that autobiographical discourse inspires in readers and to the manner in which those expectations condition the goals of the narrative project. In contrast to autobiography itself, theoretical examination of autobiographical discourse is a recent phenomenon.\textsuperscript{140} Untroubled by the prospect of a self undertaking to write its own story, early critics classified autobiography as an instance of biography, which they inspected only for its faithfulness to the available historical record.\textsuperscript{141} Starting around the middle of this century, however, literary critics began to "give up thinking about autobiography in the same way we do an objective biography" and to offer more complex definitions of autobiography,\textsuperscript{142} as well as alternative theories for evaluating autobiographical truth.\textsuperscript{143} While the critical debate over the nature of autobiographical truth is too extensive to be summarized here, many scholars have pursued the elusive distinction between autobiography and fiction.\textsuperscript{144} I allude

\textsuperscript{140} See Olney, supra note 11, at 7-9 (claiming that earliest critical work on autobiography was published in 1909); see also William C. Spengemann, The Forms of Autobiography 181 (1980) (claiming that Wayne Shumaker's 1954 book, entitled English Autobiography, was "the first work in English to study [autobiography] apart from biography").

\textsuperscript{141} See Spengemann, supra note 140, at 187, 190-92.

\textsuperscript{142} Gusdorf, supra note 10, at 45; see also Pascal, supra note 11, at 61-83.

\textsuperscript{143} See Spengemann, supra note 140, at 184-86.

\textsuperscript{144} See, e.g., Laurence Lerner, The Frontiers of Literature 12 (1988) ("Literature is fiction, history is fact: everyone knows that, but what everyone knows is not necessarily unproblematic."); Stone, supra note 115, at 6 (noting that the debate over nature of autobiographical truth has "stirred energetic controversy among critics"); Francis R. Hart, Notes for an Anatomy of Modern Autobiography, 1 New Literary History 485, 487 (1970) (noting the preoccupation of literary theorists with the relationship between the fictive and the historical, and claiming that "[t]he truism that in autobiography history and fiction are intentionally distinct proves too slippery to hold"). The outlines of the debate are neatly captured by Professor Laurence Lerner. Exploring the distinction between autobiography and fiction, Lerner observes that it is plausible to claim that "[e]very successful poem or novel is . . . an autobiography" because "the only way to create is to make the experience your own, to identify with the protagonist to the point that you share all his feelings."
to this debate to highlight an important convention of autobiography which some outsider scholars seem to have misunderstood. While many of the theoreticians intent on delimiting the boundary between autobiography and fiction have doubted that a meaningful boundary exists, readers continue to make and rely on a common-sense distinction between texts that insist on the authenticity of their factual representations and fictional texts that make no such claim. Before outsiders offer their autobiographies as a form of critical theory, they must identify the expectations that autobiographical discourse inspires in readers because those responses will largely determine the effectiveness of their social critique. In turn, readers who desire to participate in a dialogue over the value of the outsiders' stories must understand how autobiographical discourse predetermines and limits the range of available critical positions.

Because readers approach autobiography with expectations different from those they bring to fictional performances, Philippe Lejeune offers a definition of autobiography that emphasizes those unavoidable conventions. Using a metaphor that is familiar to students of law and, indeed, that underscores an important similarity

Lerner, supra, at 27-28. Of course, as Lerner also remarks, there is the competing "structuralist" view that "everything is fiction: for to write is to impose the conventions of language upon experience, and escape into the hors-texte is not possible." Id. at 28. See also Paul de Man, Autobiography as De-facement, 94 Modern Language Notes 919, 922 (1979) ("But just as we seem to assert that all texts are autobiographical, we should say that, by the same token, none of them is or can be."). Another commentator has described the relation between autobiography and fiction as follows:

It can be argued that all fiction (and poetry and philosophy and painting) ultimately constitutes autobiography, the artist inventing, whatever the purported aim of his creation, only a series of metaphors for the self. Conversely, one can maintain that all autobiography is fiction, the imposition of form and the discovery of meaning automatically converting life into its imitation.

Patricia Meyer Spacks, Imagining a Self: Autobiography and Novel in Eighteenth-Century England 154 (1976). See generally Spengemann, supra note 140, at 188 ("[T]here no longer seems to be anything that either is or is not autobiography . . ."); Mansell, supra note 76, at 77-78 ("The critic tries to assume that over every autobiography is hung a sign that says, 'The opinions here are not necessarily those of the management.' ").

145 See Cox, supra note 117, at 11; Philippe Lejeune, The Autobiographical Contract, in French Literary Theory Today 192, 192-220 (Tzvetan Todorov ed. & R. Carter trans., 1982); Mansell, supra note 76, at 72-73; see also Pascal, supra note 11, at 83 ("Not only does the reader expect truth from autobiography, but autobiographers themselves all make more or less successful efforts to get at the truth . . ."); Peter Lamarque, Narrative and Invention: The Limits of Fictionality, in Narrative in Culture, supra note 16, at 134-35.
between legal and autobiographical discourse, Lejeune characterizes autobiography as a "contract" between author and reader.\textsuperscript{146} However a reader determines that a work is autobiographical, the reader understands that the author of the work has affirmed that she is both the narrator of and protagonist in the text.\textsuperscript{147} Unlike authors of fiction, therefore, autobiographers enter into a "referential contract" with their readers, promising "to convey information about a 'reality' which is external to the text and hence to be subject to the test of verification."\textsuperscript{148} As Professor Elizabeth Bruss puts it, autobiographical discourse imposes "responsibilities" on the author and, in turn, confers "rights" on the reader.\textsuperscript{149} The

\textsuperscript{146} See Lejeune, supra note 145, at 202, 219.
\textsuperscript{147} See id. at 193, 203-04, 209; Bruss, supra note 11, at 10-12.
\textsuperscript{148} Lejeune, supra note 145, at 211; see Bruss, supra note 11, at 10-11; see also Nussbaum, supra note 75, at 16 ("Autobiographical writing claims to represent what is . . . ." (emphasis omitted)); Stone, supra note 115, at 4-5 (asserting that because autobiography is "history," as well as art, "the autobiographer is bound to [her] past in ways the novelist . . . is not"); Mansell, supra note 76, at 73-74 (arguing that readers understand that work labeled "autobiography" refers to the world or a context outside itself, whereas work labeled "fiction" refers "only to itself"). Likewise, fiction has been described in contractual terms, as critics argue that the fictionality of a given text "resides in a special kind of institutional and rule-governed relation between writer, text and reader." Lamarque, supra note 145, at 135; see Bell, supra note 81, at 177-78 (describing the difference between fiction and history as found in "their implied contract with the reader").
\textsuperscript{149} See Bruss, supra note 11, at 11. The importance that readers attach to the autobiographical covenant and, especially, to the responsibilities imposed on the author of autobiographical material was vividly demonstrated during the Senate Banking, Housing and Urban Affairs Committee's investigation of the Whitewater real estate venture. On August 2, 1994, the Committee questioned Joshua Steiner, the chief of staff for Treasury Secretary Lloyd Bentsen, about entries he made in his personal diary in which he described, among other things, contacts between Treasury and White House officials over the developing investigation. In his opening statement before the Committee, Steiner asserted that his diary did not provide a realistic account of the events and conversations it represented. As he put it then and in his answers to specific questions from Committee members, the diary "was never intended to be a precise narrative or a verbatim account of what took place." Madison Guaranty/Whitewater Inquiry: Hearing of the Senate Banking, Housing and Urban Affairs Committee, Federal News Service, Aug. 2, 1994, at 4, available in LEXIS, Banking Library, Fednew File. Instead, Steiner asserted, he used the diary to describe his reflections and feelings, as well as the "lessons" he drew from his experiences. See id. This testimony displeased a number of the Senators, who expressed in various ways the belief that because the document was a diary, its entries should be understood as an honest and accurate description of the underlying events. For example, Senator Alfonse D'Amato lectured Steiner, "I tell you something, it is distressful to see a young, bright, intelligent man who wrote this diary and then comes around and concocts some feeble, lame-brained excuses to try to explain it away like it didn't count and it didn't matter." Id.
reader expects the author to describe herself from her own perspective, but the reader also understands that the author is asserting not only that she believes the account is true, but also that it represents events and experiences which are real.\textsuperscript{150}

As a result, autobiography does not offer a way of understanding the outsiders' experiences ("life as it is") that is inherently different from that provided by law ("how lawyers talk about it"). To the contrary, autobiographical narratives and legal narratives make the same referential commitment: both are realist discourses, devoted to the distinction between events that are "in principle observable or perceivable" outside the narrative\textsuperscript{151} and those that reside solely inside the world constructed by a storyteller.\textsuperscript{152} To be sure, the storytellers do aim to expand their own and their listeners' interpretive options; hence their insistence that the meaning assigned to an event that a storyteller describes—for example, whether a sexual encounter should be construed as a rape or as consensual intercourse—is contingent on the particular truth-finding mechanism employed. Still, by committing itself to the existence of a real world outside the story, an autobiographical account limits the range of available interpretive moves to a referential framework.

\textsuperscript{150} See Philippe Lejeune, The Genetic Study of Autobiographical Texts, 14 Biography 1, 3 (Winter 1991) ("[A]n autobiographical text aims at telling the truth about the past . . ."); Bruss, supra note 11, at 11; see also Pascal, supra note 11, at 83. By contrast, readers of fictional narratives are "invited by a storyteller not so much to believe the propositions presented in a narrative as to make-believe them." Lamarque, supra note 145, at 148 (emphasis omitted). The "make-believe attitude" demands that readers "focus away from external relations of reference and truth towards internal relations of sense and form." Id.

\textsuperscript{151} See Hayden White, Tropics of Discourse '121 (1978).

\textsuperscript{152} Lamarque, supra note 145, at 134.
When the autobiographer describes an event that she experienced, she is representing that the event in question had an existence independent of her textual reconstruction of the event; she is not inventing her experience of the event, but remembering the experience as in fact it happened. By insisting that their stories represent the real, which implicitly conceals the role that the story form plays in assigning meaning to the experience, the outsider autobiographies, no less than legal discourse, obscure the "necessarily discursive character" of the experiences they reproduce.

Because autobiography makes the commitment to represent real events and the nuanced experience of those events, autobiographical discourse inspires readers to engage in the same kind of interpretive activity demanded of the participants in a legal proceeding. The autobiographer's referential commitment invites the reader to become a "detective," who examines potential "breaches of the contract" and identifies "flaws, gaps, and rearrangements" in the narrative. Although verification may be difficult (or even impossible), autobiographical discourse automatically provokes readers at least to speculate on, if not investigate, the text's verifiability and authenticity. Nor is the decision whether to undertake this investigation within the discretion of the reader any more than it is within a litigant's discretion. Rather, readers of autobiography "must . . . reality-test each text" in order to determine, for example,

153 It would not be surprising to encounter another fascinating set of questions about the outsider autobiographical narratives if we were to examine the role that memory plays in an author's representation of activities, relationships, and feelings that she experienced in the past. For a collection of essays exploring the nature and function of autobiographical memory, see Autobiographical Memory (David C. Rubin ed., 1986).

154 Clearly, the outsider storytellers do insist that their stories represent the real, including especially the subjective feelings the reported experience provoked. Patricia Williams made this point directly in an interview: "'I borrow devices from fiction,' Williams explains, 'but I don't fictionalize.' " Jon Wiener, Law Profs Fight the Power, The Nation, Sept. 4/11, 1989, at 246, 248. Moreover, the outsiders' premise that their stories reveal the falsity of law's representation of their experiences rests on the notion that their stories reflect what is real. See Scott, supra note 19, at 24.

155 See Scott, supra note 19, at 31.

156 Lejeune, supra note 145, at 203; see Bruss, supra note 11, at 11. Apparently, the "detective" metaphor captures Professor Lejeune's experience as a scholar of autobiography; thus, he has confessed that his genetic studies of autobiographical texts is "urged on by a curiosity somewhat akin to that experienced by detectives." Lejeune, supra note 150, at 1.

157 See Lejeune, supra note 145, at 212, 216.
whether the author intends particular statements to be literal or symbolic.\footnote{Stone, supra note 115, at 12 (emphasis added); see Lejeune, supra note 145, at 214-16. Therefore, I disagree with Professor Jane Baron’s suggestion that only listeners who are unsympathetic will “be tempted to ask whether the storyteller has ‘really’ had those experiences.” Baron, supra note 5, at 282. Even readers who are sympathetic to the storyteller’s perspective will seek verification in order to resolve doubts over the meaning of an autobiographical story.} Similarly, in cases where the autobiographer has committed “errors, distortions, or omissions,” the reader cannot locate the meaning of the work unless she discovers the mistakes, embellishments, or misrepresentations and then evaluates the purpose of such fictionalizing.\footnote{Stone, supra note 115, at 12; see Pascal, supra note 11, at 62, 82-83 (claiming that the argument that an author’s false impressions are as important as the true ones for what they reveal of the author’s self requires that the reader identify the false impressions); Spacks, supra note 144, at 2, 18 (arguing that readers who detect the falsity of an autobiographical claim will find that claim “particularly interesting” because imaginary episodes reveal more about the autobiographer’s character than do the real); see also Bruss, supra note 11, at 11 (“An autobiographer can be convicted of ‘insincerity’ or worse if he is caught in a premeditated distortion.”); Nussbaum, supra note 75, at 27 (“To write a diary reassures others of one’s honesty, and it is an occasion to address the reader without reserve; if deceit is detected, the entire project will be jeopardized.”). As if to reassure readers that their experiences are authentic and subject to verification, autobiographers often fit out their texts with “historicizing paraphernalia,” such as “quotations from letters, diaries, newspapers, or other verifiable, external records.” Stone, supra note 115, at 29.} For this reason, even if they share Professor Marc Fajer’s desire to adhere to norms of scholarly civility, scrupulous readers must rebuff his suggestion that they begin (and thereby limit the scope of) their search for the meaning of these texts by assuming that the outsiders’ autobiographical stories are true.\footnote{See Fajer, supra note 5, at 1863-64; see also Baron, supra note 5, at 282-83 (characterizing listeners’ requests for verification as contributing to an “unpleasant debate over honesty” and identifying other responses listeners can make to avoid such debate).}

The need for outsider scholars to understand the manner in which the autobiographical contract shapes and limits their critical enterprise is illustrated by the work of Professor Patricia Williams. Williams includes among her personal accounts of racism a description of her interaction with law review personnel over an article that included her well-known Benetton story.\footnote{See Williams, supra note 2, at 44-46. Williams mentions that she has “used the Benetton’s story a lot, in speaking engagements at various schools.” Id. at 50. The first version of the story to be published was Patricia Williams, Spirit-Murdering the Messenger: The Discourse of Fingerpointing as the Law’s Response to Racism, 42 U. Miami L. Rev. 127, 127-29 (1987).} In the story, a
white sales clerk at a Benetton store in Manhattan refuses to open the door for Williams after she sought admittance by using the store’s buzzer. Williams explains that, in the course of editing the article, the students deleted “[a]ll reference to Benetton’s” because, among other reasons, “they were not in the habit of publishing things that were unverifiable.”162 Williams then charges that this refusal to allow her to attest to her experience was motivated by racism; she quips, “I... wonder... what it would take to make my experience verifiable. The testimony of an independent white bystander?”163 Williams’s accusation of racism may be correct. In teasing out the meaning of this episode, however, Williams never notices that her editors’ request for verification may have been prompted, not by their racist attitudes, but in fulfillment of their part of the autobiographical bargain.

In her narratives, Williams often seems to manipulate her readers’ desire for verification. Throughout The Alchemy of Race and Rights, for example, she quotes a variety of materials that are ostensibly “testable” and “self-authenticating,”164 though practically unavailable to us. These materials include portions of speeches she gave, memoranda she sent to her colleagues and they to her,165 part of a final argument she made to a jury,166 entries from her journal,167 comments from student course evaluations,168 and conversations she overheard or in which she participated.169 Indeed, it is the use of these materials that signals to readers that Williams has extended an autobiographical offer. Yet when readers express a desire for additional verification or (as they do on other occasions) detect some factual error in her account,170 Williams condemns them for voicing the very expectations that her choice of literary genre imposed. With her instant, sarcastic, and (at least partially) unjust characterization of her editors as racist,

162 Williams, supra note 2, at 47 (emphasis added).
163 Id.
164 Stone, supra note 115, at 29.
165 Williams, supra note 2, at 85-90, 93-94.
166 Id. at 107-08.
167 Id. at 17, 98-101, 231-32.
168 Id. at 95.
169 Id. at 5-8, 17, 27, 31, 33-34, 73, 126, 204-05.
170 Id. at 214-15.
we may perceive that Williams, no less than her readers, is being manipulated by this discourse.

In order to put Williams's charge in its fairest light, I must concede that a reader's desire for verification of an autobiographical narrative often may be naive, not only because independent records of the personal account cannot be located, but also because a significant component of the account, namely, how the author feels about the experiences she reports, always will be unverifiable. Such material is known by the author alone. In a footnote to a list of questions listeners have asked her about the Benetton episode, Williams remarks on the difficult task she faces when asked to verify the feelings that prompted the sales clerk's refusal to open the door for her or the feelings that his conduct aroused in her. However, Williams attributes these questions, not to her listeners' naivete, but to their racism, on the ground that such questions deny that blacks have the authority to know and describe their pain. In the footnote, Williams makes two (related) points to support her charge. Her first claim is that readers who question her stories have concluded that she and other blacks who complain about racism are liars; and, by refusing to credit "black

171 See Mansell, supra note 76, at 65; see also Farber & Sherry, Telling Stories, supra note 5, at 836 (assessing the truth of the outsider narratives is "made more difficult by the impracticability of independent investigation").

172 See Gusdorf, supra note 10, at 35; Lejeune, supra note 145, at 212. As Gusdorf reflects, "[e]xternal and objective criticism might well pick out an error in detail here and there or a bit of cheating, but it does not reach to the heart of the matter." Gusdorf, supra note 10, at 37; see also Pascal, supra note 11, at 18 (asserting that autobiography "gives us the 'inside view'... for which the autobiographer is often the only authority"). Recently, Lejeune has suggested that reader-detectives intent on verification of "subjective or private affairs" should confront the autobiography with its "pre-text," if the pre-text is available. "Pre-text" signifies "all that has been before the final text and was written or collected for it," including "not only first drafts, but plans, scenarios, notes and also documentation of any kind gathered on purpose for a particular project." Lejeune, supra note 150, at 3-4 & n.1 (emphasis omitted). While it would be "arbitrary and naive" to conclude that the pre-text is more "truthful" than the autobiography itself, still a comparison of the text to its pre-text may expose "not only contradictions in facts, but changes in meaning," which reveal, in turn, the author's evolving self-image and "the manner in which memories are transformed." Id. at 3-4. This genetic approach might yield insights into Patricia Williams's autobiography, whose pre-text is (at least partially) available and includes the journal articles and essays previously published by Williams and then collected and edited by her for inclusion in the book. See Williams, supra note 2.

