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OUTSIDER SCHOLARSHIP: THE LAW REVIEW STORIES

MARY I. COOMBS*

A radically new form of writing has been appearing in law reviews of late. Consider, for example, the following:

*I want to know my hair again, to own it, to delight in it again, to recall my earliest mirrored reflection when there was no beginning I want to know my hair again, the way I knew it . . . before I knew that the burden of beauty—or lack of it—for an entire race of people could be tied up with my hair and me.*¹

*I pushed again, my back and shoulders against the table. I liked its resistance to me I needed to push again. He slit my vagina. Then he backed off. You slipped out gently. (You were so beautiful.) I cried and I laughed.*²

*You have this thing called a sausage-making machine. You put pork and spices in at the top and crank it up, and because it is a sausage-making machine, what comes out the other end is a sausage One day, we throw in a few small rodents of questionable pedigree and a teddy bear and a chicken. We crank the machine up and wait to see what comes out the other end.*³

*It is circle time in the five-year old group, and the teacher is reading . . . Little Black Sambo. . . . There is a knot in the pit of my stomach. I feel panic and shame I am slowly realizing that, as the only black child in the circle, I have some kinship with the tragic and ugly hero of this story—that my classmates are laughing at me as well as at him.*⁴

These works and others like them are part of a new genre—outsider scholarship—whose rise to prominence is an important part of the recent history⁵—and the future—of legal scholarship. The term

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1. Paulette M. Caldwell, *A Hair Piece: Perspectives on the Intersection of Race and Gender*, 1991 DUKE L.J. 365, 365.

2. Marie Ashe, *Zig-Zag Stitching and the Seamless Web: Thoughts on "Reproduction" and the Law*, 13 NOVA L. REV. 355, 360 (1989).

3. PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* 107 (1991).

4. Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317, 317 (1987).

5. Feminism and critical race scholarship have moved from obscurity to relative prominence since, say, 1980. Among ten elite law reviews, a total of eight articles published in 1980 were written or co-written by women. In 1990 that number jumped to 74. (Data on file with author). There is a similar, though less dramatic, increase in the number of articles dealing with issues of feminist jurispru-

encompasses a range of scholarship rooted in the concerns of and reflecting the perspectives of groups that have not traditionally been part of legal scholarship. In particular, I look here at feminist and critical race scholarship.⁶

Outsider scholarship is created and defined, in part, by contrast to traditional legal scholarship, which adopts a prescriptive approach, is grounded on normative positions, and is expressed in judicial discourse.⁷ Traditional scholarship assumes that neutrality and objectiv-

dence or of race and race discrimination. In 1980 there were seven articles arguably dealing with feminist issues and five dealing with race. In 1990, those totals had climbed to 18 and 13, respectively. *Id.* Those numbers still seem too low to some of us, but suggest at least a niche of acceptance.

There has been an explosion of writings on these topics, especially feminism, in law reviews generally. The Index to Legal Periodicals, which had 59 articles under the topic heading "feminist jurisprudence" in 1990-91, 30 INDEX TO LEGAL PERIODICALS, 276-77 (1990-91), did not even have such a heading in 1980-81.

Numerous symposia in mainstream law reviews have been devoted to feminism in the last few years. Some are general overviews of feminism in law. See, e.g., *Symposium: Women and the Law: Goals for the 1990s*, 42 FLA. L. REV. 1 (1990); *Symposium on Feminist Jurisprudence*, 25 TULSA L.J. 657 (1990); *Symposium, Feminist Jurisprudence Symposium*, 24 GA. L. REV. 759 (1990); *Symposium, Feminism in the Law: Theory, Practice and Criticism*, 1988 U. CHI. LEGAL F. 1; *Symposium: Feminist Moral, Social, and Legal Theory*, 56 U. CIN. L. REV. 459 (1987). Some limit themselves to a gendered analysis of particular legal issues, such as legal education, legal profession, or legal ethics. On legal education, see, e.g., *Symposium: Gender Bias in Legal Education*, 14 S. ILL. U. L.J. 471 (1990); *Symposium, Women in Legal Education—Pedagogy, Law, Theory, and Practice*, 38 J. LEG. EDUC. 1 (1988). On the legal profession, see, e.g., *Symposium on Women in the Lawyering Workplace: Feminist Considerations and Practical Solutions*, 35 N.Y.L. SCH. L. REV. 293 (1990); *Symposium: Gender Equality in the Legal Profession*, 57 FORDHAM L. REV. 933 (1989). On legal ethics, see, e.g., *Symposium on Gender and Legal Ethics*, 4 GEO. J. LEGAL ETHICS 1 (1990). Some deal with issues common to Feminist Jurisprudence and Critical Race Theory. See, e.g., *Symposium, Frontiers of Legal Thought: Gender, Race & Culture in Law*, 1991 DUKE L.J. 271; *Symposium, Legal Storytelling*, 87 MICH. L. REV. 2073 (1989); *Symposium: Excluded Voices; Realities in Law and Law Reform*, 42 U. MIAMI L. REV. 1 (1987). Critical race theorists have also been included in other symposia. See, e.g., *Symposium: Civil Rights Legislation in the 1990s*, 79 CALIF. L. REV. 591 (1991); *Transforming Legal Education: A Symposium of Provocative Thought*, 10 NOVA L.J. 255 (1986). There appear, though, to be only two such symposia as yet devoted to critical race issues. See, *Symposium, A Forum on Derrick Bell's Civil Rights Chronicles*, 34 ST. LOUIS L.J. 393 (1990); *Symposium, The 1985 Minority Law Teacher's Conference*, 20 U.S.F. L. REV. 383 (1986). There appear to have been no similar symposia in the law reviews before the 1980s.

There has also been a proliferation of specialized law journals devoted specifically to issues of feminism, race, progressive causes and, most recently, sexual orientation. Roughly two dozen such journals are currently being published, many at such elite institutions as Columbia, Harvard, Stanford, Texas, U.C.L.A., and Yale.

Finally, I suggest that the sociological significance of feminism and critical race scholarship can be measured by the extent to which organizers of and speakers at "general purpose" symposia consider it necessary to include representatives of these movements. Cf., e.g., *Symposium on Legal Scholarship: Its Nature and Purposes*, 90 YALE L.J. 955 (1981) and its successor herein. *Res ipsa loquitur.*

6. Feminist and critical race scholarship are partially distinct practices. They are nonetheless sufficiently similar—and sufficiently different in the same ways from traditional legal scholarship—that it is conceptually useful to consider them here together under the rubric of "outsider scholarship."

7. Edward L. Rubin, *The Practice and Discourse of Legal Scholarship*, 86 MICH. L. REV. 1835, 1835 n.1 (1988) (citations omitted). Mark Kelman describes it as consisting either of conceptualism—seeking to discover and explicate the formal doctrines of the law, or policy analysis—seeking to reform

ity are achievable goals. The identity of the scholar should thus be irrelevant when assessing the work.⁸

In contrast, outsider scholarship is characterized by a commitment to the interests of people of color and/or women, by rejection of abstraction and dispassionate "objectivity," and by a preference for narrative and other engaged forms of discourse. One of the most succinct definitions of feminism was provided by Mary Joe Frug: "work which seeks to account for the condition of women as well as to illustrate or oppose it."⁹ Feminism in law is thus fundamentally defined by its subject matter—women, and its politics—improving their lives. Because it is defined in part by its politics, it rejects both descriptively and prescriptively the neutrality claimed by traditional legal scholarship. "Feminist theory aspires to address the situated experience of women from the perspective of women ourselves."¹⁰ It accepts the positionality of its own discourse, while reconceiving traditional scholarship as also partial, from the perspective of the powerful.

Feminism is also defined by its methods, most importantly, consciousness-raising. If its function is to understand and to present as a challenge to law the concerns, beliefs, and lives of women, those who practice it must learn from women. "Feminist method starts with the very radical act of taking women seriously, believing that what we say about ourselves and our experiences is important and valid, even when . . . it has little or no relationship to what has been or is being said *about us*."¹¹ The feminist legal scholarship I focus on here is the sort that eschews grand theory in favor of concreteness, specificity and,

and perfect the law in accord with the author's normative positions. Mark Kelman, *The Past and Future of Legal Scholarship*, 33 J. LEGAL EDUC. 432 (1983).

8. See Stephen L. Carter, *Academic Tenure and "White Male" Standards: Some Lessons from the Patent Law*, 100 YALE L.J. 2065 (1991).

I do not suggest here that outsider scholarship is or should be a kind of identity scholarship. Women and men of color can write traditional scholarship. See Alex M. Johnson, Jr., *Racial Critiques of Legal Academia: A Reply in Favor of Context*, 43 STAN. L. REV. 137, 154 (1991). Conversely, "feminism . . . is not a 'natural' excretion of [woman's] experience but a controversial political interpretation and struggle, by no means universal to women." Katharine T. Bartlett, *Feminist Legal Methods*, 103 HARV. L. REV. 829, 833 (1990) (quoting Linda Gordon, *What's New in Women's History*, in FEMINIST STUDIES/CRITICAL STUDIES 20, 30 (Teresa de Lauretis ed., 1986)). The outsider scholarly community is one defined by those *engaged* in particular forms of scholarship, although that group is, in fact, overwhelmingly comprised of persons who have experienced outsider status. Furthermore, while the criteria for judgment should reflect the necessary positionality of such scholarship, it is ultimately the article and not the author which is the subject of judgment.

9. Mary Joe Frug, *Rescuing Impossibility Doctrine: A Postmodern Feminist Analysis of Contract Law*, 140 U. PA. L. REV. 1029, 1033 (1992).

10. Christine A. Littleton, *Feminist Jurisprudence: The Difference Method Makes*, 41 STAN. L. REV. 751, 763 (1989).

11. *Id.* at 764; see also CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* (1987); Deborah L. Rhode, *Feminist Critical Theories*, 42 STAN. L. REV. 617 (1990).

frequently, a narrative style that presents the stories of particular women, sometimes the author herself. These stories are used to advance understanding and, ultimately, the political goals of feminism.¹²

Critical race scholarship, similarly committed to the concerns of people of color, also relies heavily on the use of narrative and other non-traditional forms. Both in order to present alternative realities and to unmask the myths of the majority, it uses autobiography, story, parable, and chronicle.¹³ Perhaps because the stories critical race scholars need to tell are unknown to so many in the dominant culture, storytelling appears to be a more predominant style than it is in feminism.¹⁴

Both these forms of outsider scholarship begin methodologically and politically with the concerns of particular oppressed persons. One can, for example, see "asking the woman question"¹⁵ and "looking to the bottom"¹⁶ as two forms of the same enterprise. Critical Race Theory, like feminism, relies on sources outside law. It "draws upon several traditions, including poststructuralism, postmodernism, Marxism, feminism, literary criticism, liberalism, neopragmatism and discourses of self-determination such as Black nationalism and radical pluralism."¹⁷ It is also a practice that defines itself as critical; there is no critical race equivalent to liberal feminism.

The continued production of outsider scholarship depends, in part, on a growing pool of women and minorities on law faculties.¹⁸

12. Martha Fineman has been a strong proponent of the need for feminists to shift our attention away from both grand theory and wholly personalized narratives to what she calls mid-level theorizing. Martha L. Fineman, *Challenging Law, Establishing Differences: The Future of Feminist Legal Scholarship*, 42 FLA. L. REV. 25 (1990).

Individual feminist scholars can be found on either side or even straddling the divide between grand theory and narrative feminist legal scholarship. Compare, e.g., Robin L. West, *The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory*, 3 WIS. WOMEN'S L.J. 81 (1987) (hereinafter *A Phenomenological Critique*) (including narrative and personalized description) with Robin L. West, *Jurisprudence and Gender*, 55 U. CHI. L. REV. 1 (1988) (confronting same issue at the level of grand theory).

13. Richard Delgado, *When a Story is Just a Story: Does Voice Really Matter*, 76 VA. L. REV. 95, 95 n.1 (1990). See also Mari Matsuda, *Voices of America: Accent, Antidiscrimination Law, and a Jurisprudence for the Last Reconstruction*, 100 YALE L.J. 1329, 1393 (1991).

14. See, e.g., WILLIAMS, *supra* note 3, at 117 ("Noninterpretive devices, extrinsic sources, and intuitive means of reading may be the only ways to include the reality of the unwritten, unnamed, nontext of race."). There has been less grand theorizing within critical race scholarship. Cf. Alex M. Johnson, *The New Voice of Color*, 100 YALE L.J. 2007, 2024-25 (1991) (suggesting the future development of parallels within critical race scholarship to the various theoretical strands within feminism).

15. Bartlett, *supra* note 8, at 837.

16. Mari Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323 (1987).

17. Kimberle Crenshaw, *A Black Feminist Critique of Antidiscrimination Law and Politics: A Progressive Critique*, in *THE POLITICS OF LAW* 195, 214 n.7 (David Kairys ed., rev. ed. 1990).

18. The scholars most likely to produce such work, i.e., women and men of color, are coming into

Outsiders who are scholars are also likelier to produce outsider scholarship insofar as they find larger communities that believe that the ideas and concerns of outsider scholarship are important. Both feminism and Critical Race Theory are situated within broader intellectual movements in a variety of disciplines.¹⁹

Feminist and Critical Race Theory also grow out of political movements and are intended to advance the agendas of these movements.²⁰ Their practitioners seek to serve the needs of a larger community with their scholarship, needs that seem unlikely to be met in the near future. The socio-economic position of much of the minority community has worsened recently and the feminization of poverty has become a truism.²¹ Even among the middle-class, the promises of the feminist and civil rights movements that we could have it all as long as we were willing to take it on the existing terms seem increasingly hollow.²² The claims for formal equality embodied in earlier movements and the legal scholarship that supported them—even if they had been granted—have proven inadequate.²³ Meanwhile, we face a backlash from those who claim that the law has gone too far to help

the profession in increasing numbers. The professoriat included 20.8% women and 3.7% minorities in 1986-87. Richard H. Chused, *The Hiring and Retention of Minorities and Women on American Law School Faculties*, 137 U. PA. L. REV. 537, 555-56 (1988) (tables 1 and 2) (1986-87 data). Despite resistance to hiring scholars with non-traditional identities or orientations, these numbers are likely to increase, given that the pool of current law school graduates is 42.7% female and 11.3% minority. See *id.* at 542, 556-57.