173 Williams, supra note 2, at 242 n.5 ("These questions put me on trial—an imaginary trial where it is I who have the burden of proof—and proof being nothing less than the testimony of the salesman actually confessing yes yes I am a racist.").
self-knowledge and expression,” the community absolves itself of responsibility for the suffering inflicted by discrimination.\textsuperscript{174}

Her second argument emerges from her comparison of her readers’ treatment of the Benetton story to the media’s treatment of Tawana Brawley’s story of being raped by several white men.\textsuperscript{175} In Williams’s extended discussion of the Brawley case, she insists that ultimately it does not matter whether Brawley was telling the truth about the rape. Whether or not Brawley was raped, she was “the victim of some unspeakable crime. . . . No matter who did it to her—and even if she did it to herself. Her condition was clearly the expression of some crime against her, some tremendous violence, some great violation that challenges comprehension.”\textsuperscript{176} Therefore, listeners who believe that Brawley or Williams “had made the whole thing up” misunderstand the deeper truth told by their stories, which is that African-American women are brutalized every day in a whole variety of ugly and painful ways, yet they are denied a “stable place to testify and be heard.”\textsuperscript{177} Readers who request verification have not simply missed the point of the stories. Rather, their request is the point: the stories accurately represent the unique pain that African-Americans endure in a racist society, including the injury of having one’s complaints about that pain greeted with “skepticism and disbelief.”\textsuperscript{178}

Williams’s sensitive interpretation of the public’s reaction to Brawley’s story and to Williams’s stories exposes the community’s refusal to see, let alone heal, the wounds that racism inscribes on the bodies and souls of its victims. The condition in which Tawana Brawley was found—dazed; smeared with dog feces; her clothing torn and burned; “KKK” and “Nigger” scrawled on her body—eloquently testifies to the violence that racism fosters and that law must be concerned to remedy. Similarly, the Benetton story movingly represents the rage and humiliation that erupt in those who are outcast by discriminatory practices.

\textsuperscript{174} Id. at 242-43 n.5.
\textsuperscript{175} Id.
\textsuperscript{176} Id. at 169-70.
\textsuperscript{177} Id. at 176.
\textsuperscript{178} Id. at 174.
\textsuperscript{179} See Evidence Points to Deceit by Brawley, N.Y. Times, Sept. 27, 1988, at A1, B4.
Despite the strength and importance of these insights, Williams's interpretation ultimately fails. It accounts neither for the expectations inspired by the autobiographical covenant, nor for the heightened importance we attach to the covenant when an actor markets her personal story, not simply to bookstores or newsstands, but to legal institutions for the purpose of demanding a legal remedy. The effect of Williams's assertions about the meaning that law should assign to these stories—especially her remarks that "anything that happens to me is inherently subjective" and that "it almost didn't make any difference whether I was telling the truth or not"—is solely disruptive, since she does not provide even superficial answers to some of the central questions about law that the narrative project must resolve.

First, there is a practical question: are we to advise the men whom Brawley accused of raping her that it doesn't make any difference whether or not she is telling the truth? Or, to be more precise, should we tell them that a court must accept Brawley's story at face value because it would be racist to announce, for example, that all of the evidence, apart from the painful feelings she reported, established that no sexual encounter of any kind had occurred? This practical problem arises because law does not simply tell stories. More than many of the other realist institutions, including autobiography, that have recourse to narrative, law participates directly in the construction of real events. In addition to imposing a narrative structure on past events, law intervenes in, and thereby makes a material difference in, the lives of its subjects. As Robert Cover has observed, "[l]egal interpretive acts signal and occasion the imposition of violence upon others."

The Brawley case singled out by Williams is illustrative. If a court had endorsed Tawana Brawley's story, it would have produced a narrative based on the storyline "Brawley was raped by a group of white men." Then, the court would have enforced that narrative, probably by removing the men from their homes and incarcerating them. Williams's interpretation ignores the crucial

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180 Williams, supra note 2, at 242 n.5.
182 Id. at 1601.
convention underlying this function of the law and legal "narratives." Society has authorized law to deploy its violence in the accused men's lives only if they participated in certain real events, such as a rape. Since the occurrence of a forbidden real event furnishes the basis for law's violent activity, law does have an interest in verifying a report describing one of those events, at least to rule out reports that are invented or imagined.  

Moreover, the fact that law operates in the real world suggests that this kind of verification is especially crucial for members of the academy interested in eliminating racist and sexist harms. Unless we identify the events that inflict those harms with some precision, we cannot determine the appropriate form for law's socially corrective and punitive intervention. Since white men do rape and inflict other harms on women and people of color, we must determine why the normative criminal sanction is inept in deterring racist and sexist violence. Since white men are raping black women, with or without impunity, we have an absolute and immediate responsibility to restructure the criminal justice system to oppose rigorously this instance of inhumanity and brutality. The full horror of the Brawley case, in Williams’s penetrating vision, is that violent sexual encounters are so pervasive that young black women imagine that they are occurring, even when they are not. Horrifying as that development is, law currently sees no justification for imprisoning the men whom the women accuse, even though the images of rape cause the women real suffering. And, I venture, no one in the academy, including Williams, would suggest that we should incarcerate the men. That is why Williams’s remarks are only disruptive. She provides no assistance with or concrete instruction on the difficult question that the Brawley case seems to present to law—how to locate and remove the pressures that expose African-American women to the terror of rape until their minds are so violated that they carve on their own bodies the wounds a rapist might inflict.

Those committed to the narrative project may respond to this practical objection by claiming that the objection disappears once we understand how their works fundamentally reconceptualize

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183 To paraphrase an apt remark by a critic of autobiography, law "has no obligation to a fantasy." Hart, supra note 144, at 488.
law. Accordingly, I will consider briefly a theoretical problem that the storytellers must confront: what is the value for law of the insight that “anything that happens to [us] is inherently subjective?”184 In what kind of legal system would it make no difference whether a woman who claimed that she had been raped was telling the truth? I doubt that Williams is suggesting that law should revise its referential commitments, though her remarks could be interpreted this way. To say the least, it would be intriguing to theorize alternative systems that dissolve the distinction between real events and imagined ones, but that is not the purpose of Williams’s narrative. The heart of her critique focuses on the methods and criteria law employs when deciding whether an experience really occurred, and what the content of that experience really was. To explode the conventional criteria for establishing the truth of an event, she offers a theory of meaning that asserts that truth is grounded on the subjective impressions of the actor involved.

As we evaluate this refocusing of evidentiary criteria, we must ask whose interests would be served by this theory of meaning. Would a legal system that generally and forthrightly assigned meaning to an event based on one actor’s subjective impression of the event be less racist and sexist than the current regime? Without careful theoretical elaboration, Williams’s suggestion may be as politically regressive as it is impractical, opening the way for more racist, sexist, homophobic and class-discriminatory abuses than it mitigates. Even if we fully accept the need to expand law’s sensitivity to subjective nuances and personal perspectives with regard to truth claims, our current system is replete with examples suggesting that we should approach this project with caution. For many years, black men were subjected to criminal penalties (including lynching) because white men and women imagined that they were thinking about rape.185 To this day, men often defend

184 Williams, supra note 2, at 242 n.5; see also Delgado, supra note 2, at 2416 (noting that the same event is often open to varying interpretations).

185 See Edward L. Ayers, Vengeance and Justice: Crime and Punishment in the 19th-Century American South 238-55 (1984) (describing political atmosphere that led whites sincerely to “perceive[ ] black rapists where they did not in fact exist”); see also McQuirter v. State, 63 So. 2d 388, 390 (Ala. Ct. App. 1953) (holding that in determining whether defendant had intent to rape, the jury was entitled to “consider social conditions and customs founded upon racial differences, such as that the prosecutrix was a white woman and defendant was a Negro man”).
against rape charges by asserting that they experienced the encounter as consensual even though the women testify that they rebuffed the sexual advances.\textsuperscript{186}

Additional questions about the narrative program appear when we set aside conventional expectations and focus specifically on Williams’s representation of her relationship with her readers. In doing so, we see that Williams’s condemnation of her editors operates within the world of relationships instituted by her text in a way that profoundly compromises the objectives of the storytelling project. At the outset of the book Williams professes to be interested in an “intersubjective” relationship with her readers. Her announced aim is to “write in a way that reveals the intersubjectivity of legal constructions [and] that forces the reader . . . to participate in the construction of meaning . . . .”\textsuperscript{187} Similarly, other participants in the narrative project have argued that storytelling is superior to legal discourse because it is collaborative, rather than coercive.\textsuperscript{188} To secure readers’ cooperation, Williams “exploit[s] all sorts of literary devices,” including autobiography, in the “hope that the gaps in my own writing will be self-consciously filled by the reader.”\textsuperscript{189} Later, Williams promises that such gaps can be bridged, but only by “listening at a very deep level, to the uncensored voices of others.”\textsuperscript{190}

The imbroglio with her editors, however, reveals the inauthenticity of Williams’s invitation to her readers.\textsuperscript{191} When readers raise doubts about the meaning created through the literary device that she selected, ostensibly to engage their assistance in the production of meaning, she censures them with accusations that only a hardy


\textsuperscript{187} Williams, supra note 2, at 7.

\textsuperscript{188} See supra text accompanying notes 66-69.

\textsuperscript{189} Williams, supra note 2, at 7-8.

\textsuperscript{190} Id. at 150.

\textsuperscript{191} Williams’s inclusion of the episode within her autobiographical text authorizes us to draw inferences not only about her attitude towards those particular readers, but also about her “habitual mode of interaction with others.” See Bruss, supra note 11, at 13. As Professor Bruss explains, one of the “complicated implication[s]” of the conventions governing autobiography is that the author’s assumptions about and attitude towards her audience “also come under the scrutiny of that audience.” Id.
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(Perhaps, foolhardy) reader could contemplate enduring. Inter-subjectivity is well and good, this episode cautions, but only if readers endorse precisely the meaning Williams has in mind.

The warning this episode conveys to readers signals more than a textual incoherence or the failure of Williams’s own collaborative engagement. More fundamentally, it reveals the inherent inadequacy of autobiography as a tool of social criticism. The institutional spaces where the outsider stories have their existence, including the lecture tour podium and the pages of scholarly journals, are arenas that foster, indeed, depend on, vigorous inquiry and dialectical exchange. Before we agree to reorder society along lines a group of scholars may propose, scrupulous testing of their theories seems wholly appropriate. Yet, as Williams’s bitter rebuke of her editors portends, personal stories tend to pre-empt responses other than sympathy or silence, precisely because any critical commentary or desire for clarification may be dismissed as ad hominem—and any criticism necessarily is ad hominem, since the material available for criticism or clarification is the scholar’s personal experience. Ironically, therefore, the power of the autobiographical exchange to inspire readers’ sympathy turns out to be a significant shortcoming within the context of an academy whose participants, even when sympathetic to an idea, are committed to immediate, often face-to-face, critical inquiry and debate.

192 Perhaps Williams has succumbed to the “over-simple theory of reading” identified by Donald McCloskey. According to this theory, “texts are transparent” and “reading is . . . free from difficulties” so that “naturally the only way our readers can fail to agree with us is through their ill will or their dimness.” McCloskey, supra note 16, at 10-11. As McCloskey points out, there is a “better theory of reading,” which “is the one a good teacher uses with students. She knows well enough that the text is not transparent to the students, and she does not get angry when they misunderstand.” Id.

193 Unlike Jane Baron, therefore, I suggest that it is impossible, not just difficult, to avoid ad hominem criticism of the outsiders’ autobiographical performances. See Baron, supra note 5, at 260.

194 Robin West has remarked on the tendency of autobiographical storytelling to put readers “on the defensive,” but she suggests that this phenomenon will influence only those who read in “dread” of finding themselves or their conduct described in the story. See West, Murdering the Spirit, supra note 17, at 1780-81. While West may be correct to suggest that the point of the story will be “lost” on such readers, I believe that the use of personal stories will tend to silence many, if not most, of the readers whose reaction to the story is not immediately or purely empathetic. See id.
rance, and dismissing criticism as a personal attack on the author's character, autobiographical rhetoric is no less coercive of readers than the legal rhetoric that the outsiders desire to supersede.\textsuperscript{195}

Although Williams is quick to detect insensitivity and bigotry in remarks made by strangers, colleagues, and friends, her taste for irony fails her when it comes to reflection on her relationship with her readers and the material benefits that her autobiographical performances have earned for her.\textsuperscript{196} Perhaps Williams should be more inclined to thank, rather than reprimand, her editors for behaving as readers of autobiography invariably do. When we examine this literary faux pas—the incongruity between Williams's condemnation of her editors and the professional benefits their publication secured her—we detect yet another contradiction between the outsiders' use of autobiography and their desire to transform culture radically. Lejeune's characterization of autobiography as a "contract" reminds us that autobiography is a lucrative commodity. In our culture, members of the reading public avidly consume personal stories,\textsuperscript{197} which surely explains why first-rate law journals and academic presses have been eager to market outsider narratives. No matter how unruly the self that it records, an autobiographical performance transforms that self into a form of "property in a moneyed economy"\textsuperscript{198} and into a valuable intel-

\textsuperscript{195} One reviewer has praised Williams and offers her narratives as a model for those who would avoid "name-calling" on the ground that Williams furnishes a "compelling substantive critique" without disintegrating into "character assassination." Barnes, supra note 25, at 1659. Even if it were true that Williams did not engage in name-calling herself, her use of personal stories as a form of legal critique makes it almost impossible for other critics, in their turn, to avoid charges of "character assassination" if they question the meaning or value of those stories.

\textsuperscript{196} See, e.g., Culp, supra note 31, at 1034, 1040; Menkel-Meadow, supra note 23, at 289, 290, 295, 297-98, 299-304; West, Murdering the Spirit, supra note 17, at 1771 (describing the "greatness" of Williams's book as supplied by her "rich personal depictions" of the nature of private racism and the injuries it inflicts); Wiener, supra note 154, at 247-48.

\textsuperscript{197} Stone, supra note 115, at xiii; Cox, supra note 117, at 11 (reminding us that "biography and autobiography are more marketable products than fiction").

\textsuperscript{198} Nussbaum, supra note 75, at xiv. At least one autobiographer, who was cognizant of this effect of autobiographical discourse, found it distasteful. After she completed her autobiography, My Apprenticeship, Beatrice Webb proclaimed:

Done it! and never before have I been so relieved to see the last words of a book, for never before have I been so utterly and painfully uncertain as to its value. . . . Added to this uncertainty is the unpleasantness of selling your personality as well as your professional skill. You are displaying yourself like an actress or an opera singer—you lose your privacy.
lectual asset in an academy that requires its members to publish.\(^{199}\) Accordingly, we must be skeptical of the assertion that the outsiders’ splendid publication record is itself sufficient evidence of the success of their endeavor.\(^{200}\)

Certainly, publication of a best seller may transform its author’s life, with the resulting commercial success and academic renown.\(^{201}\) As one critic of autobiography puts it, “failures do not get published.”\(^{202}\) While writing a successful autobiography may be momentous for the individual author, this success has a limited impact on culture. Indeed, the transformation of outsider authors into “success stories” subverts outsiders’ radical intentions by constituting them as exemplary participants within contemporary culture, willing to market even themselves to literary and academic consumers.\(^{203}\) What good does this transformation do for outsiders who are less fortunate and less articulate than middle-class law professors?\(^{204}\) Although they style themselves cultural critics, the


199 Professor Sacvan Bercovitch also has remarked the curious “alliance between radicalism and upward mobility in the profession at large—the rites of academia encoded in writings of dissent.” Bercovitch, supra note 51, at 24. This alliance makes visible the oppositionalist critics’ “complicity” in the cultural institutions they oppose. Id.

200 See Delgado, supra note 5, at 672 (“[A]s for judging stories’ impact, why speculate in a vacuum? Book sales, reviews, and placement of articles in top-tier journals might enable us to gauge stories’ efficacy without the guesswork.”).

201 Cf. Gagnier, supra note 33, at 141 (remarking the difficulty that nineteenth- and early twentieth-century working class autobiographers encountered in establishing a subjectivity worthy of public regard, given their impoverished circumstances).

202 See Thomas P. Doherty, American Autobiography and Ideology, in The American Autobiography, supra note 76, at 95, 95. Indeed, one author believes that the “commercial success” of feminist storytelling has prompted within cultural criticism a “rather vicious game of issues and individuals elbowing each other out of the way, each crying ‘listen to me’, ‘hear my difference’.” Probyn, supra note 13, at 9 (emphasis omitted).

203 See Nussbaum, supra note 75, at 77-79.

204 Cf. Fox-Genovese, supra note 111, at 30 (“What good does a middle-class woman’s employment, raise, or promotion do her sisters?”). Professor Derrick Bell has noticed a similar incongruity in the context of civil rights litigation. In a dialogue on the failure of such litigation to advance the interests of the minority community, Bell speculates that individual African American lawyers may be reluctant to admit that lawsuits cannot secure just outcomes for their clients because the lawyers have achieved professional and economic success by pursuing the suits. Bell, supra note 64, at 69-70; see also Bell, supra note 31, at 25-26 (discussing the relationship between the African American middle class and the poor). Literary theorists also have noticed the problematic position of the professional intellectual whose career is founded on the social and economic subjugation of the members of an outsider group. See Probyn, supra note 13, at 9 (noting that feminists who spoke out after a gunman murdered female students at the University of Montreal
storytellers generally do not reflect on the meaning of their own commercial success, nor ponder its entanglement with the cultural values they claim to resist. Rather, for the most part, they seem content simply to take advantage of the peculiarly American license, identified by Professor Sacvan Bercovitch, "to have your dissent and make it too."205

IV. THE AUTOBIOGRAPHICAL SELF

The outsider narratives do not reflect on another feature of autobiographical discourse that is perhaps the most significant obstacle to their goal to bring to law an understanding of the human self that will supersede the liberal individual. Contrary to the outsiders' claim that their personalized discourse infuses law with their distinctive experiences and political perspectives, numerous historians and critics of autobiography have insisted that those who participate in autobiographical discourse speak not in a different voice, but in a common voice that reflects their membership in a culture devoted to liberal values.206 As Sacvan Bercovitch puts it, American cultural ideals, including specifically the mythic connection between the "heroic individual . . . [and] the values of free enterprise," are "epitomized in autobiography."207 In his seminal essay on the subject, Professor Georges Gusdorf makes an observation that seems like a prescient warning to outsiders who would appropriate autobiography as their voice. He remarks that the practice of writing about one's own self reflects a belief in the autonomous individual, which is "peculiar to Western man, a concern that has been of good use in his systematic conquest of the

were criticized for resting their "speaking position . . . upon the dead bodies of fourteen young women"); John Seelye, The Clay Foot of the Climber: Richard M. Nixon in Perspective, in Literary Romanticism in America 109, 131 (William L. Andrews ed., 1981) (stating that Frederick Douglass's "career as a public speaker was mounted from a scaffolding that . . . was planted in the unsure ground of an essential fallacy, a career that ironically was dependent on the continued plight of the black man").

205 Bercovitch, supra note 51, at 22.

206 It is tempting to turn back on the outsider autobiographical narratives Richard Delgado's criticism of mainstream civil rights scholarship by paraphrasing one of his remarks: "[t]he impression that could be received from reading these otherwise impressive works is that the liberal system of law and politics . . . is largely intact and that the [outsider storytellers] are doing little more than raising variations on a familiar theme." Delgado, supra note 46, at 1357-58.

207 Bercovitch, supra note 119, at 149.
universe and that he has communicated to men of other cultures; but those men will thereby have been annexed by a sort of intellectual colonizing to a mentality that was not their own."

Similarly, Albert Stone, a critic of American autobiography, argues that autobiographical performances celebrate the Western ideal of individualism, "which places the self at the center of its world." Stone begins to elucidate the prescriptive character of autobiographical discourse as he notes with wonder "the tenacious social ideal whose persistence is all the more significant when found repeated in personal histories of Afro-Americans, immigrants, penitentiary prisoners, and others whose claims to full individuality have often been denied by our society."

Precisely because it appeals to readers' fascination with the self-sufficiency, resiliency and uniqueness of the totemic individual privileged by liberal political theory, there is a risk that autobiographical discourse is a fallible, even co-opted, instrument for the social reforms envisioned by the outsiders. By affirming the myths of individual success in our culture, autobiography reproduces the
political, economic, social and psychological structures that attend such success. In this light, the outsider autobiographies unwittingly deflect attention from collective social responsibility and thwart the development of collective solutions for the eradication of racist and sexist harms. Although we may suspect in some cases that the author's own sense of self was shaped by a community whose values oppose those of liberal individualism, her decision to register her experience in autobiographical discourse will have a significant effect on the self she reproduces. Her story will solicit the public’s attention to the life of one individual, and it will privilege her individual desires and rights above the needs and obligations of a collectivity.

Moreover, literary theorists have remarked the tendency of autobiographical discourse to override radical authorial intention. Even where the autobiographer self-consciously determines to resist liberal ideology and represents her life story as the occasion to announce an alternative political theory, “[t]he relentless individualism of the genre subordinates” her political critique. Inevitably, at least within American culture, the personal narrative engrosses the readers’ imagination. Fascinated by the travails and triumphs of the developing autobiographical self, readers tend to construe the text’s political and social observations only as another aspect of the author’s personality.

Paradoxically, although autobiography is the product of a culture that cultivates human individuality, the genre seems to make available only a limited number of autobiographical protagonists. Many theorists have noticed that when an author assumes the task of defining her own, unique subjectivity, she invariably reproduces herself as a character with whom culture already is well-acquainted. While a variety of forces coerce the autobiographer

211 See Doherty, supra note 202, at 95-108.
212 See Gagnier, supra note 33, at 41-54.
213 Doherty, supra note 202, at 103.
214 This phenomenon brings to mind a remark made by Gertrude Stein. Commenting on the tendency of Americans to recount their individual histories, she observed that one thing those histories reveal, even though “every one dislikes to hear it,” is “that every one looks like some one else.” Gertrude Stein, Lectures in America 141 (1935).
215 See, e.g., Agnes Hankiss, Ontologies of the Self: On the Mythological Rearranging of One’s Life-History, in Biography and Society: The Life History Approach in the Social
to conform to culturally sanctioned human models, the pressures exerted by the literary market surely play a significant role. The autobiographer who desires a material benefit from her performance must adopt a persona that is intelligible, if not enticing, to her audience. As I will illustrate in the sections that follow, the outsider narratives capitalize on, rather than subvert, autobiographical protagonists that serve the values of liberalism.

An anecdote from Patricia Williams's autobiographical text usefully illustrates the inclination of autobiography to celebrate the accomplishments of the autonomous self. The point of the anecdote is to introduce readers to a favorite metaphor of Williams, which she uses to "illustrate a whole range of problems," including differing epistemological strategies available to participants in the legal system. In keeping with the autobiographical character of the text, Williams draws the metaphor, not from the cultural pool of legal figures of speech, but from a personal experience. Williams recounts that, when she was practicing consumer protection law, she tried a "suit against a sausage manufacturer for selling impure and contaminated products." During her final argument to the jury, which she quotes at length, she urged the jurors to release law from the "tyranny" of meaning imposed by the "sausage-making machine." In effect, the sausage-maker was asking the jury to find that "because [the machine] is a sausage-making..."
machine,” whatever it produces “is indisputably sausage,” even when the sausage-maker “throw[s] in . . . rodents . . . and a teddy bear and a chicken.” By contrast, Williams exhorted the jurors to declare the “limits of sausage-justice” by participating in “the creation of reality” and “waw[ing] that so-called sausage, sawdust and tiny claws spilling from both ends, in the face of that machine and shout[ing]: this is not Justice!” As Williams completed her argument and returned to counsel table, “[t]here was a spattering of applause from the gallery.”

More than one commentator has praised the sausage story as an effective use of narrative in legal scholarship. For example, Kathryn Abrams concludes that the sausage narrative is particularly useful to readers for it “give[s] a vivid, concrete meaning to complex concepts.” Likewise, Toni Massaro commends the sausage story as an example of successful narrative scholarship; indeed, Massaro remarks, “A provocative question, which I think could easily be the subject of an entire separate symposium, is this: Why is Patricia Williams’ ‘sausage story’ so marvelously, unforget-tably ‘good’?” For Linda Greene, the significance of the sausage story lies in the impact that it had on the jurors in the case and its potential impact on the community. She praises Williams for teaching jurors “to seize their interpretive power” and muses that had Williams continued practicing law in Los Angeles, “significantly more Angelenos would have enjoyed breakfast without rodent feet peeking out of sausage skins.”

Aesthetic considerations aside, one of the reasons why the “sausage story” may seem so unforgettable, if not good, is that many readers are already familiar with the metaphor. Most likely, many readers first encountered the metaphor, not in Williams’s story, but when they read an aphorism usually attributed to Bismarck.

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222 Id. at 107.
223 Id. at 108.
224 Id. at 109.
226 See Massaro, supra note 41, at 2105 n.37.
228 Id. at 911.
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occasionally to Disraeli, and adapted by Ambrose Bierce. A standard version of Bismarck's comment, taken from an opinion authored by then-Judge Scalia, is that "'No man should see how laws or sausages are made.'" Therefore, if there were to be an "entire separate symposium" exploring the meaning of Williams's sausage story, at least one panel should be asked to explore a number of intriguing questions concerning its derivation. For example, because we have evidence that the metaphor entered legal culture long before Williams gave her closing argument, readers must wonder whether that evidence compromises the authenticity of the autobiographical story. To put it bluntly, did Williams's trial experience really suggest this metaphor to her? If it did not—for example, if Williams drew the metaphor from her reading of Bismarck, Disraeli, Bierce, Judge Scalia, or the many authors who cite them—should we infer that the experience she describes may not have occurred at all? If the experience did not occur, why does Williams claim that it did? Why not simply draw out and add to the implications of a metaphor authored by others, as scholars so often do? Why identify herself as the source of the metaphor, rather than acknowledge her debt to Bismarck? We must consider the possibility that, though Williams does not cite Bismarck, Disraeli, or Bierce, she assumes that her readers will know that the metaphor should be attributed to one of them. If that is the case, does she also assume that we will understand that she is using the metaphor to signal that her account of her closing argument is fictional? Or, if we conclude that Williams really did sue a sausage manufacturer, just as Judge Scalia (apparently) adju-


231 See Ambrose Bierce, The Devil's Dictionary 108 (1957) ("Litigation, n[oun]. A machine which you go into as a pig and come out of as a sausage.").


233 The popular press also enjoys playing with the law and sausage metaphor. The most recent use of the metaphor that I encountered was in a cartoon in a local business journal. In the cartoon, four boy scouts approach a man who is standing near a storefront that bears the sign "Acme Packing Co., Inc." One of the scouts explains, "We were just down at Metro Council for our citizenship merit badge requirement, watching them make laws... and we decided we might as well come down here and watch you make sausage." Pomeroy, Untitled Cartoon, Nashville Bus. J., Aug. 15-19, 1994, at 4.
dicated a dispute over federal regulations governing sausage-making, still we must wonder, did the metaphor shape Williams's recollection and representation of her experience?

Any nagging ambivalence over the truth of this episode will affect our interpretation of and response to Williams's text on a variety of levels. Significantly, if we resolve our doubts by finding that the episode really did occur, we may conclude (like Linda Greene) that Williams has provided a valuable lesson in how to put "critical theory" to effective, practical use. The text suggests that jurors and courtroom observers were moved by the closing argument. Therefore, if the experience was real, activist practitioners interested in educating jurors (and the whole community) about their role in the legal construction of reality can and should begin making similar arguments, without compromising their ethical obligation to win cases. By contrast, if the experience was not real, those of us who practice law must consider carefully whether such an argument would advance not only our client's cause, but also our social-political agendas, particularly since theorists from other disciplines have reported that similar experiments have not been successful.234

Of course, at first glance, the authenticity of the sausage story, in and of itself, does not appear to be crucial to the success of Williams's personalized critique of liberal legal culture. However, if we conclude that this particular autobiographical representation was false and that the sausage story did not occur, we must decide whether that conclusion suggests that other personal experiences reported by Williams likewise did not occur. Doubts about the

234 For example, Mary Gergen, who is a professor of psychology, has reported the results of her study of the interpretation of menopause by women over the age of forty. Designing the study with feminist criteria in mind, Gergen advised her subjects that the meaning of menopause, as well as of the effects of aging on women, were socially constructed. The purpose of this advice was to persuade the women to abandon "[t]he social construction of menopause as a medical problem, with negative physical and psychological consequences." Mary M. Gergen, Toward a Feminist Metatheory and Methodology in the Social Sciences, in Feminist Thought and the Structure of Knowledge 98 (Mary McCanney Gergen ed., 1988). Significantly, Gergen concluded that this aspect of her study was "generally unsuccessful." Id. Although the participants in the study possessed a positive self-image, it was an image that they had brought with them to the experiment, and the strategy that they emphasized during the study was not to revise or abolish beauty standards for women, but to find ways to "'beat the old system,'" including expending their resources in an effort to "keep[ ] eternally young." Id.
truth of the sausage story might lead us to discredit the stories that are crucial to her project, namely, her personal stories of the pain she has suffered as an outsider.235 Even if we conclude that her stories about the pain of discrimination are authentic, still the sausage story undermines Williams's transformative project because the autonomous, self-sufficient, professionally successful self represented in the sausage story is one that was prepared for Williams by the cultural archetypes of individualism and endorsed by liberal ideology. Particularly if the sausage story did not occur, but even if it did, the story vividly illustrates how autobiographical discourse tends to pressure even an author who desires to represent the experiences of the marginalized outsider into casting herself as the triumphant hero of her own text—a self who basks in the applause of an appreciative audience (whether imagined or real)—and thereby reinforces the experiences that a liberal ideology has constructed. Autobiographical narrative inevitably creates the teller as the hero of the tale.236

In the sections that follow, I will elaborate this claim by examining several outsider autobiographical narratives and arguing that each author casts himself or herself as a protagonist with whom mainstream culture is comfortable and whose qualities serve the interests of liberal ideology. Each author tells a familiar story, and none of these stories seriously challenges (indeed, each story supports) the norms it ostensibly is designed to overthrow. The storytellers' claim that they have appropriated autobiography for radical ends misapprehends the power of the traditional narrative types

235 As Williams puts it, "'my personal concern is with identifying the specifics of my pain. What causes it, what sustains it, what interferes with my ability to be most fully and most productively myself. My unhappiness, whether alone or among many, makes me inefficient. It makes me hide myself.'" Williams, supra note 2, at 94 (quoting a memorandum written, but never sent, to a colleague of Williams, responding to his comments on her criticism of law school exams that employ racist, sexist, and homophobic hypotheticals).

236 See Spacks, supra note 144, at 18 (autobiography insists on the "larger-than-life significance of the self").

[The autobiographer] will think of himself as having led a life so important it needs celebration, and of himself as sufficiently skilled at rendering as to render it rightly. Certainly, he will not begin his task believing he has led a botched life and will now botch the botch. Unless, of course, there's money in it and people will pay to peer at his mistakes . . . .

within which they are operating. The authors’ selection of these familiar types to represent their individual subjectivity reveals that autobiography has appropriated the storytellers’ selves for liberal ends.

A. Jerome Culp; Or, the Rags-to-Riches Story

So closes an eventful passage in the life of Luke Larkin. He has struggled upward from a boyhood of privation and self-denial into a youth and manhood of prosperity and honor. There has been some luck about it, I admit, but after all he is indebted for most of his good fortune to his own good qualities.237

Horatio Alger

The autobiographical performance of Jerome Culp is an especially concise illustration of the manner in which unreflective storytelling subverts the outsiders’ desire to represent a more authentic version of their experiences than that embedded in law. In Culp’s vision, his personal story will awaken in his colleagues and his students an understanding that the “mythic structures of legal discourse” exclude the real experiences of black people.238 Culp’s story is a poignant one—and, surely, it attests to a happy transformation in his social and material fortunes—but the story does not perform the work that he intends. Far from providing a “revolutionary” understanding of African-American experience, as Culp claims,239 the story unselfconsciously duplicates what some critics believe is middle-class culture’s formative “stock” narrative, namely, the rags-to-riches story popularized by Horatio Alger, Jr.240 Thus, Culp’s performance refutes the thesis that it was

238 Culp, supra note 17, at 540, 545-46, 558.
239 See id. at 540, 543.
240 Alger’s rags-to-riches stories were wildly popular, especially after his death. One author has claimed that Alger “was, without doubt, America’s all-time best-selling author!” Ralph D. Gardner, Foreword to Horatio Alger, Jr., Silas Snobden’s Office Boy 6 (Doubleday & Co. 1973) (n.d.); see id. at 14-15 (reporting that estimates of the total number of Alger books printed “range from a high of 400,000,000 . . . to . . . 100,000,000”); R. Richard Wohl, The “Rags to Riches Story:” An Episode of Secular Idealism, in Class, Status, and Power: Social Stratification in Comparative Perspective 501, 502 n.5 (Reinhard Bendix & Seymour Martin Lipset eds., 2d ed. 1966) (describing the “[f]antastic estimates of Alger’s audience”).
intended to prove: rather than bringing to law a "different voice," Culp’s story reveals the way in which cultural narratives erase difference by coercing women and blacks into claiming as their own the very experiences whose denial ostensibly forged their political and social identity as outsiders.

Before examining Culp’s personal narrative, it is useful to identify a theoretical contribution Culp has made to the outsider project, particularly, to our understanding of the different voice thesis. Culp has proposed that we refine that thesis, by drawing a distinction between a “black voice” and a “black perspective.” According to Culp, all black scholars possess a black voice because, when they write or teach, they “speak as member[s] of a community who are viewed by others and view themselves in terms of their race.”

Even if the scholar of color does not intend to speak with a voice of color, he does so irrespectively because readers will make assumptions about him based on his race. But, Culp emphasizes, the scholar who speaks with a black voice does not necessarily espouse a black perspective. For Culp, a black perspective is one “that is opposed to racial oppression in the same sense that feminist means opposition to patriarchy and oppression of women.”

As an example of an African-American lawyer who possesses a black voice, but not a black perspective, Culp offers Justice Clarence Thomas. “Because Judge Thomas is black, he will bring a black voice to the Supreme Court.” Although they are uttered in a black voice, Justice Thomas’s political arguments are “inconsistent with a black perspective” because they are not designed “to end racial oppression in society and have had minimal impact in changing the views of black citizens.” By contrast, Culp characterizes his own scholarship as expressing both a black voice and a black perspective because he is a black man who has “struggled in [his] own way, as hard as [he] could, against the racial oppression that exists in America.” Of particular interest is Culp’s claim that his story about his life, which he calls “a tale of blackness and

241 Culp, supra note 46, at 63.
242 See id. at 63-65.
243 Id. at 65.
244 Id. at 66.
245 Id. at 66-67.
246 Culp, supra note 17, at 555.
When we examine Culp’s autobiographical performance, however, it is difficult to locate those aspects of the experiences he records that are distinctively “black” in either of the senses, “voice” or “perspective,” that Culp imagines.

Instead, Culp’s autobiographical story is the standard worldly success narrative. The story recounts the protagonist’s “rise from rags to riches,” as well as his ascension from “impotence to importance,” which is claimed by some critics to be the “definitive formulation of the American Dream.” A history of this narrative and, particularly, of the place Culp’s story occupies within the tradition, would include a number of authors writing over the course of several centuries. I will touch primarily on the influence of the juvenile novels authored by Horatio Alger, Jr., which are widely credited with introducing the narrative into twentieth-century American popular culture. As Culp himself remarks when

247 Id. at 558.
248 Lemay, supra note 119, at 350, 351; see Bercovitch, supra note 119, at 148 (asserting that in our culture the ritual of autobiography contributes to the “myth of America, a national drama of discovery, mission, and telos, which was emblematized as a sort of middle-class rags to riches story”); Spengemann & Lundquist, supra note 76, at 509 (“The mythical elements are all here: the progress from penury to wealth, the religious overtones of secular success, the identification of affluence and worldly reputation with happiness.”); see also Horatio Alger Association of Distinguished Americans, Inc., An Investment in America’s Future 2 (on file with author) (noting that Horatio Alger, Jr. has been “[c]alled by some the greatest salesman of the American Dream”).

249 See Asa Briggs, Victorian People 116-17 (1972); Richard Weiss, The American Myth of Success 4 (1969) (“Though the success myth did not become crystallized until the second third of the nineteenth century, its roots are found in early American Puritanism.”); Richard Weiss, The American Myth of Success 4 (1969) (“Though the success myth did not become crystallized until the second third of the nineteenth century, its roots are found in early American Puritanism.”); Seelye, supra note 204, at 118 (concluding that “Sir William Phips, the hero of Cotton Mather’s Pietas in Patriam... [is] the likeliest candidate for the honor of being America’s first self-made man”).

250 See supra note 240. When reporting on the worldly success of an individual or, increasingly, of a business entity, members of the popular media frequently use Alger’s name as the metaphor for the subject’s financial ascension. See, e.g., Flashbacks, Forbes, Aug. 29, 1994, at 287 (Dero A. Saunders ed.) (describing the “Horatio Alger-like rise” of the motion picture industry); Marilyn A. Gillen, Graceland: The Living Legacy of Elvis Presley, Billboard, Sept. 25, 1993, at 61 (“Elvis was a rock’n’roll Horatio Alger.”); Sue Hubbell, You Can Still Get It at the ‘Dime Store,’ But Not for a Dime, Smithsonian, June 1994, at 104, 105 (describing Frank Winfield Woolworth as “the farm boy who became a millionaire in the best Horatio Alger tradition”); Jackie Rogers, Understanding Oprah, Redbook, Sept. 1993, at 94 (“Oprah Winfrey’s life is a modern-day Horatio Alger story of a poor, illegitimate black girl who went from rags to incredible riches while challenging all
reflecting on the meaning of his personal narrative, today Alger's name is synonymous with the story of the self-made man. A number of literary historians and theorists have concluded that Alger's most significant literary ancestor is Benjamin Franklin, since Franklin's autobiography furnished the model that Alger pursued in all of his juvenile plots. Culp's autobiographical performance testifies to the remarkable tenacity of Franklin's vision of a successful life, a vision that has proven resilient enough to dominate even the autobiographical writings of

the rules.