19. See, e.g., SANDRA M. GILBERT & SUSAN GUBAR, *THE MADWOMAN IN THE ATTIC: THE WOMAN WRITER AND THE NINETEENTH-CENTURY LITERARY IMAGINATION* (1970); SANDRA HARDING, *THE SCIENCE QUESTION IN FEMINISM* (1984); BELL HOOKS, *AIN'T I A WOMAN? BLACK WOMEN AND FEMINISM* (1981); JOAN KELLY, *WOMEN, HISTORY, AND THEORY* (1984); ANN OAKLEY, *THE SOCIOLOGY OF HOUSEWORK* (1974); CORNEL WEST, *PROPHECY DELIVERANCE: AN AFRO-AMERICAN REVOLUTIONARY CHRISTIANITY* (1988); "RACE," *WRITING AND DIFFERENCE* (H.L. Gates, Jr. ed., 1986); *CAPITALIST PATRIARCHY AND THE CASE FOR SOCIALIST FEMINISM* (Zillah Eisenstein ed., 1979); *TOWARD AN ANTHROPOLOGY OF WOMEN* (Rayna Reitner ed., 1975).

20. See, e.g., Gary Minda, *The Jurisprudential Movements of the 1980s*, 50 OHIO ST. L.J. 599 (1989); Gary Peller, *Frontier of Legal Thought III: Race Consciousness*, 1990 DUKE L.J. 758; Rhode, *supra* note 11, at 622.

21. See Kimberle W. Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1332 n.3 (1988); Mary Corcoran et al., *The Economic Fortunes of Women and Children: Lessons from the Panel Study of Income Dynamics*, in *WOMEN AND POVERTY* (Barbara Gelpi et al. eds., 1986) 7; Audrey Rowe, *The Feminization of Poverty: An Issue for the 90's*, YALE J.L. & FEMINISM 73 (1991).

22. The glass ceiling limits success. See *Few Women Found in Top Public Jobs*, N.Y. TIMES, Jan. 3, 1992, at A12; *Measuring the Glass Ceiling*, 111 U.S. NEWS & WORLD REPORT, August 19, 1991, at 12. See generally SUSAN FALUDI, *BACKLASH* (1991). The work-family dilemma has only intensified. See, e.g., Joan C. Williams, *Deconstructing Gender*, 87 MICH. L. REV. 797 (1989).

23. See, e.g., Crenshaw, *supra* note 17; Alan Freeman, *Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine*, 62 MINN. L. REV. 1049 (1978); D. Marvin Jones, *Unrightable Wrongs: The Rhenquist Court, Civil Rights, and an Elegy for Dreams*, 25 U.S.F. L. REV. 1, 26-36 (1990).

subordinated groups.²⁴

Legal scholars committed to furthering the interests of outsider groups thus face a world that requires far more than the implementation of agreed-on principles. We need to rethink what role law can play in liberation, while simultaneously defending against a re-interpretation of existing legal rights that seems to erode even the protections once enjoyed. It remains to be seen what kinds of scholarship this ferment will create. What is clear is that our intellectual and political agendas are unfinished.

Feminist and critical race scholarship, although they appear from the inside to be dynamic fields of scholarship addressing intellectually challenging and politically crucial issues, face a somewhat hostile response from the practitioners of traditional legal scholarship. Scholars have commented on the unwillingness of many traditional legal scholars to expand their horizons to include feminism and critical race scholarship.²⁵ This unwillingness is also reflected in a reluctance of traditional scholars to engage in serious dialogue about outsider scholarship. They may dismiss it "in coffee pot discussions, and in the deliberations of appointments committees,"²⁶ but are unwilling to grant this scholarship the respect inherent in making it "the subject of sustained criticism."²⁷ This common experience of being excluded, ignored, and probably denigrated behind closed doors, for much the

24. This backlash has operated on a number of levels. Politicians like David Duke and Jesse Helms succeed by rousing white males to a sense that they have been illegitimately displaced. See, e.g., Roberto Suro, *The Louisiana Election: Even Losing, Duke Spreads Message to Nation*, N.Y. TIMES, Nov. 18, 1991, at B6. See also FALUDI, *supra* note 22. Meanwhile, the views of black and female neoconservatives, who claim that the subordinated positions of minority groups reflect their own defects of the negative effects of legal and political claims on their behalf, have been widely hailed. See, e.g., STEVEN CARTER, *REFLECTIONS OF AN AFFIRMATIVE ACTION BABY* (1991); SYLVIA HEWLETT, *A LESSER LIFE: THE MYTH OF WOMEN'S LIBERATION IN AMERICA* (1986); SHELBY STEELE, *THE CONTENT OF OUR CHARACTER* (1991).

25. See Richard Delgado, *The Imperial Scholar Revisited: How to Marginalize Outsider Writing, Ten Years Later*, 140 U. PA. L. REV. (1992) (forthcoming 1992) (hereinafter *The Imperial Scholar Revisited*); Mari Matsuda, *Affirmative Action and Legal Knowledge: Planting Seeds in Plowed-up Ground*, 11 HARV. WOMEN'S L.J. 1 (1988); Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 U. PA. L. REV. 561 (1984) (hereinafter *The Imperial Scholar*).

26. Kathryn Abrams, *Hearing the Call of Stories*, 79 CALIF. L. REV. 971, 976 (1991).

27. Martha Minow, *Beyond Universality*, 1989 U. CHI. LEGAL. FORUM 115, 116; see also Book Note, *When Victims Happen to be Black Neoconservatives*, 105 HARV. L. REV. 773, 783 (1992).

The reluctance of traditional scholars to do so is not without reason; such criticism risks angry misperception. Alex M. Johnson, Jr., in discussing Randall Kennedy, *Racial Critiques of Legal Academia*, 102 HARV. L. REV. 1745 (1989), suggested that "Kennedy is able to espouse views that, because he is a scholar of color, are not viewed as racist. If similar arguments were made by a majority (white) scholar, charges of racism would be rife." Johnson, *supra* note 8, at 140. Mari Matsuda had earlier suggested that such criticism might be dangerous, noting that she experiences "an immediate reaction of rage when someone tells me they did not like the Civil Rights Chronicles. . . . Does it mean that I presume anyone who does not have a near-religious experience upon reading Derrick Bell is a racist?" Matsuda, *supra* note 25, at 10.

same reasons, is another factor binding feminism and critical race scholars into a larger shared community.