251 See Culp, supra note 17, at 558.

252 Not only does Alger's "name sparkrecognition in almost every household," Gary Scharnhorst, Introduction to The Lost Tales of Horatio Alger ix, ix (1989), but also everyone associates that name with "the uniquely American phenomenon of one who started from scratch and—generally against great odds—reached the top rung of the ladder," Gardner, supra note 240, at 5.

253 One commentator has labeled Franklin the "Horatio Alger in Colonial America." See Peter Baida, Poor Richard's Legacy: American Business Values from Benjamin Franklin to Donald Trump 26 (1990).

254 More than one commentator traces our current, secular story of worldly success to Benjamin Franklin's autobiography. See Lemay, supra note 119, at 350; Seelye, supra note 204, at 110; Spengemann & Lundquist, supra note 76, at 509 (Franklin's "teaching was well heeded, as we know; a whole nation of entrepreneurs has found him a model of success"); see also Bercovitch, supra note 51, at 46 (describing faith in the "simple sunny rewards of American middle-class life" as constituting a "dominant pattern of belief, reaching from Ben Franklin's Poor Richard to Horatio Alger's Ragged Dick"); Bercovitch, supra note 119, at 141 ("For all its irony and wealth of detail, Franklin's narrative... gives us 'the pattern American', pattern both for both 'a rising people' and (later) for the entire genre of the American success story."). Franklin's autobiographical narrative, in turn, provided the model for Alger's juvenile novels. See Gary Scharnhorst, Horatio Alger, Jr. 68-71 (1980); Seelye, supra note 204, at 110, 114-18.

255 It is interesting to notice that other twentieth-century African American autobiographers "are attracted to the prescriptions for success in Benjamin Franklin's Autobiography." Dudley, supra note 73, at 191-92 (describing Franklin's influence on the autobiographies of Booker T. Washington and Malcolm X); see also Abbott, supra note 120, at 27-57 (tracing the connections between Franklin's memoir and the autobiography of Malcolm X).
those who desire to transform the political system in whose service the vision first was articulated.

Happily, though Alger wrote more than one hundred rags-to-riches novels, what the public remembers about these narratives may be summarized in one sentence, which captures almost perfectly the plot of Culp's life story: A young man who was born with a very low social position, "works hard, applies himself to his studies, saves his money, and rises through sheer effort to a position of social, economic and occupational importance." Although Culp is not unaware of the kinship between his story and Alger's novels, his autobiographical narrative mimics, without a trace of irony, Alger's formula for a successful life. To this extent, Culp's personal story is a striking instance of the success of Alger's fiction, for Alger intended his novels to function as exemplars; they are homilies composed of sound pronouncements as to how his young readers should conduct their lives. It seems that

256 It is difficult to be certain how many rags-to-riches novels Alger authored because after his death in 1889 "New York publishers kept hacks at work turning out successful imitations of his stories as long as the market demanded them." Wohl, supra note 240, at 502. One author estimates that Alger wrote 103 rags-to-stories, see Scharnhorst, supra note 254, at 147-50, while another text claims that he wrote at least 135, see Alger, supra note 237, at 567-70.

257 It is possible thus to reduce Alger's juvenile canon, for "[i]n a sense, Alger wrote only one book, which he published under a hundred titles." Baida, supra note 253, at 88.

258 Wohl, supra note 240, at 503.

259 When he discovered that a number of his colleagues came from "backgrounds of ... deprivation" similar to his own, Culp remarked that "Duke Law School's faculty may be unique in the truly Horatio Alger quality of many of its faculty." Culp, supra note 17, at 558.

260 For example, in his chapter introducing Ragged Dick, his earliest and most popular character, Alger expressed the hope that readers "may find something in [Dick] to imitate." Horatio Alger, Jr., Ragged Dick and Mark, the Match Boy 44 (Rychard Fink ed., Collier Books 1962) (1868); see also Scharnhorst, supra note 254, at 67 ("[Alger] sought to 'exert a salutary influence' upon his readers 'by setting before them inspiring examples of what energy, ambition, and an honest purpose may achieve.' " (quoting Horatio Alger, Jr., Fame and Fortune viii (1868))). This didactic impulse is another trait that Alger shared with, if not drew from, Benjamin Franklin. See Charles L. Sandford, An American Pilgrim's Progress, in Benjamin Franklin and the American Character, supra note 119, at 64, 71 ("There is little doubt of the serious intent underlying either [Franklin's] Autobiography or the creation of 'Poor Richard,' to impart moral instruction to the public."). As Franklin himself put it, he wrote his memoirs so that "Posterity may ... know" the means through which he rose from "Poverty and Obscurity ... to a State of Affluence and some Degree of Reputation in the World, ... as they may find some of them suitable to their own Situations, and therefore fit to be imitated." Benjamin Franklin's Autobiography, supra note 119, at 1.
Culp, for one, discovered in the rags-to-riches story a model worthy of emulation in his own life,\textsuperscript{261} for the "autobiographical statement" that Culp emphasizes most heavily is that he is "the son of a poor coal miner."\textsuperscript{262} He recounts, "I come from a modest background. Neither of my hard-working parents had the opportunity to go to college, though both graduated from high school—my father was a coal miner and my mother was a house parent for delinquent children."\textsuperscript{263} Only the second member of his family to attend college,\textsuperscript{264} Culp pursued his "undergraduate education at the University of Chicago, and graduate and legal training at Harvard University."\textsuperscript{265} At the time he applied for admission to college, Culp explains, colleges were not vigorously pursuing affirmative action policies.\textsuperscript{266} He expected to be and (with one exception) was "selected to attend any college [he] wanted" because he comfortably satisfied the college admissions criteria.\textsuperscript{267}

\textsuperscript{261} Another fascinating contemporary example of the influence Alger's narratives have enjoyed is provided by a personal reminiscence of Maya Angelou. In 1992, Angelou (together with, among others, Clarence Thomas) was a recipient of the Horatio Alger Award. In her speech accepting the award, Angelou reported that when she was a child she read Alger's novels voraciously and identified with their heroes "completely." According to Angelou, Alger and other authors "taught me I could reach for the stars. I had every right to succeed, and, if I failed, I had every right to forgive myself and to try again and again and again." Videotape of 1992 Horatio Alger Awardees' Biographies and Speeches (on file with the author).

\textsuperscript{262} Culp, supra note 17, at 539, 543.

\textsuperscript{263} Culp, supra note 107, at 1153. Culp also mentions in a footnote that "[e]very woman in my mother's generation at some time worked for a white employer in a household position." See Culp, supra note 47, at 46 n.15. Culp provides this information about his family to illustrate the confining effects of racism, but, by itself, the information does not clearly distinguish Culp's life experience from that reported in Alger's fiction. In Alger's novels, the protagonist's mother often must perform domestic work in order to support herself and her children, as do the working class women who populate the texts. Alger, supra note 237, at 14, 55-56, 148.

\textsuperscript{264} Culp's sister was the first person in his family to pursue a college degree, see Culp, supra note 107, at 1153, and he mentions in another article that his "oldest brother attended an Ivy League institution," Jerome McCristal Culp, Jr., Water Buffalo and Diversity: Naming Names and Reclaiming the Racial Discourse, 26 Conn. L. Rev. 209, 220 (1993).

\textsuperscript{265} Culp, supra note 17, at 543.

\textsuperscript{266} Culp, supra note 107, at 1153.

\textsuperscript{267} Id. Of the twenty-one colleges to which he applied, Culp was admitted to every one except Harvard College. Id. at 1153-54. While he speculates that racist attitudes may have prompted Harvard's decision to reject him, Culp remarks that nonetheless he "can prove that I was predicted to be able to do the work" required of Harvard undergraduates. Id. at 1154.
Later, Culp put himself through law school by hiring himself out as a manual laborer.\(^{268}\) His hard work and perseverance were eventually rewarded. Culp was hired by Duke Law School in 1985 as "the first black member" of that school's faculty,\(^{269}\) and today he has completed his ascension to "a position of power and influence"\(^{270}\) as a tenured Professor of Law at Duke.

While the content of Culp's life story is emotionally evocative and inspiring, I fear that it thoroughly discredits the transformative role he ascribes to his autobiographical storytelling. Indeed, we may turn back to his political claims with wonder: in what sense may the rags-to-riches story be termed "revolutionary" or an expression of a distinctive black voice or distinctive black perspective? These questions should be especially urgent ones for Culp because he, like other outsider scholars,\(^{271}\) has criticized African-American authors who tell success stories on the ground that the stories unfairly stigmatize blacks who do not achieve a comparable level of respectability.\(^{272}\) No less than the tales recounted by Franklin, Alger, or the authors Culp criticizes, Culp's story valorizes the protagonist for his self-reliance and enterprising spirit, treats his early hardships as an asset that fortified his character for future competition in the professional marketplace,\(^ {273}\) and crowns

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\(^{268}\) Culp, supra note 264, at 242 ("I have cleaned toilets, shoveled coal and flyash, ground steel, and left law classes early to earn the money to get the education that allowed me to become a law professor.").

\(^{269}\) Culp, supra note 17, at 550.

\(^{270}\) Id. at 539.

\(^{271}\) See Bell, supra note 31, at 5 ("For white people who both deny racism and see a heavy dose of the Horatio Alger myth as the answer to blacks' problems, how sweet it must be when a black person stands in a public place and condemns as slothful and unambitious those blacks who are not making it"); Delgado, supra note 28, at 103 (criticizing liberal discourse for relying on "black self-help measures" as the primary substantive mechanism for remediying the effects of racism); see also Mari J. Matsuda, Voices of America: Accent, Antidiscrimination Law, and a Jurisprudence for the Last Reconstruction, 100 Yale L.J. 1329, 1333 (1991) (describing the case of an outsider who "shares... traits with Alger's heroes," but whose story ends in Title VII litigation, not "the triumphant recognition of his talents by the free market").

\(^{272}\) See Culp, supra note 31, at 1024 (describing Stephen Carter's description of his struggle to become a law professor and arguing that what many readers take from Carter's text "is the notion that if he can make the trip, why not other blacks").

\(^{273}\) A remark by one of Alger's characters captures the cultural significance of Culp's story:

I was...a very poor boy. When I was a boy of thirteen and fourteen I ran around in overalls and bare-footed. But I don't think it did me any harm... It kept me
with social and economic success his hard work to overcome the effects of his impoverished background. Since he offers his life story as an example of a black perspective, we can only surmise that Culp's preferred remedy for the harms inflicted by racial oppression is to instruct African-Americans on the virtues of self-help. Therefore, rather than transforming the way in which his readers see the world and legal stereotypes, as Culp intends, the rags-to-riches story and the experiences it sponsors seem to have transformed Culp. In the end readers may say of him, as Alger did of the Italian protagonist of one of his novels, "but for his dark eyes, and... brown complexion, he might have been mistaken for an American" man.

A careful reading of Culp's body of legal scholarship suggests that he might respond to these objections by arguing that his story assists in overthrowing racist stereotypes. By attributing Culp's worldly success to his own individual efforts, the story bears witness to the intelligence, talent, self-discipline, and diligence of people of color. The story also refutes stereotypes that hold that African-Americans who attain success are the unworthy beneficiaries of affirmative action programs or other handouts provided by the liberal white establishment. But Culp's autobiographical strategy is unlikely to institute the sweeping reforms he envisions because his story performs a simple act of negation—an act that vigorously reaffirms the validity of the underlying stereotypes. Rather than undermining the ideology that created and maintains racist stereotypes, Culp's rags-to-riches story reinforces the key tenets of that ideology. In particular, his story reinforces the belief that self-help is the preferred method for overcoming adversity—
even when its source is institutional racism—unless, of course, one happens to be lazy, ignorant, incompetent or intemperate.

While it is difficult to predict what the practical effect of Culp’s narrative will be, it is interesting to notice that Culp shares with Alger, as well as with the twentieth-century institution founded in Alger’s name, a common didactic intention. Culp’s black students are the primary targets of his simple and familiar message—“they too can engage in the struggle to reach a position of power and influence.” But what will become of the African-American students who do not measure up to their professor’s example? Perhaps more crucially, what will be the fate of African-Americans who never see the gates of Duke Law School or, for that matter, any other school whose mission is to induct students into lives of middle- or upper-class prosperity? How will they elude the stigmatizing labels and the impoverished circumstances that inspire those labels, which Culp has so successfully avoided in his own case? To answer these questions—to begin to resolve the concerns that are at the core of outsider scholarship—we require a definition of individual success and failure more complex than that proposed by Culp’s life story. Rather than the mantra of individual self-reliance, we need a definition that more adequately theorizes the relationship between the individual and social forces, if we are to cease our practice of blaming rather than assisting those who live in poverty.

A second response Culp might offer is to claim that his personal narrative in fact exposes the basic fallacy of the rags-to-riches formula as a cure for racist oppression. Culp has followed the Alger prescription perfectly and has ascended the ladder of socio-

277 Just as Alger hoped to influence his young readers to model their lives upon the heroes of his novels and to enlist the sympathies of adult readers “in behalf of the unfortunate children whose life is described,” see Scharnhorst, supra note 254, at 34 (quoting Horatio Alger, Jr., Ragged Dick vii-viii (1868)), so Culp hopes to inspire black students to follow him in the struggle to achieve material success and to instruct white readers “that black people have to struggle,” see Culp, supra note 17, at 539. Similarly, one of the basic goals of the Horatio Alger Association of Distinguished Americans is “[t]o educate America’s youth about the limitless possibilities which are available through the free enterprise system . . . .” Horatio Alger Association of Distinguished Americans, Inc., Building a Legacy: Biennial Report 1993-94 at 5 (on file with author). Through a variety of programs, the Association seeks to realize that goal by reminding young people that some of the most successful Americans came from backgrounds of adversity.

278 Culp, supra note 17, at 539.
economic success, yet he reports that representatives of the white culture continue to treat him with fear, suspicion, and disrespect.\(^{279}\)

The story illuminates the power of racism to inflict injuries that are distinct from those prompted by bias against members of the lower class. Yet, at least in his writings, Culp never explicitly identifies the continuing racist injuries he suffers as evidence of the failure of the liberal vision. Nor does he confront the same pointed questions I mentioned above. If Culp’s experience suggests that a racist culture always dangles social riches just outside the outsiders’ reach, how can he characterize the narrative as a black perspective, and why does he recount it in “many of [his] law school courses” for the purpose of furnishing a model self for his students’ imitation?\(^{280}\)

Culp’s scholarship would be enriched through greater attention to the political commitments that have determined the plot of his personal narrative, thereby clarifying the precise nature of the political reforms he envisions.\(^{281}\) A possible focus for this project is suggested by Culp’s own writings. Culp bitterly criticizes Justice Thomas for his failure to oppose racism, but he has never remarked on the similarity between the plot line of the Justice’s life story and his own. For example, during Justice Thomas’s confirmation hearing, members of the public and a number of senators were moved by Thomas’s story of his successful personal struggle to overcome a childhood of poverty and material deprivation.\(^{282}\) Culp

\(^{279}\) Id. at 552 (describing encounter with an “old white woman” when Culp was an undergraduate; although Culp and his girlfriend were “well-dressed black college students,” the old woman “knew [they] were Black Panthers who had come to . . . do her harm”); Jerome McCristal Culp, Jr., Notes from California: Rodney King and the Race Question, 70 Denv. U. L. Rev. 199, 202 (1993) (describing encounter with black woman who was afraid that Culp might rob her); id. at 203 (describing incident in which campus police stopped Culp after he drove away from Duke Law School, and surmising that officer must have believed that Culp was a “robber, rapist or intruder” because of his race, age, and gender).

\(^{280}\) Culp, supra note 17, at 539.

\(^{281}\) See Johnson, supra note 25, at 2062 (calling on proponents of the voice of color to articulate the political and moral theories that they endorse).

\(^{282}\) Justice Thomas outlined his personal story in his opening statement to the Committee on the Judiciary. 1 Nomination of Judge Clarence Thomas to be Associate Justice of the Supreme Court of the United States: Hearings Before the Senate Comm. on the Judiciary, 102d Cong., 1st Sess. 108-10 (1991) [hereinafter Thomas Confirmation Hearings]. That story not only assisted Justice Thomas to a seat on the United States Supreme Court, it also earned him the Horatio Alger Award. In 1992 the Horatio Alger
has never investigated the claims that Thomas and his supporters made on behalf of Thomas's life story, claims that, at least on the level of rhetoric, bear a marked similarity to the different voice thesis promoted by Culp. In his testimony before the Senate Judiciary Committee, for example, Thomas suggested that lawmakers must be sensitive to the personal experiences of African-Americans. In the estimation of Thomas and his supporters, the Justice's lived experience of racial discrimination was a significant professional credential that he would bring to the Court because it had instilled in him "the ability to stand in the shoes of other people across a broad spectrum of this country." Before we participate in Culp's autobiographical program, it would be useful to know why Justice Thomas's rags-to-riches story promotes a racist ideology, while a seemingly identical story narrated by Professor Culp opposes, and even overthrows, that ideology.

B. Patricia Williams; Or, Answering My Accusers

*Most often [my name] has been connected with some charge which I could not acknowledge, or some principle which I had never entertained.*

Samuel Taylor Coleridge

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Society of Distinguished Americans bestowed the award on Justice Thomas for overcoming a childhood of adversity as well as "for his desire to help others succeed." Videotape of 1992 Horatio Alger Awardees' Biographies and Speeches (on file with the author).

283 Thomas Confirmation Hearings, supra note 282, at 283 (response by Judge Thomas to question posed by Senator Thurmond). In his statement before the Senate Judiciary Committee, Senator John C. Danforth, who was Thomas's principal supporter, remarked, I hope that sometime in the days Judge Thomas will be before this committee, someone will ask him not about unenumerated rights or the establishment clause, but about himself. What was it like to grow up under segregation? What was it like to be there when your grandfather was humiliated before your eyes? What was it like to be laughed at by seminarians because you are black? Everyone in the Senate knows something about the legal issues before the Supreme Court. Not a single member of the Senate knows about being poor and black in America.

Id. at 102. Similarly, when he announced his nomination of Thomas, President Bush reflected on the significance of Thomas's personal story, saying that "Judge Thomas' life is a model for all Americans, and he's earned the right to sit on this nation's highest Court."


284 Samuel Taylor Coleridge, Biographia Literaria; Or, Biographical Sketches of My Literary Life and Opinions 1 (1834).
The essays collected in Patricia Williams's book, *The Alchemy of Race and Rights: Diary of a Law Professor*, have been praised by a number of commentators, who describe them variously as "transformative," "post-modern," "interdisciplinary," "great literature," "poetry," "groundbreaking," "haunting" and "breathtaking." While Williams's text possesses qualities that justify some of these labels, the meaning this text produces also is conditioned by its autobiographical form. *The Alchemy of Race and Rights* is an example of an apology, a conventional autobiographical form in which the author undertakes to defend her intellectual career. The apology form predates the postmodern period by many centuries. Its roots are located in classical rhetoric, with one of the earliest examples, Plato's account of Socrates' defense of his actions, dating to 399 B.C. More recently the apology emerged as a dominant convention of Victorian autobiographies.

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285 Williams, supra note 2.
286 Abrams, supra note 225, at 1004; Menkel-Meadow, supra note 23, at 288; West, Murdering the Spirit, supra note 17, at 1771, 1781-82.
288 Greene, supra note 227, at 909; Menkel-Meadow, supra note 23, at 290; West, Murdering the Spirit, supra note 17, at 1771, 1772.
289 Greene, supra note 227, at 912-13; Menkel-Meadow, supra note 23, at 291; see also Abrams, supra note 225, at 1003 (“In short, I believe Williams’ stories the way I believe a good piece of literature.”); Culp, supra note 31, at 1034 (praising Williams’s “ability to craft the word” and the “beauty” and style of her stories); West, Murdering the Spirit, supra note 17, at 1773 (praising the “sheer excellence and beauty of Williams’ style”).
291 See West, Murdering the Spirit, supra note 17, at 1773.
293 See Derrick Bell & Erin Edmonds, *Students as Teachers, Teachers as Learners*, 91 Mich. L. Rev. 2025, 2037 (1993); West, Murdering the Spirit, supra note 17, at 172-73.
294 See Ira Bruce Nadel, *Apologize or Confess! The Dilemma of Victorian Autobiography*, Biography, Summer 1982, at 189, 190-91; see also Hart, supra note 144, at 491 ("‘Apology’ is personal history that seeks to demonstrate or realize the integrity of the self.").
295 See Nadel, supra note 294, at 190.
Williams's decision to place the accusation in the foreground of her text determines the meaning and tone of The Alchemy of Race and Rights.
and Rights in ways that she probably did not intend. Immediately following the accusation, for example, we witness a conversation between Williams and her sister, in which Williams provides an energetic exposition of her plan for the book. The plan is ambitious: the book will institute a new genre of legal writing, even as it locates and deconstructs the cultural forces that influence a wide variety of complex legal issues. The exposition is a helpful guide to the theoretical and methodological intentions underlying this sometimes opaque text, but with Harvard’s accusation still ringing in our ears, the exposition also outlines the personal defense of Williams’s intellectual temperament and professional attributes that the book as a whole will undertake. The speech announces that Williams was not formed to grind (or be ground in) the mill of conventional legal scholarship, over which ordinary academics must toil. Rather, she is intended for and capable of finer work, and she has chosen to focus her intellectual power on the practices of the academy itself, to lay bare the errors and biases that permeate its craft, to pierce and, in the end, to revise its governing paradigms.

Regrettably, the political implications of the role that Williams has selected for herself escape her examination; her apologetic project fixes her gaze too completely. Thus, she never notices that the intellectual traits that equip her to be the scourge of the academy are produced by and reinforce the academic culture she desires to revise. Williams is a shining example of the independent and ambitious intellect privileged by a liberal educational system; hers is an intellect that has internalized the same commitment to scholarly freedom, adversarial opposition, and vocal dissent fostered by

303 Id. at 5-8.
304 For example, in the now-classic text The Idea of History, R.G. Collingwood pronounced that the essential intellectual trait of an historian is autonomy, “where by autonomy I mean the condition of being one’s own authority, making statements or taking action on one’s own initiative and not because those statements or actions are authorized or prescribed by anyone else.” R.G. Collingwood, The Idea of History 274-75 (1949). Williams’s exposition reveals her desire to conform to Collingwood’s instruction: “[F]ar from relying on an authority other than himself, to whose statements his thought must conform, the historian is his own authority and his thought autonomous, self-authorizing, possessed of a criterion to which his so-called authorities must conform and by reference to which they are criticized.” Id. at 236.
among other cultural institutions) the legal academy. Her dedication to intellectual autonomy nominates her to be the instructor of the academy’s instructors, just as Harvard is first among the most elite group of legal institutions.

Given the nature of the insult that inspired *The Alchemy of Race and Rights*, it is unremarkable that the text aggrandizes Williams’s intellectual achievements and professional reputation on a number of different levels. Since much of the material in the book had been published as journal articles before the insult was uttered, clearly the insult did not inspire Williams to write these essays in the first place. Rather, she represents the insult as the occasion that prompted her to collect, edit, and republish the essays in book form. In this process, however, the apologetic form that structures the book comes to subvert the essays’ substantive ideas and critical content. The apology appropriates the essays and implicitly offers them as elements of the autobiographical plot; no matter what their signification was outside the apology, once they are placed inside the apology, the essays’ meaning resides in significant part in

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305 In his fascinating book, *The Rites of Assent: Transformations in the Symbolic Construction of America*, supra note 51, Sacvan Bercovitch traces through a variety of texts his argument that American liberal culture has produced an institutionalization of dissent through which critical opposition to accepted wisdom ultimately functions as a strategy for cultural continuity and renewal.

306 As Williams puts it in a memorandum that she wrote for, but until its publication within *The Alchemy of Race and Rights* did not communicate to, one of her colleagues: “[J]ust because Harvard admitted me or Stanford hired me doesn’t mean that they own me to the extent that I can never speak about my feelings.” Williams, supra note 2, at 94.

307 It is difficult to provide a concise description of the publication history of the essays that appear in *The Alchemy of Race and Rights* because some of the chapters in the book contain material from more than one of Williams’s previously published law review articles. Although for some purposes it would be necessary to provide a detailed analysis of prior versions of the book chapters, together with a precise comparison of the contents of each prior version to the corresponding portion of the book, here I merely provide a chronological list of the articles and essays, portions or substantially all of which appear in the book: Patricia Williams, A Brief Comment, with Footnotes, on the Civil Rights Chronicles, 3 Harv. Blackletter J. 79 (1986); Patricia Williams, Spirit-Murdering the Messenger: The Discourse of Fingerpointing as the Law’s Response to Racism, 42 U. Miami L. Rev. 127 (1987); Patricia J. Williams, Alchemical Notes: Reconstructing Ideals from Deconstructed Rights, _22 Harv. C.R.-C.L. L. Rev. 401 (1987); Patricia J. Williams, On Being the Object of Property, _14 Signs 5 (1988); Patricia Williams, The Obliging Shell: An Informal Essay on Formal Equal Opportunity, _87 Mich. L. Rev. 2128 (1989); Patricia J. Williams, Commercial Rights and Constitutional Wrongs, _49 Md. L. Rev. 293 (1990); Patricia Williams, Fetal Fictions: An Exploration of Property Archetypes in Racial and Gendered Contexts, _42 Fla. L. Rev. 81 (1990).
their value as evidence of Williams's professional assets and accomplishments.\footnote{308}

Published by Harvard University Press, an irony not mentioned by, but surely not lost on, Williams, the book places before the academy the impressive publication record that Williams had compiled before Harvard maligned her worth on national television. Readers have the opportunity to judge for themselves the intellectual caliber of the essays, but they also are assured that their favorable judgment is shared by the elite group of editors who selected the essays for publication and then for republication. For any readers who might be inclined to doubt the significance of Williams's scholarship, the opening chapter refers them to the extensive and (mostly) laudatory commentary that scholars from a broad range of disciplines have lavished on her work.\footnote{309} Clearly, these

\footnote{308} Chapter 3 of *The Alchemy of Race and Rights* contains a vivid example of the manner in which the apology appropriates and subverts the critical content of the law review articles. In the opening pages of the chapter, Williams recounts the Benetton story and describes her interaction with the editors of the law review that first published the story. See Williams, supra note 2, at 44-48. Next, Williams explains that “last April” she “retold [her] sad tale of exclusion from Soho’s most glitzy boutique” at a “law-school conference on Equality and Difference” in which she “was invited to participate.” Id. at 48. Then, following the words “I opined,” the text provides a lengthy quote from the paper that Williams delivered at that conference. Id. at 48-50. While I was not able to locate a published version of the Equality and Difference conference paper, the same remarks that Williams quotes from that paper also appear in a paper that she gave at a conference on Legal Storytelling held at the University of Michigan. See Williams, Obliging Shell, supra note 220, at 2141-42. The remarks articulate an important and insightful rejection of liberal attacks on affirmative action. Yet, when we encounter the remarks not simply within a scholarly article published by Williams, but embedded within a story about a law professor delivering an invited lecture to a law school audience, they explicitly take on an additional level of meaning. The text shifts our attention away from the theoretical critique the remarks embody and focuses instead on the authoritative and accomplished figure of Williams, the giver of speeches to distinguished faculties, the opiner of views on sensitive and cutting-edge topics.

\footnote{309} Williams explains: On the one hand, my writing has been staked out as the exclusive interdisciplinary property of constitutional law, contract, African-American history, feminist jurisprudence, political science, and rhetoric. At the same time, my work has been described as a ‘sophisticated frontal assault’ on laissez-faire’s most sacred sanctums, as ‘new-age performance art,’ and as ‘anecdotal individualism.’

Williams, supra note 2, at 6. This tactic of reassuring skeptical readers by summarizing for them the opinions of unnamed reviewers of Williams's work is in (ironic) tension with her criticism of a “colleague” who decided that “he didn't like a book he had just read because he had another friend who was a literary critic and he imagined that this critical friend would say a host of negative things about the book.” Id. at 11 (emphasis omitted).
references proclaim, Harvard’s determination that it “would have to ‘lower its standards’”\(^{310}\) to hire Williams was an ill-informed blunder.

To be sure, *The Alchemy of Race and Rights* offers an explicit critique of the academy’s evaluative standards. As that critique is unfolding, however, the text returns repeatedly to Williams’s professional credentials. The accumulation of these references over the course of the book intrudes on and ultimately blunts the force of the critique by revealing the extent to which the standards have created Williams’s identity, and, significantly, by emphasizing the desirability of that identity. More subtly, but no less than the mainstream academy, the text privileges a professional self who excels according to the evaluative standards enforced by Harvard Law School. For example, by the time we encounter Williams’s pronouncement that academic standards are the “concrete monuments to socially accepted subjective preferences”\(^{311}\) we have been told that she was a law student at Harvard.\(^{312}\) Later, the importance of that credential is underscored by Williams’ inclusion of a memorandum from an insecure colleague who did not attend Harvard or Yale but who wishes that he had.\(^{313}\) The text’s comparison of Williams’s resume with that of her less well-credentialed colleague reveals the apology form at work, subverting Williams’s critique of academic standards. The terms of the apologetic contract require the text to defend Williams’s professional record, and the strategy understandably and, perhaps, inevitably, pursued by the apology is to demonstrate that she satisfies or, even, exceeds the standards. In this way, the autobiographical performance undercuts the critical rhetoric by insisting on the validity of the evaluations produced by the very standards that Williams intends to oppose.

The text further testifies to the desirability of evaluative standards by cataloging the material benefits and the psychological satisfactions bestowed on those whom the standards approve. The benefits include upward mobility within the academy and the per-

\(^{310}\) Id. at 5.
\(^{311}\) Id. at 99.
\(^{312}\) Id. at 55, 94.
\(^{313}\) See id. at 93–94 (quoting a memorandum from a colleague describing his insecurity at not having attended Harvard or Yale in the context of a discussion of affirmative action).
quisesites that attend a bustling professional schedule. Though Harvard may not desire to retain Williams as a member of its law faculty, we are told that at least three other law schools have offered her a position; among the schools that have "hired" Williams, the text names Stanford, whose reputation is considered by some to be as prestigious as that of Harvard. Consistent with this evidence of Williams's prominence within the academy are the many references to her active professional calendar. Williams asserts that sometimes she feels "invisible," but the book repeatedly undercuts that claim by reminding readers that she is a visible, sought-after and authoritative presence within the academy. We are told of the numerous speeches that she is invited to give, the conferences that she attends, and the papers that she writes and publishes. Far from being "stupid" or otherwise unqualified by law school standards, this professional self is talented, hard-working and enormously productive. This is a self whose career has been remunerative, achieving a measure of professional recognition that most academics approach only in their dreams. As I noted above, the outsiders' professional success is an uneasy companion for their radical rhetoric. However, this text's complicity in upholding the standards does not reside solely in the benefits the standards have secured for Williams—the benefits are difficult, if not practically impossible, for her to avoid—but in its failure to confront, let alone criticize or interpret, the existence and nature of

314 See id. at 15 (traveling from old home in New York to new home in California); id. at 94 ("Stanford hired me . . ."); id. at 187 (mentioning, in passing, that she is at the University of Wisconsin).


316 Williams, supra note 2, at 228.

317 See id. at 19, 50.

318 See id. at 48.

319 See id. at 43, 47-48.

320 As Jerome Culp wistfully remarks, "It is clear that Professor Williams deserves the high praise and favor that she has garnered in parts of the legal community, praise and honor that I do not ever expect to obtain . . . ." Culp, supra note 31, at 1026.

321 See supra text accompanying notes 196-205.
her personal stake in the continued existence of the standards. Not only does the apologetic form appear to demand a defense of the self in the oppressor’s terms, but it also inhibits any awareness of how the self is socially constituted by the forces it would oppose. The apology unfolds an identity captured by, even propitiating, the continued existence of those same standards that have supposedly erased the subject’s racial distinctiveness. Hence, a tenacious circularity limits the scope of the social criticisms that may be embodied in the apologetic form.

Williams’s employment of the apology form also thwarts the epistemological project that occupies *The Alchemy of Race and Rights*. Determined to dismantle the objective truth-finding mechanisms maintained by legal discourse, Williams endeavors to keep before readers the inevitable influence of subjective perspective on the production of meaning. One of the devices she employs to this end deserves special mention here, because it captures perfectly a dilemma that the apology creates for the epistemological project. The device involves the use of what I call “interlocking narratives.” That is, rather than simply telling readers a story about an event that she (or another person) experienced (the “experiential narrative”) and then drawing out for us its meaning, Williams often embeds the experiential narrative within yet another narrative (the “framing narrative”). In the framing narrative, Williams describes herself recounting the experiential narrative and its meaning to another group of listeners (usually, her students or colleagues), and the framing narrative also reports those listeners’ reactions to the experiential narrative.

At first glance, this elegant device promises to aid Williams’s program. The device permits the author to recount the experience,
her interpretation of it and her listeners’ interpretation of it, and, at the same time, to notify readers that they must ponder for themselves not only the meaning of the experiential narrative but also the meaning of the framing narrative. In short, by inserting the framing narrative between the reader and the experiential narrative, the device could serve to remind readers of the distance separating them from the experience; in some texts, that space might be occupied by an interpretive process, in which the readers’ subjectivity plays a significant role, that (re)produced the meaning of the experience.

When the interlocking narratives are located inside Williams’s apology, however, they constrict, rather than expand, the readers’ interpretive room. Ultimately, the content of the framing narratives has a potent coercive effect on readers. The framing narratives overshadow the experiential narratives, predispose readers to endorse Williams’s interpretation of the experience, and silence any criticism they might offer. Enlisted by the apologetic program, the framing narratives emphasize Williams’s professional authority by assigning her the role of teacher and critical scholar, one who is busy delivering invited lectures throughout the country, teaching classes at elite law schools, communicating to law school colleagues, and publishing scholarly articles. This evidence of Williams’s authoritative presence and professional success attracts the readers’ notice and inclines them to identify with the autobiographical protagonist and her interpretation of the events she reports.

Perhaps most significantly, the text’s treatment of the other characters who populate the framing narratives further restricts the readers’ range of interpretive options. These characters consist of those who listen to Williams’s lectures about the legal, political, and cultural implications of everyday events. Unlike its favorable portrait of Williams, the text throws a harsh and unflattering light on the listeners. Virtually without exception, the listeners are flat, unreflective, ill-educated and bigoted characters. Invariably, the listeners disagree with Williams’s interpretation of her experiences, but the comments and questions they put to her are impatient, insensitive and dull. In other words, they are “stupid.” At the

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325 See id. at 13 (Williams's students are “confused,” “overwhelmed” and “paralyzed” by her stories); id. at 21 (one student “is angry at” Williams because the class discussion has made the student “feel guilty... that her uncle is... ‘a slumlord’ ”); id. at 26-28 (during a
end of these episodes, therefore, readers possess only one interpretive option, namely, to endorse Williams's meaning, since understandably they desire to avoid being numbered among the fools.

The apology flattens out, even strangles, the destabilizing effects that the interlocking narratives might inject into the interpretive process. Once they are embedded inside the framing narratives, the experiential narratives are demoted and derealized: they are straw tales, mere excuses for the authorial presence to display its intellectual power. Rather than implementing a dialectical exchange between the experiential narrative and the framing narrative—and between reader and author—the interlocking narratives are reduced to a rhetorical manipulation, whose purpose is to focus the readers' attention on the authoritative authorial self. Once again, we see how the apology has the tendency to represent its opposition only in terms of itself. Just as the apology aggrandizes and then appropriates to itself the authority it would depose, so it reduces its opponents to stock alazons against whom the authorial eiron may display her superior wits.

C. Richard Delgado; Or, the Imperial Self

What has been long meditated in the silence of the study, will one day resound in the aweful voice of public opinion. The chief magistrate can command; the senator can persuade; the judge can decide; the soldier can conquer. A great author obtains these various purposes at once by his solitary labours. His truths command; his elo-

class in which Williams tells stories about the plight of homeless, students "growl with the restless urge to go shopping," and, after class, they "rush to the dean to complain" that "[t]hey are not learning real law"); id. at 31 (in response to remarks by Williams questioning the impact of money on culture, law school dean "says quietly, 'But money is real'"); id. at 50 (story by local newspaper reporter describing a speech by Williams completely mischaracterizes her argument); id. at 50-51 (listing questions and objections that listeners have raised in response to the Benetton story, all of which suggest that Williams does not know what she is talking about); id. at 91 (Williams circulates a memorandum to her law school colleagues in which she exposes the racism, sexism, and homophobia underlying many exam hypotheticals and in which she makes personal revelations about the pain racism inflicts; colleagues respond by accusing Williams, among other things, of "being didactic, condescending, 'too teacherly' ").

326 This title also was used by the late Quentin Anderson for an essay in which he traces a belief in the absolutism of the self through works by Ralph Waldo Emerson, Walt Whitman, and Henry James. Quentin Anderson, The Imperial Self: An Essay in American Literary and Cultural History (1971).
Regulating the Self

quence persuades; his reason decides; and his works inspire a rival
nation with a more enduring respect, than even a victorious army.  