Relations between feminism and Critical Race Theory have not been entirely harmonious, however. Feminism has been criticized both for its narrow focus on women and for assuming that the category of woman is unidimensional. Much of this criticism has focused on the tendency of feminists to ignore race and thus, in essence, to privilege whiteness.²⁸ Critical Race Theory must struggle against a parallel tendency to essentialize: to treat race as unidimensional and the sole locus of oppression.²⁹ For all outsider scholarship there is a constant tension between the excesses of generalization and particularism.

In this essay, I examine two issues for the newly emergent outsider scholarly communities. First, I want to consider the special questions that outsider scholars, situated as they are on the boundary between academia and the outsider communities with whom they identify, face in choosing their audience. Then, I want to examine the criteria of merit these scholars might develop to encourage and to judge their own works. In examining the questions both of audience and of criteria of judgment, I suggest that a study of the issues, so intensely implicated by the practices of outsider scholarship, may also help us understand the parallel issues that traditional legal scholarship has too long elided.

I. PHENOMENOLOGY OF PRODUCTION: THE WORDS OF THE SCHOLARS

The demographic and political forces that facilitate outsider scholarship are necessarily mediated by the decisions of individuals to engage in feminist and/or critical race scholarship. The process by which certain academics choose to produce this scholarship can be more fully understood by drawing on the accounts of those engaged in that mediation. Such an enhanced understanding will help us to address both the question of audience and the need for, and benefits of, establishing criteria of judgment for evaluating outsider scholarship.

28. See, e.g., ELIZABETH V. SPELMAN, *INESSENTIAL WOMAN: PROBLEMS OF EXCLUSION IN FEMINIST THOUGHT* (1988); Judy Scales-Trent, *Black Women and the Constitution: Finding Our Place, Asserting Our Rights*, 34 HARV. C.R.-C.L. REV. 9 (1989).

29. See Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 588 (1990) (discussing "racial essentialism"). One of the more elegant recognitions of the error of essentializing black experience is in a story by Pat Williams of others forcibly pairing her in a dance with "Clarence Blackman" because we were both black and . . . the dance critics knew so little about dancing that they couldn't see the differences between us." Patricia Williams, *Response to Mari Matsuda*, 11 WOMEN'S RTS. L. RPT. 11, 12 (1989).

The information here is culled from interviews with roughly two dozen outsider legal scholars.³⁰ Although I sought a mix of people in terms of prestige of institution and tenure status, the sample is neither random nor large enough to draw any statistically valid conclusions. It may, however, be suggestive of the influences on and concerns of those who devote at least part of their intellectual life to the production of outsider scholarship.³¹

The interviewees' commitment to outsider scholarship is often rooted in personal histories. A number came to law teaching from a background of commitment to civil rights and/or feminist ideas and organizations. Some were older women who entered academia in order to write this kind of scholarship. For such women, advice regarding the risks of outsider scholarship is largely irrelevant. "This commitment is why I left practice for teaching"; "if this is taking a chance regarding tenure, this is a chance I have to take"; "everything I write grows out of . . . how people expect me to separate being black and being a woman"; "I came into teaching so I could have time to write about these things I'm thinking about."

For some feminist/critical race scholars, academic concerns play a larger part in the mix of motives leading them to write outsider scholarship. They were already committed to feminism as an academic discourse in, e.g., history or literary theory, and carried these more theoretical concerns into their legal scholarship.

A number of my informants discussed the career risks of doing outsider scholarship. They had seen others apparently harmed professionally because their scholarship was feminist.³² They were frequently advised, often by friends, to limit the extent to which their scholarship was non-traditional in subject matter or style. One informant's dean advised her to, "do anything you want but have at least one [relatively traditional] work in a recognized top journal." Sometimes, the perceptions of risk had a somewhat distanced quality: several people felt their own institutions were relatively safe, while believing that legal academia as a whole remained dangerous. Others

30. Interview forms and results on file with author. I reached approximately 60% of those in the original sample. Those who spoke to me seemed representative of the larger group except that I was generally unable to reach the most prominent adherents of these schools of thought.

31. The persons in the sample intend to, and presumably will, write feminist/critical race scholarship in the future. I did not, nor could I practically, find and interview those people who might have produced such scholarship but were deterred from doing so by the sorts of structural and personal inhibitions that those in my sample experienced. The sample also did not include those female and minority scholars who have chosen to write only scholarship designed to be race- and gender-neutral in its subject matter, perspective, and style.

32. One source vividly recalled the Clare Dalton tenure battle during the time she was working toward an LL.M. at Harvard and read that as a warning.

experienced the danger of producing (only) feminist/critical race scholarship as closer to home, despite the dean's reassurances.

Responses to the direct and indirect warnings fell into a few patterns. A number of untenured informants felt at some risk and had devised various responsive strategies. A couple had chosen to be very clear about their intentions during the recruitment process; they believed that this would insulate them from any later criticism on this account. One woman said that "no matter how much I do this stuff [critical race scholarship], I need a big trusts and estates piece." Some informants planned to offset the possible negative effects of doing feminist/critical race scholarship by performing so well that they exceeded their institution's standards.³³

Others encountered responses to their choice of feminist/ critical race scholarship that were irritating, but not serious. For example, when this scholarship was published in elite law journals, colleagues discounted it with the claim that the editors who had accepted it were merely being "trendy." One respondent was asked, "When are you going to do your second article?" after publishing one traditional and several feminist pieces; another, after publishing two critical race articles in leading journals, was chided, "When are you going to go back to doing traditional [real] scholarship?"

The fear of negative reactions by colleagues had been much more problematic for my more senior informants, who had come into teaching before the explosion of feminist/ critical race scholarship. Most of them did not write in these areas in the earlier stages of their careers: the decisions to refrain were experienced as a mix of external constraint and internal choice. They had found no support for non-traditional scholarship, but also did not experience the driving need to write such articles that some of the newer scholars expressed. These informants typically began their careers by writing and teaching in "hard" areas, like tax or commercial law, only later developing an interest in feminism or critical race issues as topics for scholarship. As one tenured respondent at a non-elite institution said, she was "not prepared to be at the groundbreaking of a new field, as feminism was before I was tenured." They experienced the shift to writing outsider scholarship as liberating. One woman, who had spent her first fourteen years in academia writing traditional scholarship, said, "it's a relief to write about stuff that's part of my life."

33. For example, one informant "earned" her freedom to write as she chose by being the first professor at her school to have published in the *Yale Law Journal*. This strategy is reminiscent of the feminist aphorism: A woman needs to be twice as good to get half as far as a man. Fortunately, that's not difficult.

The shift in intellectual biographies thus appears to reflect changes in the academic culture, rather than the effects of tenure. While some people experience tenure as providing freedom to write what they wish, many are determined to do so from the beginning. As one recently hired informant stated, "I'm too old to wait six years to write what I want." Another raised doubts whether one *could* "suddenly shift agendas after six years." Conversely, a couple of my informants noted that risks do not evaporate after tenure, if one wants to shift institutions or simply cares about the reactions of the general legal academic community.

Perhaps the most significant development in encouraging the production of feminist and critical race scholarship has been the proliferation in recent years of external support systems for such writing. These were frequently stressed in explaining the decision to focus one's scholarly agenda in these areas. The support systems are of different levels of formality. First, the population of women law teachers is becoming quite large. At least at some institutions, there are enough people engaged in, or sympathetic critics of, feminist scholarship to form a critical mass. Some of the senior women, whether or not they are themselves actively engaged in the production of such scholarship, have also begun to play a role as mentors.³⁴

For white feminists, and especially for the smaller and generally more recently hired group of critical race scholars, the development of formal and semi-formal support networks has been very important. The CLS conferences focusing on feminism in 1985 and on minority voices in 1986 served as organizing moments. Feminists have formed groups in several locales where ideas can be shared, works in progress read and criticized, and political concerns aired. Critical race scholars have had an annual Conference on Critical Legal Studies since 1988. The Midwest People of Color Legal Scholarship conference, first organized by Linda Greene, has provided a safe setting for untenured minority professors to meet in intensive sessions with tenured minority professors, who can provide critical feedback on their works in progress. Martha Fineman has for several years run a similar program, the Feminism and Legal Theory Conference, for review of the work of younger feminist scholars. Two respondents mentioned the influence and support of the North East Corridor Black Women Law Teacher's Collective. These relatively formal structures also help provide a basis for more informal networking and mentoring. The increased numbers and support structures have fortified people to carry out modes of

34. Critical race scholars are unfortunately still too minuscule a part of the landscape at any institution to benefit from such localized informal support.

scholarship that were far more daunting even ten years ago. New speciality journals have provided locations for publication, while interest by student editors at the more prestigious mainstream journals has helped create visibility and legitimacy for these new forms of scholarship. Nothing on the horizon suggests that these trends will be reversed. What remains to be seen is whether this outpouring of scholarship will become a permanent part of the academic landscape and whether its sociological prominence will be echoed in future assessments of its intellectual and political importance.

II. THE QUESTION OF AUDIENCE

The question of to whom and for whom we speak is implicit in all scholarly writing. Outsider scholars differ from more traditional scholars, however, both in the answers to these questions and in the degree to which these questions are consciously considered.³⁵

Outsider scholarship has a wider range of possible audiences than presumed by traditional scholarship.³⁶ We may be speaking to legal decisionmakers in the dominant community, to potential allies from that community, to each other, or to non-academics in our outsider communities. More than traditional scholars, we face a range of possible, sometimes overlapping, audiences.³⁷ Both individually and collectively, we should thus begin focusing upon the question of audience.³⁸ By doing so, we will produce better scholarship, i.e., scholarship

35. I distinguish here between traditional legal scholarship and outsider scholarship. Other fields of legal discourse such as Law and Economics and Law and Society have also proliferated recently, so that the picture of center and margin may become increasingly inaccurate. In a general sense, much of what I say here about audience questions may also apply to other non-traditional fields, though I focus concretely on my own subdiscipline.

36. Traditional legal scholars often write as if they were simply throwing their thoughts into the great maelstrom for whomever might wish to fish them out. The form of classic normative legal scholarship, with its concluding plea for some manner of legal reform presumes an audience of legal decisionmakers. See generally Francis A. Allen, *Legal Scholarship: Present Status and Future Prospects*, 33 J. LEGAL. EDUC. 403, 404 (1983) (decrying move away from forms of scholarship likely to "influence the behavior of legal institutions"); Pierre Schlag, *Normative and Nowhere to Go*, 43 STAN. L. REV. 167 (1990). More sophisticated scholars recognize that few judges or legislators read, let alone follow, the prescriptions of law reviews. See, e.g., Judith S. Kaye, *One Judge's View of Academic Law Review Writing*, 39 J. LEGAL. EDUC. 313, 319 (1989); Frederick Schaur, *The Authority of Legal Scholarship*, 139 U. PA. L. REV. 1003, 1010 (1991). Increasingly, the elite forms of mainstream legal scholarship, particularly in their jurisprudential and historical variations, have abandoned the fiction of persuading decisionmakers and are written solely for other legal scholars.

37. See Matsuda, *supra* note 13, at 1393 (describing the three audiences she seeks to reach).

38. This process is beginning. See WILLIAMS, *supra* note 3, at 8; Robin D. Barnes, *Scholarly Discourse* (1992) (unpublished manuscript on file with author). Cf. Delgado, *The Imperial Scholar Revisited*, *supra* note 25 (examining limited reception of outsider scholarship among traditional legal scholars); Matsuda, *supra* note 25 (exhorting dominant community scholars to change exclusionary practices).

which more fully serves its own purposes.³⁹

The most obvious audience is the dominant community. We write for them simply because we usually publish in law reviews which they read. We also write for them because we hope/believe that they will understand the world differently after they have heard us. Such scholarship is intended to persuade. It can do so through a variety of traditional or narrative forms.

Sometimes our writing appears not dissimilar to standard normative legal scholarship—it begins with the problems of outsider communities as its lens, but still takes legal doctrines, institutions, or theories as its subject, analyzes and criticizes them, and proposes reforms.⁴⁰ The hoped-for audience for such scholarship is similar to that for mainstream normative scholarship: legal decisionmakers, lawyers looking for arguments to make to legal decisionmakers, and other academics judging how well the author has presented her arguments.

A significant portion of feminist scholarship is, in whole or in part, normative in this sense. If that is all it is, it has much the same drawbacks of all normative scholarship—it is unlikely to change the behavior of anyone whose behavior matters very much. Nonetheless, unlikely is not the same as unable; to the extent that it does facilitate legal reform it may improve people's lives.⁴¹ Adherents of Critical

39. Additionally, outsiders and other legal scholars must take into account two other audiences. First, we must gain the approval of some set of the law students who control access to the journals. Second, at least for our early years, we must consider the views of the tenure committee. A number of my informants indicated that they had or would tailor some of their early scholarship to ensure tenure. Cf. Regina Austin, *Sapphire Bound*, 1989 WIS. L. REV. 539, 541 ("almost no one is interested in the legal problems of minority women, certainly not enough to reward scholarly investigations of them with tenure, promotions and such").