Isaac D'Israeli

The autobiographical essays authored by Richard Delgado, namely, The Imperial Scholar and The Imperial Scholar Revisited, are among his best-known work. In keeping with his characterization of critical race scholarship generally and his own works particularly, Delgado interprets these essays as mounting an attack on "liberalism as a means of addressing the American race problem." In the essays, Delgado concludes that the citation practices of the leading civil rights scholars are part of a systematic effort to exclude from recognition works authored by people of color and women. The particular "empirical" impressions that Delgado announces are that the "important work" in civil rights is produced by a small number of writers, all of whom are white men "who teach in the major law schools," that the members of this "inner circle" "almost never" cite the writings of minority

328 Delgado, supra note 17.
329 Delgado, supra note 46.
330 In The Imperial Scholar Revisited Delgado remarks that the earlier essay has achieved a high level of visibility within the circle of law review consumers and was even noticed by the popular press. Among other things, he asserts that as of 1992 the earlier essay had "been cited more than fifty times, as often without approval as with," and that, although the assertions made in that essay were among "the more controversial... of its time," they have by 1992 become "commonplace." Id. at 1349, 1350.
331 Delgado & Stefancic, supra note 29, at 462; see also id. at 462, 482-86 (characterizing "critique of liberalism" as dominant theme of critical race theory, and attributing that critique to all but three of the twenty articles authored by Delgado that are included in his critical race bibliography).
332 While I am content to believe that Delgado's findings are true, he leaves open their empirical accuracy. See Delgado, supra note 17, at 563, 566. Randall Kennedy criticizes Delgado's failure to write with specificity about the minority works he claims have been ignored. According to Kennedy, Delgado's critique is unpersuasive because it "fails to shoulder the essential burden of championing on substantive grounds specific works that deserve more recognition than they have been given." Kennedy, supra note 37, at 1745, 1773-78.
333 See Delgado, supra note 17, at 562.
scholars;\textsuperscript{334} and that when the inner-circle scholars do cite outsider scholarship, they usually do not give it sufficient credit.\textsuperscript{335}

In order to explain why these findings matter, Delgado makes a couple of additional claims. First, he observes, legal scholarship is powerful. Papers authored by law professors possess "clout;" in part through their influence on proceedings outside of the academy, including, for example, the deliberations undertaken by courts and legislative bodies, legal scholarship "contribute[s] to the ideologies" that "maintain and justify . . . [the] ascendancy" of the "dominant class."\textsuperscript{336} Second, he concludes, scholars of color make unique contributions to knowledge in that they supply factual information and philosophical viewpoints that are more sensitive to the lived experiences, material needs, and self-identities of minority populations than are the facts and ideas sponsored by affluent white men.\textsuperscript{337} By excluding people of color from the field, these arguments suggest, the influential inner circle has authored a body of scholarship that suppresses precisely that knowledge which civil rights law most needs to fulfill its task of doing justice for minority citizens.

These essays have the potential to provide a fascinating critique of the hierarchical and exclusive tendencies of the legal academy, not merely because they may bring to light important work that has been shamefully ignored. By drawing legal scholars' attention to the political significance of their own professional activities, these essays offer to illuminate the mechanisms that create and sustain power relations within the academy and, more importantly, that regulate and discipline the knowledge that academy members take seriously. Among other things, the essays propose a trenchant analysis of the elitist organization of the legal academy: how the members of the inner circle control the styles and topics of debate; how institutional elitism serves the hegemonic interests of a white middle class culture; and, finally, how these interests rest on socially limited notions of liberal individualism. As a result, the essays give rise to the expectation that they may teach us the ways

\textsuperscript{334} Id.
\textsuperscript{335} See Delgado, supra note 46, at 1358-68 (referring to citation mechanisms through which inner-circle writers minimize the significance of minority scholarship).
\textsuperscript{336} Delgado, supra note 17, at 573.
\textsuperscript{337} Id. at 567-72.
in which ideology and institutional practices conjoin to produce the kinds of knowledge that forever relegate people of color and women to a position on the margin.

Probably for a variety of reasons, this portion of Delgado’s critique never materializes. Perhaps most crucially, Delgado willfully places his own scholarly practices beyond the scope of his metacommentary, a conspicuous deficiency for an author so concerned with exposing how certain styles of discourse codify power relations within the academy. In this sense, he is surprisingly unreflective over the meaning that is produced by his distinctly plotted and patterned autobiographical script, which heroically unfolds his determination to publish work that inner-circle authors will perceive to be, as he puts it, “audacious.”

My comments will focus on the manner in which Delgado’s selection of autobiographical discourse as the vehicle for his attack severely circumscribes the transformative and, even, informative power of his critique. The exigencies of autobiographical plotting obscure Delgado’s substantive arguments, encourage him to envision the legal academy as a theater of rivaling subjectivities, and, in the end, lead him to represent his narrative self, ironically, as possessed by the same imperial motivations and practices for which he rebukes the despots of the inner circle. Through its tendentious narrativizing of the self and the self’s own struggles for recognition, his autobiographical storytelling imperially appropriates and personifies social conditions and problems by representing those problems as an extension of his unfolding autobiographical self.

The outlines of Delgado’s autobiographical narrative are familiar to an academic audience, whose members immediately will recognize its principal plot elements and leading characters. The opening paragraph of *The Imperial Scholar* positions its narrator as a

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338 Delgado explains that he refuses to consider whether outsider scholars apply the “same marginalizing techniques” that he has “shown on the part of the old guard” because his “purpose was to identify mechanisms that interfere with legal and social reform, not ones that interfere with stasis.” Delgado, supra note 46, at 1371 n.97. This remark is an example of Delgado’s failure to reflect sufficiently on the relationship between scholarly means and political ends. If outsiders are using the same citation techniques for which Delgado condemns the insiders, then it would seem necessary to consider the possibility that the outsiders are participants within, rather than reformers or opponents of, the established power relations.

339 See id. at 1366-67 n.72.
mature law professor who owns a well-established and well-deserved reputation for his scholarly production. From that secure vantage point, as well as from a distance of almost a decade, the narrator reflects on the anxiety he experienced when he entered law teaching and contemplated his prospects there. As he recalls, he travelled a path to tenure that was marked out for him by his "well-meaning senior colleagues." These "friends" advised the young scholar that if he wanted to succeed he should "play things straight" in [his] scholarship" and "establish a reputation as a scholar in some mainstream legal area and not get too caught up in civil rights or other 'ethnic' subjects." Taking this advice "to heart," the young scholar spent "the first six years of [his] career" producing a "steady stream of articles, book reviews, and the like, impeccably traditional in substance and form." As one would expect, his prolific attention to traditional scholarship paid off in the form of a tenure award. Apparently fortified by the guarantee of future employment, Delgado then was ready to turn his "attention to civil rights law and scholarship."

His first step was to reconnoiter the field. Eager to make up for the time lost in the pursuit of tenure, Delgado "asked [his] research assistant to compile a list of the twenty or so leading law review articles on civil rights." To locate the scholarship that "really counts," he relied uncritically on the mainstream indicia of success often evinced by the reputation of the individual author. Thus, among other "criteria," he advised his assistant to look for the articles that were published in elite law journals and frequently cited by courts and commentators. When Delgado reviewed the articles these criteria yielded, it turns out that the intelligence he was most interested in gathering was not their ideas, but the names of their authors and the names of the authorities they cited. Thus,

340 Delgado, supra note 17, at 561.
341 Id.
342 Id.
343 Id.
344 Id.
345 Id. at 562.
346 Id. at 561. Delgado's other criteria were "theoretical rather than practical focus, and so on." Id.
347 The first characteristic of the articles to catch Delgado's eye is the names of their authors and the names of the authors cited in their footnotes, and the question of who is
when Delgado remarks that he “had a great deal of catching up to do” in the civil rights field, we may presume that he means “catching up” on the names of the authors who have earned recognition under his criteria for successful scholarship. What he discovered when he read the names “puzzled” him: none of the names was attached to a minority scholar; rather, all of them identified white men. As Delgado puts it, “the giants in the field” are white men, and, most crucially, these men, together with the courts, have “consigned to oblivion” relevant and significant works authored by scholars of color.

It is important to pause at this juncture and note the conventional demands of autobiographical discourse thrusting individual subjectivity to the fore. Here, Delgado’s narrative assigns personal agency to the white scholars, for it is they, through their own racist citation practices, who are consigning outsider scholarship to oblivion. As Delgado unquestionably knows, institutional practices, which support the hierarchical distribution of power throughout the academy, are instrumental in determining whose work gets published and by which publications, as well as by whom and how often a given scholarly text is cited. Delgado’s selection of autobiographical discourse disequips him for an examination of institutional practices because the personal narrative demands the presence of characters. Thus, Delgado’s fascination with the men whom he calls the “great names,” who carve up and exploit the intellectual territory of civil rights for their own benefit, is produced by the autobiographical plot, which requires individual actors to accuse and tyrants to overthrow. The introduction of these blameworthy individual agents assures a satisfying personal story by supplying villains for the autobiographical hero to oppose and subdue, but their presence diverts our attention from the insti-

citing whom supplies the dominant focus of the two essays. See id. at 561-62; Delgado, supra note 46 at 1351.

Delgado, supra note 17, at 561.

Delgado’s fascination with the names of the successful scholars is reflected in one of the pieces of research he undertook after reviewing his list of articles, namely, his preparation of “an informal sociogram, a pictorial representation of who-cites-whom in the civil rights literature.” Id. at 563.

Id. at 561.

Id. at 561-64.

See Cox, supra note 117, at 13.
tutional power relations of the academy and their connections to larger racist and sexist social formations.

Within the unfolding autobiographical plot, the protagonist’s discovery that the giants of civil rights scholarship are ignoring minority writers is the crucial, epiphanic moment. Until he makes the discovery, the scholar seems to have been reasonably contented with his decision to follow the rules established by his senior colleagues. For all the narrative tells us, he really did not chafe under those rules, nor ponder their meaning or the interests they served. After all, his obedience had earned him a respectable measure of professional success, and, ultimately, it would free him to focus his attention on the work that he believed “really counts.” But the discovery shattered his equanimity by revealing that his trust in his seniors was naive, indeed, that they had been working in the service of enemy interests. In the light of the discovery, his colleagues’ “well-meaning” counsel takes on a sinister connotation. Now, he understands, the advice really was a warning, even, a threat that he should stay out of the civil rights field if he wanted tenure. Like the discriminatory citation mechanisms he has uncovered, his friends wrongfully had barred him from taking his rightful place in the vanguard of a “powerful social movement.”

In keeping with the expectations instilled by the autobiographical covenant, we must examine questions about Delgado’s story that are suggested by the historical record. The general impressions of Delgado’s pre-tenure self that emerge from his autobiographical narrative are that he wanted to devote his energy to civil rights scholarship, that his senior colleagues counseled him that he should stay out of that field until he obtained tenure, and that he honored his colleagues’ advice faithfully by avoiding the area com-

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353 In addition to describing how he made his successful run for tenure, the text notifies us that Delgado’s scholarship has earned recognition within the legal academy. Thus, as evidence for his observation that “minority legal scholars seem to have less trouble being recognized and taken seriously in areas of scholarship other than civil rights theory,” Delgado points out that his “own work is cited in... sundry places.” Delgado, supra note 17, at 565 & n.19 (citing case books and treatises that cite his scholarship).

354 Id. at 562 (emphasis omitted).

355 Id. at 561.

356 See id. at 566 (speculating that mainstream writers whether “consciously or not... resist entry by minority scholars into the field, perhaps counseling them, as I was counseled, to establish their reputations in other areas of law”).

357 Id. at 575.
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completely while he was on the tenure track. As The Imperial Scholar reflects, however, at least some of these impressions are not accurate since the essay cites two articles concerning civil rights issues that Delgado co-authored before he was awarded tenure.

Delgado's revision of his pre-tenure scholarship raises a number of interesting questions about his representation of his colleagues' advice and his reactions to the advice. For example, since it appears that Delgado did not adhere to his friends' advice as scrupulously as he claims, we might wonder, was the advice offered to him at all? If the advice was given, the fact that Delgado did not follow its letter might suggest that at the time it was given it did not convey the warning that Delgado reads into it about eight years later when writing The Imperial Scholar. Still another possibility is that the colleagues provided the advice after Delgado's early civil rights articles appeared.

If that were the case, we would want to explore inferences about the reasons underlying the advice that are different from those provided by the essay. We also may speculate that the advice was given to Delgado, at the time he said it was offered, but any warning it conveyed to him was insubstantial and inaccurate. As his pre-tenure publications reflect, he disregarded the advice, wrote about civil rights issues, and was awarded tenure anyway. I mention these questions mainly for the doubts they raise about the version of Delgado presented in the opening paragraph of The Imperial Scholar. If Delgado's choice of scholarly topics before

358 See id. at 561 (noting that the advice was given when Delgado "began teaching law in the mid-1970's . . . . Being young, impressionable, and anxious to succeed, [he] took the[ ] advice to heart and, for the first six years of [his] career, produced a steady stream of articles, book reviews, and the like, impeccably traditional in substance and form").

359 See id. at 572 n.60 (citing Leo M. Romero, Richard Delgado & Cruz Reynoso, The Legal Education of Chicano Students: A Study in Mutual Accommodation and Cultural Conflict, 5 N.M. L. Rev. 177 (1975)); id. at 574 n.65 (citing Richard Delgado & Vicky Palacios, Mexican Americans as a Legally Cognizable Class under Rule 23 and the Equal Protection Clause, 50 Notre Dame Law. 393 (1975)).

360 Moreover, for those who are interested to investigate the empirical validity of Delgado's critique, these questions may prompt a reexamination of Delgado's interpretation of the advice as a warning to keep out of the civil rights field. So construed, the advice constitutes one of the few pieces of evidence offered by Delgado to support his claim that white male scholars are deploying various strategies (both consciously and unconsciously) to exclude minorities and women from the civil rights arena. Obviously, if the advice was not given at all or, more subtly, if it was offered for reasons more complex than Delgado's interpretation explores, then we might question not only the relevance of
tenure was not dictated by his colleagues’ preferences but (at least, in part) by his own preferences and tactical judgments, then we may question his representation of himself as an “impressionable,” indeed, a trusting and obedient, junior professor.

We encounter a more crucial doubt about the character of the autobiographical protagonist if we assume that the advice was given at the time the text identifies. This doubt arises when we consider the content and context of the advice: senior, presumably white, colleagues advise an assistant professor of color that he should defer writing about civil rights law, which they specifically characterize as an “ethnic” subject, until after he is tenured.\(^3\) On its face, the advice suggests that those who control the academic tenure process base their decisions on racist criteria. Therefore, we must ask, did the young scholar not reflect on the racist content of the advice at the time it was given? It is unlikely that he would not consider the advice racist at the moment he heard it. Thus, we may reasonably speculate that the scholar (with even a little reflection on his colleagues’ advice) may have learned that the academy discriminates against minority entrants early in his career, rather than after he had been tenured, as the narrative suggests. As this speculation reveals, the story seems to have reconstructed the chronology of significant events in order to locate the emphatic moment of revelation as a post-tenure (rather than pre-tenure) discovery.

This revision has important implications for our assessment of the autobiographical protagonist. If the text had acknowledged that the discovery occurred pre-tenure but the protagonist deferred its announcement until after tenure was secured, the heroism of the protagonist would have been sadly diminished. Indeed, some readers might have judged his faithful adherence to his colleagues’ advice to be pusillanimous and self-serving. Though the young scholar knew their advice was racist, he not only failed to protest, but he elected to remain silent and to comply with a racist directive in order to advance his own career. By placing the discovery post-tenure, however, the autobiographical plot reveals a courageous protagonist, who promptly and resolutely brings his discovery to

\(^3\) Delgado, supra note 17, at 561.
the attention of the academy, identifies the powerful wrongdoers by name, and demands that they repair their biased practices.

When Delgado publishes his discovery, he clearly intends to oppose the scholarly practices of the civil rights academy; he also suggests that he is engaged in a mission to reform those practices.\textsuperscript{362} The rhetoric of the sequel essay hints that Delgado's publication of the discovery was instrumental in ushering in a radical transformation of the entire business of doing legal scholarship.\textsuperscript{363} By locating both the discovery and pronouncements about the impact of its publication inside a story about Delgado, however, the essays describe a revolution that takes place only inside the autobiographical protagonist himself. They fail to trace the broader implications of the indictment for the overdetermined social matrix responsible for the production and regulation of legal knowledge. The effect of the epiphanic discovery in awakening and shaping the autobiographical self is fully consistent with the psychological dynamism, responsibility, and motivations that liberal individualism attributes to its paradigm of the human actor. In essence, the protagonist's abrupt discovery of his own anonymity marks his break with his formerly servile self by making him ambitious for an authoritative name and transforming him into a fierce competitor within the marketplace of reputations.

Perhaps Delgado has disrupted the scholarly "business as usual," but I tend to doubt his claim that his scholarship is transformative. To be sure, where the members of the inner circle are "polite," he is "audacious;" where they "criticize . . . each other's ideas," he does not hesitate to expose their personal prejudices; where they cite "each other" as authorities, he cites himself and other outsider authors. Still, the nature of Delgado's preferred remedy is indistinguishable from the practices he opposes: thus, he delivers to inner circle scholars precisely the same warning, namely, to get out of the civil rights field,\textsuperscript{364} that was given to him, even as he counsels outsider scholars that they should avoid publishing any criticism of the narrative project he has fathered.

\textsuperscript{362} Id. at 577-78.
\textsuperscript{363} Delgado, supra note 46, at 1349-50, 1369.
\textsuperscript{364} Delgado, supra note 17, at 577.
D. Robin West; Or, My Scandalous Memoirs

By the circumstances of the story which I am going to relate, you will be convinced of my candour, while you are informed of my indiscretion; and be enabled, I hope, to perceive, that howsoever my head may have erred, my heart hath always been uncorrupted, and that I have been unhappy, because I loved, and was a woman.365

Lady Vane

Robin West's autobiographical essay366 raises a number of fascinating questions about the inherent limitations of autobiographical discourse when it is offered as a form of political critique. The essay participates in a well-established tradition of autobiographical revelations by women of their sexual experiences,367 and yet its attitude is transgressive. We are meant to believe (and, probably, we do) that the text's overt sexual content is risky, as is its decision explicitly to break ranks with potential allies within the academy.368 The text's attitude also is one of liberation. Its mission is to release women from patriarchal norms that trivialize, even as they produce, women's suffering, and it dictates a clear strategy for reform. The cornerstone of that strategy is autobiographical storytelling: according to West, women must promote their “experience” as the

365 Lady Vane, The Memoirs of a Lady of Quality, reprinted in Tobias Smollett, The Adventures of Peregrine Pickle, in which are included Memoirs of a Lady of Quality 432-538 (James L. Clifford ed., Oxford Univ. Press 1964) (1751). As Felicity Nussbaum explains, the authorship of Lady Vane's memoirs is a “literary mystery” since the memoirs were included as a chapter in Smollett's second novel. Telephone conversation with Felicity A. Nussbaum, April 26, 1995. However, Lady Vane was a real (as opposed to fictional) person, and literary historians and theorists agree that her memoirs are autobiographical. Id.; see Nussbaum, supra note 75, at 178, 191-92; James L. Clifford, Introduction to Smollett, supra, at xvi, xix, xxvi.

366 West, Hedonic Lives, supra note 17. A version of this essay, entitled “Women's Hedonic Lives,” appears as the fourth chapter of Robin West, Narrative, Authority, and Law (1993). The essay included in the book omits many of the autobiographical details that are recorded in the original version. The essay in the book does not explain why West decided to excise those references, and, like the original version, it emphasizes the significance of autobiographical storytelling within feminist legal theory and practice. See id. at 184, 196.

367 For a helpful description and critique of this tradition, see Nussbaum, supra note 75, at 178-200.

368 After brushing aside the androcentric definition of human nature endorsed by liberal legal critics, the essay goes on to reject the dominant feminist strategies for reform on the ground that those strategies also are founded on an understanding of human nature that is “simply untrue of women.” West, Hedonic Lives, supra note 17, at 89, 139-42.
"primary" source of political ideals, legal norms, and pragmatic remedies.\textsuperscript{369} While "experience" thus performs a considerable amount of work for West, she treats the term as if its meaning were self-evident.\textsuperscript{370} Its usage within her essay suggests that she intends it to refer to the feelings, as well as knowledge, that the self gathers from its own activities and relationships.\textsuperscript{371} The specific activities and relationships that West advises women to scrutinize are sexual, and she insists that those experiences must be publicized. Indeed, we are assured, women will secure law's commitment to improve the quality of their lives only when they begin telling stories about their erotic experiences "out loud, in public, in whatever voice, dialect or register fits the occasion."\textsuperscript{372}

When West keeps faith with her program by performing this narrative maneuver herself, she organizes the universe of female sexual experiences into the painful and the pleasurable. She then selects the painful experiences as the foundation for her critique of liberal feminism,\textsuperscript{373} while drawing from the pleasurable experi-

\textsuperscript{369} Id. at 115-16, 127-32. For Patricia Williams, "experience" also occupies a privileged location. She asserts that "one's own experiential knowledge" is both the "true self" and the "real" (as opposed to the "imaginary"); therefore, experiential knowledge, rather than abstract ideals (which appear to fall into the category "imaginary"), should provide the basis for social relations. See Williams, supra note 2, at 63, 244 n.14. Likewise, Richard Delgado insists that special authority should be attached to "first-hand knowledge." See Delgado, supra note 17, at 564-65 (criticizing a colleague for relying on Frank Michelman, rather than a scholar of color, as the "authority for the proposition about withered self-concepts" because Michelman "probably has relatively little first-hand knowledge about withered self-concepts").

\textsuperscript{370} "Experience" is another "critical term" employed but not defined by the outsider storytellers. Since "experience" has "varied" and "elusive" connotations, it requires careful definition. See Scott, supra note 19, at 26-27. For an illuminating discussion of the "alternative senses in which the term 'experience' has been employed" by historians, including "historians of difference," see id. at 24-33.

\textsuperscript{371} For example, West consistently equates "experiential truth" with the pleasurable feelings that sexual submission inspires in women. See West, Hedonic Lives, supra note 17, 128-29, 134-35. The privileged place that West assigns to her feelings is reminiscent of a remark made by Rousseau early in his autobiographical text, namely, "I felt before I thought." Jean-Jacques Rousseau, The Confessions 19 (J.M. Cohen trans., Penguin Books 1987) (1781). In her essay on the meaning and critical potential of "experience," Joan Scott suggests that though naive the sense in which West uses the term is not an uncommon one. See Scott, supra note 19, at 27.

\textsuperscript{372} West, Hedonic Lives, supra note 17, at 96; see id. at 90, 144.

\textsuperscript{373} West argues that the effort by liberal feminists to secure women a range of choices equal to those enjoyed by men is misplaced because women's painful sexual experiences
periences a lesson that animates her critique of radical feminism.\textsuperscript{374} West informs us unambiguously that the painful experiences she recounts are autobiographical, including physical abuse by a man with whom she was intimate, her "promiscuous" heterosexual activity as a teenager and as an adult, and her "fear of rape and street hassling."\textsuperscript{375} At first glance, the pleasurable erotic fantasies and experiences of "submissive" (i.e., "masochistic") sex do not appear to be autobiographical, because the evidence is drawn from accounts supplied by women other than West,\textsuperscript{376} and this portion of the essay may not be autobiographical. At the same time, the essay contains a number of remarks that invite readers to speculate that West is confessing her own pleasure in "the experience of dominance and submission."\textsuperscript{377} Those references include her promise to discuss only those environments and activities that she has experienced first-hand,\textsuperscript{378} her extended defense of her claim that women must validate and trust the erotic feelings that their masochism produces because those experiences are the "truth,"\textsuperscript{379} and, of course, her assertion that autobiographical storytelling is the most promising technique for feminist reform.\textsuperscript{380} Still, the text teases readers by failing to identify explicitly West's own erotic tastes and, significantly, by failing to explain why at this point the

reveal that women frequently consent to transactions to enhance not their own happiness, but the happiness of others. Id. at 90-111.

\textsuperscript{374} West criticizes the radical feminists' commitment to eliminating the gender hierarchy on the ground that women's erotic pleasure in fantasies and experiences of submissive sex reveals that absolute equality "will come at a high cost." Id. at 131, 111-32.

\textsuperscript{375} Id. at 97; see id. at 97-108.

\textsuperscript{376} Id. at 116-25.

\textsuperscript{377} Id. at 116-17.

\textsuperscript{378} Id. at 97. Although West made this promise in the remarks that preface her description of her painful sexual experiences, her reason for making the promise, namely, that she can "fully understand" and therefore write about an activity only if she has "lived through it" herself, id., implies that she has experienced personally all of the activities, relationships and environments that she describes in the essay.

\textsuperscript{379} Id. at 122-32. West's insistence that women should "trust" their feelings, see id. at 135, is reminiscent of another remark by Rousseau, namely, that "I cannot go wrong about what I have felt, or about what my feelings have led me to do; and these are the chief subjects of my story." Rousseau, supra note 371, at 262. The length and tone of this portion of West's essay supports Terry Eagleton's observation that cultural critics who use their "experience" as the foundation for their critique will be left to "restat[e] [their] case again and again, each time with gathering stridency and abstraction." Eagleton, supra note 322, at 15.

\textsuperscript{380} West, Hedonic Lives, supra note 17, at 90, 144.
Regulating the Self

This provocative quality intensifies readers' curiosity about the author of the text, and while West intends to engage them with social and political questions, the narrative form she has employed encourages them to wonder about her sexual proclivities and activities rather than to scrutinize the political program those desires and activities are said to support.

As I mentioned, the burden of West's autobiographical performance is to confer on her sexual experiences the status of "truth." The barriers to sexual truth are formidable. Social and academic norms counsel silence, and, of course, women must overcome their innate propensity to lie. Yet, West herself has found the courage to violate the "taboo" and testify to the truth, and she urges other women to follow her example. The essay materializes West's transgressive self-consciousness through the use of a narrative device that divides the autobiographical narrator into two characters engaged in a dialogue. The first narrator is assigned the task of recounting West's sexual experiences and the meaning she attaches to them. The second narrator then interjects to remind the first narrator that she is revealing material that culture insists should remain hidden. Second-guessing the strategy pursued by the first narrator, the second narrator asks questions that probe whether the first narrator should be "talk[ing] about" these experiences and whether her political goals are "worth" the price her revelations might exact. After silencing the second narrator with brief and decisive answers to some of these questions, the first narrator resolutely continues her exemplary search for her hedonic "truth." The essay thus raises vividly a question asked by Michel Foucault in

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381 West believes that "women have a seemingly endless capacity to lie, both to ourselves and others, about what gives us pain and what gives us pleasure." Id. at 144.

For a multitude of reasons, [women] lie to ourselves and to others . . . . We lie so often we don't know when we are doing it. We lie so often we lack the sense of internal identity necessary to the identification of a proposition's truth or falsity. We lie so often that we lack a self who lies. We just are lies; we inhabit falsehood. Our lives are themselves lies.

Id. at 127.

382 See id. at 144 ("Women must start speaking the truth about the quality of our internal lives.").


384 See id. at 99, 101, 107.
The History of Sexuality, namely, "What is this injunction? Why this great chase after the truth of sex, the truth in sex?"385

The essay's own response to that question is that women's hedonic experiences possess "normative significance."386 If women could begin to ferret out the truth of and in their sexual pleasure, that truth would provide the basis for an understanding of female nature that is different from the definition of human nature pursued by law. In particular, West argues that her sexual experiential truth reveals that women are not the autonomous "self-regarding" selves constructed by a liberal ideology, but are relational "other-regarding" (or "giving") selves, that is, selves who are ruled by a desire to "maximize the pleasure" of others, rather than that of themselves.387 West's pleasure and pain provide the foundation for this model female giving self, which presumably will complement, rather than replace, the male-centered liberal self currently embedded in law.388 Moreover, pleasure is the "ideal toward which femi-

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385 1 Michel Foucault, The History of Sexuality 79 (Robert Hurley trans., 1978). In a thought-provoking and valuable critique of Foucault's work, West urges feminists to reject some of the key insights that have inspired the critical legal studies movement. Robin West, Feminism, Critical Social Theory and Law, 1989 U. Chi. Legal F. 59. While West appreciates the "irony which consumed Foucault," namely, that we spend most of our time speaking about the "unspeakable subject," she argues that the endless talk about sex is uttered by and about men and male sexuality. Id. at 74-75. According to West, feminists must resist Foucault's fascination with the discourses of sexuality because it led him and his followers to ignore the "silences" about sex. The inhabitants of these silences are women and children. Id. at 66-78. Following this critique, one important question is what will the silent ones say if they are given the opportunity to speak? Unlike West, I am skeptical that recourse to autobiographical stories will produce an understanding of sexuality that is "radically different" from the accounts that West desires to challenge. Id. at 75.

386 West, Hedonic Lives, supra note 17, at 143.

387 Id. at 93. West remarks that the liberal definition of human nature may be false generally; that is, it may be false of men, as well as of women. Id. at 92. However, because she targets liberal theory by arguing that "the empirical assumptions regarding human motivation which underlie the liberal's commitment to the ethics of consent [are] more false for women than for men," id. (emphasis omitted), and because she construes women as other-regarding selves who consent to transactions in order to maximize the pleasure of others, and because she insists that men and women are different in essential respects, it is fair to say that she treats the liberal definition of human nature as if it were true of men.

388 West does not identify clearly the use to which law would put her definition of female nature. Although her essay equivocates at this point, see id. at 143 ("Lastly, by forcing into the public discourse descriptions of women's subjective, hedonic lives, the conception of the 'human being' assumed by that discourse—the substantive description of experienced human life which the phrase 'human being' denotes—might change so as to actually include women."), its singular focus on female experience and its insistence that women's hedonic lives are qualitatively different from those of men, see id. at 81, suggest that it
nist legal criticism and reform should be pressed," and pain is the evil to be resisted.\textsuperscript{389}

When we begin to locate West's essay within the tradition of autobiographical writing about sexual experiences, we encounter a number of problems, each of which casts doubt on the quality of the reform that this narrative strategy may secure. A cursory historical inquiry suggests that the sexual material that West enjoins women to publicize has erotic consequences that are subject to appropriation by a variety of cultural, political, and economic interests. According to one literary theorist, "scandalous memoirs"—that is, autobiographical accounts of the author's own sexual experiences—have been written by women at least since the eighteenth century. Far from being the new form of autobiographical writing that West's argument implies,\textsuperscript{390} scandalous memoirs appear to be one of the "first significant public form[s] of self-writing" produced by women.\textsuperscript{391}

A careful study of this tradition yields some support for the notion that an autobiographical strategy could reshape cultural understandings of the female self. For example, through their public celebration of women's sexual desire and by furnishing "minute particulars" of the author's own sexual tastes and activities, the early memoirs disrupted some of the cultural conventions that condemned unchaste women to a life of solitary shame.\textsuperscript{392} The memoirs also earned money for their authors, thereby constituting them as financially independent agents and holding out the possibility that other women could earn a similar freedom from men.\textsuperscript{393}

While this development may have permitted (some) women to exceed the lived experiences to which contemporary definitions of female nature previously had confined them, the development would seem to be consistent with the liberal paradigm since it constituted the individual authors as autonomous, self-reliant agents.

\textsuperscript{389} Id. at 89-90.

\textsuperscript{390} See id. at 96, 143 (asserting that women should "start" publishing stories about their sex lives because by "forcing" those stories into public discourse women may transform the cultural definition of the human being).

\textsuperscript{391} Nussbaum, supra note 75, at 180.

\textsuperscript{392} See id. at 179, 181-83.

\textsuperscript{393} See id. at 187.
On the other hand, if liberal culture encourages or, indeed, requires women to be the kind of giving selves that West envisions so that men—and men only—may be "fully self-realizing," then the transformation of women from giving selves into liberal agents might presage a more profound cultural and political transformation. If woman no longer was construed as the submissive, other-regarding self who functioned as the prop for the dominant, self-regarding man, we might anticipate a transformation in male identity, as well as in the culture that had supported these definitions of woman and man.

When we focus on the precise content of these autobiographical performances and their likely effect on readers, however, we may become skeptical of their power to recuperate cultural images of women, let alone of men. Notwithstanding their individual authors’ intention to repair the image of sexually active women and to escape the system that labeled those women “fallen,” the early scandalous memoirs’ “salacious content” fascinated (some) readers completely. To put it bluntly, an autobiographer’s erotic reminiscences may sexually excite readers, deflecting their attention away from the moral or political message the author intends to convey. One of the implications of the readers’ erotic response is that the line between this autobiographical form and pornography is thin; so thin, in fact, that at the same moment that women began writing scandalous memoirs, fictional confessional erotica, whose purpose, as well as content, was pornographic, also began to be marketed. Ironically, therefore, it seems that the memoirs purchased economic freedom for their authors through their power to arouse and assuage the desire of consumers to possess female sexual subjectivity.

To be sure, West is not unconscious of the pornographic character of her essay; nor would she necessarily perceive that character

394 Fox-Genovese, supra note 111, at 129.
395 See Nussbaum, supra note 75, at 187.
396 Id. at 186.
397 Id. Perhaps the most famous of the early fictional confessional erotica is John Cleland’s Memoirs of A Woman of Pleasure (commonly referred to as Fanny Hill), which first appeared in 1748-1749. According to the editor of the Oxford University Press edition, Memoirs of a Woman of Pleasure “is among the most frequently reprinted, translated and illustrated of all English novels.” See Peter Sabor, Introduction to John Cleland, Memoirs of a Woman of Pleasure vii (Oxford University Press 1985) (1748-49).
to be problematic. For her description of pleasurable masochistic fantasies, she selects a "masochistic text," *The Story of O*, precisely because she considers the fictional story to be "a stunning piece of pornography." 398 This pronouncement is in keeping with West's conviction that pornography is not necessarily anti-feminist, 399 and her view may be correct. However, West's essay illustrates some of the risks attending a strategy for legal reform that is founded on the experience of pornography (or, for that matter, on other sexual experiences), rather than on a theoretical investigation of the ideological and discursive constituents of the experience. As I mentioned, a portion of West's essay focuses our attention on the pleasure that women secure through masochistic sexual practices. While her explicit descriptions of that pleasure, its personnel, and its equipment refer to and, indeed, depend on the presence (whether real or imagined) of a dominant (i.e., sadistic) male lover, 400 the political critique that she suggests, but never adequately articulates, is founded only on the woman's masochism. Still curiously preoccupied with the self-imposed task of proving that the woman's masochistic pleasure is "true," 401 West never brings the figure of the sadist or his pleasure into sharp focus. The

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398 West, Hedonic Lives, supra note 17, at 119. West uses *The Story of O*, not by quoting it directly, but by quoting another author's description of her own masochistic experiences, which, in turn, quotes from and describes *The Story of O*. See id. at 119-21, 125-26.

399 Id. at 134-39.

400 Id. at 119-26.

401 I label the task "self-imposed" because I believe that it responds to a crude description of the "false consciousness" concept, which West attributes to radical feminists. Id. at 122-29. In the context of her critique, West treats "false consciousness" as an argument that masochistic pleasure is "false" in the sense that it is actually impossible. Id. at 125. Perhaps "false consciousness" had that connotation when employed initially. More recently, however, critics interested in understanding the meaning of women's sexual experiences (including, I assume, some radical feminists) do not quarrel with the conclusion that women really feel their submission to be erotic. Rather, they are interested to investigate whether that real pleasure may be produced by "traces of domination, whether natural or political." Scott, supra note 19, at 31 (quoting Denise Riley, 'Am I That Name?' Feminism and the Category of Women in History 99 (1988)). If we determine that a felt pleasure is one of the effects of a network of power relationships that subordinate women in culture generally, rather than being "true" in the pre-political sense that West imagines, see West, Hedonic Lives, supra note 17, at 128, perhaps we can begin to locate and explain the various ideological mechanisms that produce the pleasure. Among other things, the hope is that this process of interpretation, to borrow yet another phrase from Michel Foucault, may reveal "which space of freedom we can still enjoy and how many changes can still be made." See Martin, supra note 14, at 11.
essay stages the sadist’s physical activity slightly out of the readers’ line of vision, teasing them to imagine its precise character and vigor. Just as the captive women in The Story of O are forbidden to “‘raise [their] eyes above the level of [their masters’] genitals,’”402 so West never permits her readers to gaze upon the sadist’s face.

Within the vision of erotic life instituted by this text, the identity of the sadist and the character of his pleasure are self-evident. The sadist’s identity resides solely in his effect on the female subject he masters completely. Unnamed, menacing and supremely self-possessed, the sadist pursues his own sexual pleasure by doling out hers through the physical and psychic pain over which he exercises exclusive control. Whether or not readers find these images titillating, it is difficult to distinguish their message from the understanding of the male self that is sponsored by many forms of pornography, namely, that men become potent through their domination of women.403

That this same lesson about gender identity is embedded in and explicitly reinforced by West’s interpretation of the woman’s masochistic pleasure reveals the theoretical poverty of her autobiographical technique, at least insofar as she proposes to transform liberal culture. According to West, “many women” report that submission “feels” good in bed.404 Based on this experiential “truth,” West argues that law should construe women as “giving selves,” and that truth also is the foundation for her suggestion that feminists revise their commitment to “absolute equality” between women and men in sites other than the bed. West is unwilling to articulate the details of that revised commitment; she merely speculates that masochism is pleasurable when it is founded on “trust,” not fear, and that this “fact... should serve to remind us that... absolute equality comes at the cost of the trust of which

402 West, Hedonic Lives, supra note 17, at 119 (quoting Maria Marcus, A Taste for Pain: On Masochism and Female Sexuality 193 (1981)).
403 Cf. Nussbaum, supra note 75, at 186 (“The voyeuristic reader... is... compelled toward sexual excitement that makes men potent through domination.”).
404 West, Hedonic Lives, supra note 17, at 130, 131, 134 (“Yet many women—including some feminists, and including some lesbians—don’t feel sexual submission as bad. In fact, many women feel sexual submission as pleasurable, as so pleasurable as to be erotic, and as so erotic as to be orgasmic.” (emphasis omitted)).
human beings are capable . . . .\textsuperscript{405} Of course, as West constructs these erotic arrangements, male sadism is the necessary companion to the female masochism she celebrates. Therefore, we must surmise, since the man’s sadism produces the pleasure of the woman (as well as, presumably, that of the man) male sadism also constitutes “a genuine human truth and a deep human need” to which our political and legal reforms should be directly committed.\textsuperscript{406}

The problem is that West never elaborates the nature of the sadist’s “truth.” She does not ask what sadism means, let alone examine its history or the cultural mechanisms that currently support sadistic fantasies and activities. Most likely, West would object to my use of the word “sadism” to describe the male sexual activity that she has in mind since she mentions several times that women enjoy sexual submissiveness only when the amount of pain is carefully calibrated or “controlled.”\textsuperscript{407} Presumably, these remarks are meant to reassure us that West will abandon her experiential project at the point where it locates subjects who report that they secure pleasurable feelings from fantasies of or participation in brutal beatings of women\textsuperscript{408} (or, one would hope, men or children). However, West’s emphasis on the controlled nature of these encounters only heightens the man’s dominant position since he is the one doing all of the controlling. The woman “trusts” the man to be her master because he has mastered his own impulses (whether violent or pacifist) sufficiently so as to inflict on her a strictly defined quantum of pain—pain that really or in memory “stops just within that tiny area when it becomes sexual pleasure,”\textsuperscript{409}—and it is this erotic experience, of course, that is the sole master of her self-identity since the experience constitutes, we are told, her “truth.” If these sexual arrangements are meant to have normative consequences for feminists, as West suggests, her program seems to present an inconsequential challenge to the liberal

\begin{itemize}
\item \textsuperscript{405} Id. at 131.
\item \textsuperscript{406} Id. at 129, 87-90.
\item \textsuperscript{407} See id. at 117, 124-25, 136, 138.
\item \textsuperscript{408} See id. at 138 (“I have no doubt—if The Story of O is being re-enacted in real life on some farm somewhere in the hills of Kentucky right through to the bitter end, then we can all live without The Story of O.”).
\item \textsuperscript{409} Id. at 124-25 (quoting Maria Marcus, A Taste for Pain: On Masochism and Female Sexuality 119 (1981)).
\end{itemize}
paradigm. Within these arrangements, the man is the exemplary liberal self. He is self-controlled, self-directed, and master of his own fate and pleasure, while the woman possesses, embraces, and finds orgasmic the complementary traits that support his full self-realization.