40. For example, most of the scholarship dealing with the question of equal treatment vs. special treatment and the proper legal response to the work-pregnancy dilemma, was, in whole or in part, a feminist variation of classical normative legal scholarship. See, e.g., Lucinda Finley, *Transcending Equality Theory: A Way Out of the Maternity and the Workplace Debate*, 86 COLUM. L. REV. 1118 (1986); Herma H. Kay, *Equality and Difference: The Case of Pregnancy*, 1 BERKELEY WOMEN'S L.J. 1 (1985); Christine A. Littleton, *Reconstructing Sexual Equality*, 75 CALIF. L. REV. 1279 (1987); Ann Scales, *The Emergence of Feminist Jurisprudence: An Essay*, 95 YALE L.J. 1373 (1986); Wendy Williams, *The Equality Crisis: Some Reflections on Culture, Courts, and Feminism*, 7 WOMEN'S RIGHTS L. REP. 175 (1982).

41. See Patricia Cain, *Feminist Legal Scholarship*, 11 (unpublished manuscript, on file with author) ("[w]hat to argue ('sameness' or difference') and when to argue it has become primarily a question of strategy"); Richard Delgado, *Norms and Normal Science: Toward a Critique of Normativity in Legal Thought*, 139 U. PA. L. REV. 933, 960-62 (1991) (noting potential value of normative scholarship but stressing its dangers in blinding us to the fundamentally non-normative nature of the bureaucratic state); Rhode, *supra* note 11, at 632-35 (discussing complex relationship between critical feminism and rights discourses).

The interrelationship among audience, purpose, and form is most striking if we consider the writings of certain feminist scholars who produced both briefs and other legal arguments directed to concrete immediate legal reform and also scholarship addressed to an academic community which raises doubts about that very enterprise. Ruth Colker, *Feminist Litigation: An Oxymoron?—A Study of the*

Race Theory have generally been critical of normative scholarship as reformist. They have in turn been criticized by other legal scholars of color for neglecting the concrete social and economic problems of minority communities.⁴²

Much outsider scholarship seeks to cross the boundaries that define our community by speaking to the dominant community, but in a different voice.⁴³ Perhaps the paradigmatic form of outsider scholarship is that which tells the stories of outsiders to those in power.⁴⁴ Through narratives and other non-traditional forms of legal writing, we seek to explode the stock stories that undergird the dominant culture and permit it to justify itself to itself.⁴⁵ The ideal reader for this form of scholarship is someone vaguely troubled by the oppression in the world yet committed to the abstract values of rule of law, separation of powers, etc. The hope is that such scholarship will lead to change by providing a shock of recognition that undermines the story of the absolute need for rule of law, thereby creating allies in our struggle for progressive legal change.⁴⁶

Briefs Filed in William L. Webster v. Reproductive Health Services, 13 HARV. WOMEN'S L.J. 137, 155 (1990) (noting different qualities of Martha Minow's work as scholar and as brief-writer); Elizabeth M. Schneider, *The Dialectic of Rights and Politics: Perspectives from the Women's Movement*, 61 N.Y.U. L. REV. 589 (1986).

42. Personal communication with Harold A. McDougall III, Associate Professor, Catholic University of America School of Law (Feb. 6, 1992).

43. Cf. Crenshaw, *supra* note 21 at 1358 ("The most significant aspect of Black oppression seems to be what is believed about Black Americans, not what Black Americans believe").

44. Implicit in such scholarship is a belief that readers' prior world-views are subject to change, at least at the margins, in light of what they read in our narratives. I believe that, though we do not write our own lives on blank slates, we are more than characters in some authorless epic. We are partially determined but partially able to choose the environment, including the stories, to which we are exposed. Cf. Steven L. Winter, *The Cognitive Dimension of the Agon Between Legal Power and Narrative Meaning*, 87 MICH. L. REV. 2225, 2245 (1989) ("our very ability to construct a world is already constrained by the cultural structures in which we are enmeshed").

45. See Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2412 (1989); Gerald P. Lopez, *Lay Lawyering*, 32 UCLA L. REV. 1 (1984) (describing lawyer's job of working against the background of the "stock stories" of opponents and decisionmakers). Cf. Lynne N. Henderson, *Legality and Empathy*, 85 MICH. L. REV. 1574, 1576 (1987) (describing empathy, created by such stories, as "a way of knowing that can explode received knowledge of legal problems and structures [and] reveal [] moral problems previously sublimated by pretensions to reductionist rationality. . .").

46. Other, non-outsider progressive scholars have also used vivid narratives of the lives of those upon whom the law operates to challenge conventional understandings. See, e.g., Richard Michael Fischl, *Self, Others, and Section 7: Mutualism and Protected Protest Activities Under the National Labor Relations Act*, 89 COLUM. L. REV. 789, 793-95 (1989). Outsiders, however, are more likely than white male progressives to engage in this form of scholarship for we are less at home than white males in the abstract and invisible voice of traditional scholarship. See Jerome McCristal Culp, Jr., *Autobiography and Legal Scholarship and Teaching: Finding the Me in the Legal Academy*, 77 VA. L. REV. 539, 542-43 (1991); Mary I. Coombs, *Non-Sexist Teaching Techniques in Substantive Law Courses*, 14 S. ILL. U. L.J. 507, 522 (1990). Cf. DEBORAH TANNEN, *YOU JUST DON'T UNDERSTAND: WOMEN AND MEN IN CONVERSATION* (1990) (describing gendered styles of conversation).

Such scholarship is fundamentally hopeful.⁴⁷ When it works, the reader is changed by knowing our stories.⁴⁸ The potential reach of such scholarship is limited, however. A reader whose belief system requires no empathy for those in whose interests we labor would be unmoved.⁴⁹ A person who believes that a three-week old fetus is a full human being will care little about the effect on women's lives of the denial of reproductive choice.⁵⁰ A person who believes in white supremacy will remain untroubled by the pain caused blacks by their material and symbolic exclusion from American life.⁵¹

The stories we tell members of the dominant community will obviously be different from the reader's stock stories.⁵² They must also, however, be sufficiently familiar to be comprehensible.⁵³ The reader must be drawn in by aspects which fit his experience, his stock stories, and then be drawn out to a new story.⁵⁴ To work, our story must appear sufficiently non-threatening, at first, to be understood—and to

47. Whether empirically justifiable or not, some degree of hope may be psychologically necessary to continued struggle. Consider the hopeful closing of Derrick Bell's *Civil Rights Chronicles*, despite the pessimistic tone and depressing data of the previous chapters. See Mary E. Becker, *Racism and Legal Doctrine*, 67 TEX. L. REV. 417, 427-28 (1988) (reviewing DERRICK BELL, *AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE* (1987)).

48. Henderson, *supra* note 45.

49. Toni M. Massaro, *Empathy, Legal Storytelling, and the Rule of Law: New Words, Old Wounds?*, 87 MICH. L. REV. 2099, 2118 (1989).

50. See KRISTIN LUKER, *ABORTION AND THE POLITICS OF MOTHERHOOD* 159-75 (1984) (describing world view of pro-life activists). Cf. Brief for Petitioners at 6-25, *Hodgson v. Minnesota*, 110 S. Ct. 400 (1989) (Nos. 88-1125 and 88-1309) (describing stories of minors seeking abortions).

51. Cf. DERRICK BELL, *AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE* (1987); Crenshaw, *supra* note 21; Lawrence, *supra* note 4 (describing the costs of racial oppression and exclusion).

52. See Cain, *supra* note 41, at 32 ("gendered misunderstandings" make it difficult for male scholars to comprehend narratives and theories of feminist legal scholarship).

53. In part, this means that successful narrative scholarship must attract the reader. Because we are seeking to shift the reader out of the prior structures through which he has comprehended the world, traditional analytic forms, which rely and build on these cognitive structures, are inapt. Form here does follow function.

While narrative scholarship is sometimes criticized for not being "reader-friendly," other forms of scholarship are far more off-putting to one not already immersed in the world of high legal scholarship. (Citations deleted to protect the guilty). See Abrams, *supra* note 26, at 1042-43.

54. Lopez, *supra* note 45 at 29 (the narrator "must tell a story enough like what he predicts is a compelling stock story for [the listener] to see one of his stock stories in the circumstance and, if necessary, substitute it for the stock story already in place."). Cf. Winter *supra* note 44 (discussing ways in which the disempowered can successfully use narrative by such techniques as placing a non-traditional protagonist in a stock story or turning the stock story on its head by shifting the choice of protagonist.).

The process of creating such functional narratives is far more than reportage. It is a deeply considered artistic creation, reflecting a careful analysis of both the situation to be narrated and the situation of the ideal reader. See generally, Henderson, *supra* note 45 at 1584-85. Cf. Abrams, *supra* note 26 at 1030-41 (describing role of narrative in creating normative meanings).

be read, for we have no power to force the reader to keep reading.⁵⁵ This need to seduce the reader may often be in conflict with our own understandings of the “true story” of the outsider affected by the law. A central challenge for outsider jurisprudence is learning to dance across that line between plausibility to the reader and truth to the subject.⁵⁶

If one objective of our scholarship is to reach sympathetic insiders within the legal community, we want to publish in those fora that this audience is most likely to read. In addition, since the forms of scholarship may seem unfamiliar and discomfoting, we want to maximize the chances that the reader will continue reading. Insofar as our ideal reader is law-connected, we should be writing in standard law journals, the more prestigious, the better. The editorial boards of the elite law reviews thus serve a crucial doorkeeping function for this form of outsider scholarship (as they do for all forms of legal scholarship). The development of niches within elite law reviews for non-traditional, less footnote-engorged formats—the comment or essay—may provide increased opportunities for outsider scholarship to reach the dominant legal community.⁵⁷

Our writings in law reviews, for law professors, can have other functions besides converting the convertible. They comprise conversation among feminist/critical race scholars—we write for each other. In carrying out the internal conversations of our scholarly subcommunities, we require honesty, courage, and openness. It is useful to have new ideas circulating; it is essential that those ideas be tested and critiqued.⁵⁸

Much of this internal conversation can take place in person, in phone conversations, or in the exchange of ideas in drafts and unpub-

55. Is a footnote necessary for the proposition that most of us are more likely to read stories than analytical treatises when we are reading for pleasure?

56. The parallel conflict between the role of the lawyer as translator/advocate and the empowerment of the client to communicate her own story is central to the emerging school of theoretics of practice. See, e.g., Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L.J. 2107, 2141-45; Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1 (1990); Cf. Lopez, *supra* note 45, at 36 n.77 (“‘the price of intelligibility’ [may] often underlie[] . . . the reluctance of Chicanos, and perhaps other cultural or oppressed groups, to tell and have told about them stories that the law will hear”).

57. Cf. Jordan H. Leibman & James P. White, *How the Student-Edited Law Journals Make Their Publication Decisions*, 39 J. LEGAL EDUC. 387, 396-97 (1989) (distinguishing standard law review and essay form). The continued emphasis on the traditional form (the “real” law review article) may reflect the lingering power of an older paradigm in the process of being replaced by a paradigm in which narrative, empirical work, postmodern theory and other new forms take central place, and traditional doctrinal work is marginalized). George L. Priest, *Triumphs or Failings of Modern Legal Scholarship and The Conditions of Its Production*, 63 U. COLO. L. REV. 725 (1992).

58. See *infra* Part III (regarding the importance of self-criticism within outsider scholarly communities).

lished papers. However, the act of preparing one's ideas for publication serves an important disciplinary function. As we write our narratives, conscious of structure and of audience, we must clarify in our own minds what we are seeking to accomplish in this particular work.⁵⁹ Ambiguities and contradictions that can be suppressed in a talk take on an unpleasant sharpness when reduced to print.⁶⁰

Publishing our internal dialogue in law reviews is also dangerous, however. The community as a whole may benefit from having ideas enter into the conversation at a relatively tentative stage and from sharp exchanges of view. If the work is published, however, it is also available to those who may use it against us. An individual scholar may be at risk if her articles seem tentative and unformed. We are all at risk if weaknesses in movement-identified work and disagreements among us can be used by our enemies to discount the scholarly legitimacy of the whole community.⁶¹ This problem of the unfriendly eavesdropper is not entirely avoidable as long as we are a scholarly community, not a cloister, and as long as we share institutions with other, often unfriendly, scholarly sub-communities. There are means to lessen the risks. We may, for example, carry out our internal dialogue in the specialty journals, whose readership is overwhelmingly favorable to our underlying agenda,⁶² though this may also exclude from the dialogue those who are not familiar with, or lack ready access to, these journals.⁶³ It is useful, even when we are engaging in self-

59. Professor Weisbrod describes narratives as, *inter alia*, a means "to locate ourselves, to clarify our own story, to test alternative realities in our minds." Carol Weisbrod, *Divorce Stories: Readings, Comments and Questions on Law and Narrative*, 1991 B.Y.U. L. REV. 143, 153.

60. Furthermore, published works are necessarily available to a wider audience, both sympathetic and skeptical. The author is forced to anticipate and respond to the likely challenges to her methods, her assumptions, and her conclusions by those in sister disciplines. Our work can be improved if we respond to the theoretical perspectives of other communities. Julius Getman, *The Internal Scholarly Jury*, 39 J. LEGAL EDUC. 337, 339 (1989). See, e.g., Mary E. Becker, *Barriers Facing Women in the Wage-Labor Market and the Need for Additional Remedies: A Reply to Fischel and Lazear*, 53 U. CHI. L. REV. 934 (1986).

It would be unwise, however, to let concerns over external critique burden every piece of outsider scholarship with an obligatory section defending the very premises of the community, such as the legitimacy of the narrative mode. Such questions may frequently be bracketed away; they ought not to be assumed out of existence. More particular points of intersection do require us to consider alternatives. Cf. Symposium, *Minority Critiques of the Critical Legal Studies Movement*, 22 HARV. C.R.-C.L. L. REV. 297 (1987) (responding to the critique of rights with a variety of arguments and stories, which suggest that the relationship between minority communities and rights-claims is more complex than CLS had recognized).