The regressive effects of West's liberating project are a striking example of the hazards of autobiographical criticism, and I believe these effects largely are produced by an uncritical use of her personal "experience" as the foundation of her political commitments. In order to understand women's erotic pleasure, West explains, she is consulting her sexual experiences "with no political pre-judgments" and then employing the "truth" she discovers there as the basis for her critique of political and legal culture. More than one commentator has criticized this kind of pre-political appeal to "the authority of experience," since "[w]hat counts as experience is neither self-evident nor straightforward; it is always contested, always therefore political." One of the earliest to offer this warning was Terry Eagleton, who remarked on the naivete of critics who attempt "[t]o combat 'ideology' . . . [by] point[ing] to 'experience'—as though that, precisely, were not ideology's homeland." Unlike West, a number of feminists have taken the warning to heart particularly when designing potential research strategies. As Sandra Harding has observed, inattention to the discursive character of experience can lead women, no less than men, into making arguments that are "misogynist," as well as

410 As Professor Elspeth Probyn has cautioned, the stipulation of experience as a condition of possibility for critical enunciations cannot give way to a simple reification of either experience or the experiencer. To take experience in and of itself as the sole criterion for and in speech leads to such reifications. In fact, the experience of women certainly demonstrates that arguments based in a certain sense of experience can be the most vicious.

Probyn, supra note 13, at 20-21.

411 West, Hedonic Lives, supra note 17, at 128-29.

412 Scott, supra note 19, at 24, 26, 37; see Sandra Harding, Whose Science? Whose Knowledge? Thinking from Women's Lives 123 (1991) ("After all, experience itself is shaped by social relations: for example, women have had to learn to define as rape those sexual assaults that occur within marriage.") (emphasis omitted).

413 Eagleton, supra note 322, at 15; see Probyn, supra note 13, at 13 ("In the turn to the autobiographical as a panacea for the ills of criticism, speaking from the heart has replaced a much needed theoretical consideration of the epistemological and political stakes involved.").
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“racist, class-biased, and heterosexist.” West’s turn into autobiography brings her face-to-face with her own feelings about her sexual activities, which imparts an appealing vigor to her writing, but it also blinds her to the social relations inscribed at the intersection of events from her life and the autobiographical discourse in which she represents those events. In the end, West’s version of experiential politics reinstates the status quo, since it consists of nothing more than “a second-order mirror held up to reflect what already exists.”

When we tear our gaze away from the erotic experiences that West reproduces and refocus on their discursive location, we encounter a series of difficult questions, which I will sketch briefly here in order to illustrate another kind of contribution that autobiographical discourse may make to the meaning of the experiences it represents. The particular autobiographical technique employed by West is confessional. Like any other piece of self-writing, the “confession is a ritual of discourse in which the speaking subject is also the subject of the statement.” In and of itself, the sexual content of West’s essay suggests that we are witnessing her confession. Starting with “the Christian penance” and continuing through a wide variety of contemporary secular techniques, sexual experience has been “a privileged theme of confession.” Moreover, the confessional long has had a special interest in the sexual

414 Harding, supra note 412, at 123.
As our everyday language reminds us (when racist or homophobic comments are preceded by ‘some of my best friends . . . ’, or when a wider comprehension of the experience of sexism is precluded by ‘I’m not a feminist but . . . ’), experience alone does not guarantee articulation with other experiences, or with the experiences of others.

415 Probyn, supra note 13, at 21. In addition to the unconscious bias that may shape women’s descriptions of their own experiences, Harding points out that those descriptions may be unreliable because “we all change our minds about all kinds of issues.” Harding, supra note 412, at 123.

416 Stuart Hall, Cultural Identity and Diaspora, in Identity: Community, Culture, Difference 222, 236-37 (Jonathan Rutherford ed., 1990). Joan Scott makes the same point when she remarks that “the evidence of experience, whether conceived through a metaphor of visibility or in any other way that takes meaning as transparent, reproduces rather than contests given ideological systems.” Scott, supra note 19, at 25.

417 Foucault, supra note 385, at 61.

416 Id. at 61.
activity of women.\textsuperscript{418} Perhaps most significantly, West’s attitude towards her personal revelations attests to her confessional impulse.\textsuperscript{419} In part through the dialogue she stages between her two narrative selves—in which the second narrator administers to the first a set of \textit{Miranda} warnings specially designed for this situation—she affirms her commitment to tell the truth. Though it may reveal “shameful” information about herself, this truth is so important to the liberation of women (indeed, it is “foundational”) that she is willing to incur personal and professional risks in order to “unearth[ ]” it “painstakingly . . . from [her] consciousness.”\textsuperscript{420} When she recommends her confessional program to other women, West’s tone lapses into the hortatory, as she proclaims that women will discover there “the power of truth, not just a truth.”\textsuperscript{421} In short, this particular narrative strategy, which West offers as a “feminist method of moral argument,”\textsuperscript{422} appears to be a secular version of the Christian confessional with special emphasis on its redemptive potential: women are obliged to articulate the truth about their sexual experiences if they would redeem themselves from the bonds of patriarchy.

Like so many of the autobiographical practices to which the outsider storytellers have recourse, the confession has a long and complicated (indeed, one can say, tortured\textsuperscript{423}) past. West does not appear to have considered that past, including particularly the

\textsuperscript{418} See Mike Hepworth & Bryan S. Turner, Confession: Studies in Deviance and Religion 81-82, 105-07 (1982).

\textsuperscript{419} As Ellen Willis has remarked, It is not the content of a personal revelation that determines whether it’s a confession, but the writer’s attitude toward it . . . A confession always makes a moral point or raises a moral issue; the prostitute who reveals all about life in the brothel simply because it’s a titillating subject is not confessing, though she may go through the motions for the sake of redeeming social value.


\textsuperscript{420} West, Hedonic Lives, supra note 17, at 99, 101, 107, 116; see Foucault, supra note 385, at 59 (In our “singularly confessing society . . . one goes about telling, with the greatest precision, whatever is most difficult to tell.”); see also Willis, supra note 419, at 200 (“The implicit claim of the confession is that the writer is brave, that he is willing to expose, to save his soul; its implicit demand is that we suspend our reflex condemnation and hear the writer out.”).

\textsuperscript{421} West, Hedonic Lives, supra note 17, at 128, 144.

\textsuperscript{422} Id. at 90.

\textsuperscript{423} Foucault characterizes confession and torture as “the dark twins.” As he puts it, “Since the Middle Ages, torture has accompanied [confession] like a shadow, and supported it when it could go no further: the dark twins.” Foucault, supra note 385, at 59.
power relations that condition the truth that confessional discourse may produce. Contrary to the liberating spirit with which West recommends her confessional technique, many critics (beginning with Michel Foucault) have been skeptical of the claim that confession holds out freedom (whether spiritual, psychological, or material) to the subject who offers the confession. To be sure, confessional discourse does make that claim, as West's argument reflects, but Foucault has speculated that this promise of liberation may be the "internal ruse of confession."\textsuperscript{424} Confession implies, if not requires, a relationship of dominance and submission between, respectively, the subject who listens and the subject who speaks "for one does not confess without the presence (or virtual presence) of a partner who is not simply the interlocutor but the authority who requires the confession, prescribes and appreciates it, and intervenes in order to judge, punish, forgive, console, and reconcile."\textsuperscript{425} The speaking subject may feel, as West clearly does, that she is the sole author of the truth that her confession produces, and, surely, she contributes to and participates in the production of that truth.\textsuperscript{426} However, Foucault's remarks remind us of the power that confession confers on those who listen, the power to decipher

\textsuperscript{424} He goes on to remark that

one has to have an inverted image of power in order to believe that all these voices which have spoken so long in our civilization—repeating the formidable injunction to tell what one is and what one does, what one recollects and what one has forgotten, what one is thinking and what one thinks he is not thinking—are speaking to us of freedom.

\textsuperscript{425} Id. at 60; see Dennis A. Foster, Confession and Complicity in Narrative 2 (1987) (Confession "involves a narrator disclosing a secret knowledge to another, as a speaker to a listener, writer to reader, confessor to confessor. A full confession would presumably require that a private knowledge be revealed in a way that would allow another to understand, judge, forgive, and perhaps even sympathize.").

\textsuperscript{426} Some critics construe Foucault's remarks as suggesting that the confessional solely vests authority in the subject who listens, see Foucault, supra note 385, at 62 ("[T]he agency of domination does not reside in the one who speaks (for it is he who is constrained), but in the one who listens and says nothing; not in the one who knows and answers, but in the one who questions and is not supposed to know."), and to this extent they may take exception. For example, one author argues that the confession exercises power over the subject who listens as it places him under an "obligation to understand" and make sense of the confessional narrative. See Foster, supra note 425, at 5-6, 7, 11 (using, among other things, Freud's description of the Wolfman case to illustrate the obligation confession places on the listener).
what is said and decide what activity is to follow.\textsuperscript{427} West's confessional strategy reproduces the relations of dominance and submission remarked by Foucault, and, further, it embeds those relations within the familiar gender hierarchy. Thus, in West's vision, women must submit the truth about their sexual experiences to men because it is only with their assistance that women can go about changing law.\textsuperscript{428} When we consider the particular experiences that West's confessional technique is designed to elicit—dominance and submission feel good in bed to men and women, respectively—and the political truth she derives from those experiences—law must be revised so that it directly supports female (masochistic) pleasure and by implication male (sadistic) pleasure—we must wonder whether her strategy is just another instance of the traditional deployment of the confessional to regulate women's sexuality.\textsuperscript{429}

Upon locating within confessional discourse the same relations of dominance and submission that West prizes as the source of erotic pleasure, we also must remark the complicated and productive relationship between confessional discourse and the pleasurable experiences it reproduces. Although West does not examine that relationship, popular culture is well-acquainted with the erotic charge produced by confessional activity.\textsuperscript{430} Yet again, Foucault's

\textsuperscript{427} See Foucault, supra note 385, at 66-67; cf. Foster, supra note 425, at 8 ("Like confession, analysis transforms a feeling of alienation, of sickness, into an account of separation; it encourages one who is lost to trust his past to a listener who will make sense of it.").

\textsuperscript{428} See West, Hedonic Lives, supra note 17, at 85, 96, 144.

\textsuperscript{429} See Hepworth & Turner, supra note 418, at 81-82, 105-07.

\textsuperscript{430} A recent example of the popular understanding of the erotic content of the confessional is provided by Arnold Schwarzenegger's remarks on a scene in the movie True Lies. In the movie, Schwarzenegger plays a character named Harry; Harry is a spy, but his wife Helen (played by Jamie Lee Curtis) believes that he is a computer salesman. When Harry suspects (wrongly) that Helen is having an affair, he arranges to have her arrested, and he and his (male) partner interrogate her with the use of technology that conceals from her the identity of her questioners. During the interrogation, Harry and his partner ask Helen, among other things, if she has committed adultery. Helen denies any sexual infidelity, but she confesses that she finds her life boring. At the end of the scene, Harry prescribes a kind of "penance" for Helen, which requires her to pose as a prostitute, and, as Harry must have expected, both spouses find this activity to be erotically appealing, as presumably does the audience. A reviewer who discussed the interrogation scene with Schwarzenegger reports that

Schwarzenegger sees this stark encounter as Helen's chance for liberation: "During the interrogation, she says her life is boring. She needs excitement, to be at
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provocative discussion of confession contains relevant speculations, as he wonders whether Western culture's admonition to confess the truth of sex functions as a kind of "ars erotica." Foucault's remarks remind us of the pleasure that the speaking subject takes in the confessional activity itself, as distinct from the pleasure provided by the sexual activity to which she confesses:

[T]he anguish of answering questions and the delights of having one's words interpreted; all the stories told to oneself and to others, so much curiosity, so many confidences offered in the face of scandal, sustained—but not without trembling a little—by the obligation of truth; the profusion of secret fantasies and the dearly paid right to whisper them to whoever is able to hear them . . .

The listener in whom the speaking subject confides also finds the confessional activity to be pleasurable, albeit of a different quality. A confessional narrative arouses in the listener the desire to discover its meaning; thus, its allure for the listener resides in the "pleasure of mastery," which he secures by his authority to interpret and thereby contribute to the truth that the confession contains.

These observations suggest that confessional discourse enhances or perhaps, even, creates in the first instance the erotic pleasure that the participants attribute to the sexual experiences confessed by the speaking subject. If that is the case, and given the relations of dominance and submission that the confessional enacts, we must wonder whether the confessional may have the tendency to encourage women to report masochistic sexual experiences and, further, to construe those experiences as pleasurable. Certainly, the relationship between confessional activity and the true reports it produces is far more complicated and attenuated than this question suggests. Still, I offer it to suggest that confessional discourse does not provide a transparent window into sexual or any other experience, and to emphasize that there is no necessary reason why

risk. My character realizes he hasn't given her the life she wanted, so he starts giving her the excitement right there. She was begging for it.”

Richard Corliss, Lies, True Lies and Ballistics, Time, July 18, 1994, at 55, 56.

431 See Foucault, supra note 385, at 70-71.

432 Id. at 71.

433 Foster, supra note 425, at 5, 11.
feminists should trust the experiential reports produced by the confessional more than those constructed by legal discourse.

V. CONCLUSION

Although scholarly articles generally conclude by offering answers, not questions, a question that springs from my criticism is "the impatient question, 'What would you have us do?'" Of course, there will be impatience for an answer only if supporters of the narrative project decide that my observations require, at least, some revision of their agenda, some refocusing of their stories or some retheorization of their stories' connection to law. Certainly, when we reflect on the potential contributions that outsider stories may make to our understanding of the lives of marginalized peoples and of their subjective experiences of pain and pleasure, it seems too extreme to refuse autobiographical tactics altogether, if indeed it were possible to do so. Still, the limited transformation that the stories so far have effected is fully consistent with the liberal ideology outsiders mean to resist. For that reason alone, outsiders may desire to locate other, more promising discursive strategies for legal and political reform.

These observations lead to another question. Are we so captured by culture that it is not possible for us to imagine, let alone author, a resistant scholarship? No less than autobiographical storytelling, we may anticipate, other discursive positions selected by the outsiders will possess or quickly develop a set of conventions that have been molded by, and thus support, contemporary cultural values. Any revolution carried out under the auspices of the academy seems likely to preserve at least as much, if not more, than it destroys. Whatever the prospects for future forms of discourse, it appears that autobiographical discourse, given its roots in a culture of liberal individualism, possesses only a limited capacity to articulate the dynamics necessary for radical social change. By contrast, an alternative discourse might encourage its participants to ponder explicitly the relation between the means of communication and a larger, more inclusive concept of social life.

Blessed with foresight, Paul Bove injected this question into the preface, rather than conclusion, of his study of intellectual culture. See Bove, supra note 287, at xiii.
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Perhaps more to the point, the question "What should we do to produce a resistant scholarship?" itself must be examined critically to identify the desire that resides within it and to determine whether that desire is another cunning snare prepared by a liberal culture. The desire to oppose and subdue the established authorities, to sweep aside and go beyond one’s antecedents, may feel like rebellion to the oppositionalist critic, as well as to the members of the establishment she opposes. But, we may wonder, is that desire itself an artifact of liberal culture, just another version of the yearning for individual autonomy and success that liberal ideology fosters in its subjects? Unquestionably, this desire and the productive activity it fuels have been the faithful servants of the mainstream academy. The academy may renew itself, indeed, justify its continued existence and expansion, only if each generation of scholars improves upon or, better yet, revises the wisdom its teachers have imparted. Of course, if a slow process of amelioration is occurring, perhaps I should not label this desire a trap. Perhaps the storytellers’ failure to oppose seriously the liberal vision should be greeted as evidence of the beneficence of that vision, rather than of the theoretical deficiencies afflicting the narrative program. These speculations might support a fairly modest revision of the narrative project. Since they are in the debt of liberal culture, just as surely as they are in its thrall, the storytellers should acknowledge the existence and extent of their debt, ponder the contributions that liberal individualism has made to their own success, and theorize the connection between their self writings and the social reforms they still envision. This proposal would require the storytellers to abate their inflated claims about the sweeping changes their project will oversee. However, this rhetoric is a crude byproduct of mainstream academic conventions, and its absence will help to clear the way for a focused investigation of the spaces within liberal philosophy that are most receptive to the claims of people subordinated by racism and sexism.

Yet, those claims are so many and some are so urgent as to demand solutions more immediate and more sweeping than the outsiders believe a liberal program may produce. Hence the impatience: what alternative strategy is capable of ushering in those solutions? Perhaps, we should examine Derrick Bell’s enigmatic
reference to the politics of failure. At least, the investigation of failed lives and the reallocation of social resources that those lives mandate might divert our attention from our own middle-class success stories, which liberal culture inevitably employs in the service of individual solutions. A politics of failure, rather than success, might provide us access to the lives that command our most urgent social obligation—the lives that elude completely the liberal autobiography, lives that culture consigns to silence, “devoid of all future, deprived of all prospects” except “a long cohabitation with the uninhabitable.”

435 Here, I have in mind a comment made by a character in Faces at the Bottom of the Well. In Chapter 1, the narrator is driven to a lecture site by a black man named Jesse B. Semple. In the course of a broad-ranging conversation about issues affecting African-Americans, Semple praises Jesse Jackson because, among other qualities, Jackson “got the courage to fail.” Bell, supra note 31, at 28.