61. Professor Cain suggests that we counter the misunderstandings of our internal dialogue by writing separately to the dominant community in the form of "remedial feminist jurisprudence" designed to communicate our insights and theories to those who are strangers to it and lack experiential connection to its issues. Cain, *supra* note 41, at 45-47.

62. See, e.g., Colker, *supra* note 41.

63. The rise of Infotrac, of a law journal file on Lexis, and of other indexing devices may reduce

criticism, to preach at least to all those willing to come to church and not merely to the choir.

Writing and publishing our outsider scholarship serves another function: it is a means to develop and share, with each other and with our more empathetic white male colleagues, stories and ideas that we can use in our role as teachers. In carrying out our pedagogic tasks, we often discover that the materials at hand—casebooks, hornbooks, etc.—are overwhelmingly the product of traditional legal scholarship.⁶⁴ It is possible, though difficult, to provide transformative ideas to our students within the confines of such materials. As a community, we can support each other in providing educational materials more consonant with our views. We are beginning to write or contribute to teaching materials that view various doctrinal worlds through the eyes of their more oppressed subjects.⁶⁵ Many of us have developed stories, exercises, and parables to expand our students' classroom experiences. Sharing these can be an efficient way of making all of us better teachers.⁶⁶ Pat Williams' story of the polar bears,⁶⁷ for example, has been used as a teaching tool by a number of teachers in different courses; like any good story, it is capable of multiple meanings.⁶⁸

For some of what we do, the outsider community is our audience

both the advantages and disadvantages of publication in specialty journals, depending in part on the universality of the data base employed.

As is suggested by other participants in this symposium, the dialogue of legal scholarship may be increasingly controlled by the reader, rather than the author. See Priest, *supra* note 57; Jean Stefancic, *The Law Review Symposium Issue: Community of Meaning or Re-Inscription of Hierarchy?*, 63 U. COLO. L. REV. 651 (1992).

64. This is in part a reflection of the recent entry into the profession of any significant number of outsiders. Junior faculty rarely write casebooks or other student-oriented material. See Mary Kay Kane, *Some Thoughts on Scholarship for Beginning Teachers*, 37 J. LEGAL EDUC. 14, 17 (1987).

65. Some recent casebooks have been more open to progressive teaching. See, e.g., JOHN KAPLAN & ROBERT WEISBERG, *CRIMINAL LAW: CASES AND MATERIALS* (2d ed. 1991); ROBERT M. COVER ET AL., *PROCEDURE* (1988). A casebook on Feminist Jurisprudence, edited by Professors Mary Becker, Cynthia Bowman, and Morrison Torrey, is in progress and Katherine Bartlett and Rosanne Kennedy recently published *FEMINIST LEGAL THEORY: READINGS IN LAW AND GENDER* (1991).

66. See, e.g., Patricia A. Cain, *Feminist Jurisprudence: Grounding The Theories*, 4 BERKELEY WOMEN'S L.J. 191, 208-10 (1989); Culp, *supra* note 46, at 552-54. Such stories can be found in a variety of outsider scholarship. Marianne Wesson, *Mysteries of Violence and Self-Defense: Myths for Men, Cautionary Tales for Women*, 1 TEX. J. WOMEN & L. 1 (1992); Robert Williams, Jr., *Gendered Checks and Balances: Understanding the Legacy of White Patriarchy in an American Indian Cultural Context*, 24 GA. L. REV. 1019 (1990); see also Jeremy Paul, *A Bedtime Story*, 74 VA. L. REV. 915 (1988); Joseph William Singer, *Persuasion*, 87 MICH. L. REV. 2442 (1989) (pedagogically useful stories by progressive white males).

67. Patricia A. Williams, *On Being the Object of Property*, 14 SIGNS 5 (1988).

68. Nonetheless, I, at least, would not have seen the pedagogic possibilities in the underlying facts absent Professor Williams's narrative.

as well as our subject.⁶⁹ Narratives and analyses that show the discontinuities between the experiences of outsiders and the law's rules and assumptions can empower the community. Legal scholars can serve two roles in this process. First, our boundary-crossing positions give us the time and the distance to examine the various ways in which law and legal institutions misconceive the problems of the community. In contrast to community members caught up in the tangles of the law and necessarily focused on their own particular set of facts, we may more readily identify patterns and persistences in the responses of legal doctrines and institutions. Seeing and naming these problems can then provide tools for addressing particular disputes and for finding a better role for law. For example, academics and other professionals helped to develop a language with which to address the problems of sexual harassment, of domestic battering, and of hate speech as cognizably legal and political.⁷⁰ Victims/survivors are not mere passive consumers of concepts provided by the professoriat; part of our very methodology is recognition of the role of consciousness-raising in naming these experiences and bringing them into a public sphere.⁷¹ Nonetheless, our situation at the boundary between the outsider community and the law community provides us tools and insights less readily available to minorities and women without our advantages.

We can also speak to the outsider community as messengers from the world of law. A welfare mother knows that the system isn't working for her. What may be harder for her to comprehend is the underlying institutional and ideological structures of the legal system that allow it so readily to ignore her needs. Outsider legal scholars can clarify the workings of the system and the world-view that undergirds it. By bringing these analyses back to the outsider community, we can both help them understand why the system does not work for them and remind them that the law's preconceptions are not objectively true. This can reaffirm our communities in their own self-

69. See Austin, *supra* note 39, at 542-46; Harlon Dalton, *The Clouded Prism*, 12 HARV. C.R.-C.L. L. REV. 435, 442 (1987).

70. Perhaps the classic example of such work for and with the community is that of CATHARINE A. MACKINNON, *SEXUAL HARASSMENT OF WORKING WOMEN: A CASE OF SEX DISCRIMINATION* (1979). See also the work of Elizabeth Schneider and Martha Mahoney regarding the issues of battered women and of Mari Matsuda and Charles Lawrence on campus hate speech. Martha R. Mahoney, *Legal Images of Battered Women*, 90 MICH. L. REV. 1 (1991); Schneider, *supra* note 41; Mari Matsuda, *Public Response to Racist Speech: Considering the Victim's Story*, 87 MICH. L. REV. 2320 (1989); Charles R. Lawrence III, *If He Hollers Let Him Go: Regulating Racist Speech on Campus*, 1990 DUKE L.J. 431. These authors have also taken their messages to broader audiences than the readers of elite law reviews through public talks, litigation assistance, etc.

71. See, e.g., Bartlett, *supra* note 8, at 863-67; Cain, *supra* note 66, at 192; Catharine A. MacKinnon, *Feminism, Marxism, Method and the State: An Agenda for Theory*, 7 SIGNS 515 (1982).

understandings.⁷²

We also can use our scholarship directly and indirectly on behalf of the outsider community by writing for law students and lawyers who are part of and/or who will work on behalf of outsider communities. Because these sisters and brothers so often feel marginalized, it is important for them to see their concerns addressed in legal journals and in recognizably scholarly forms.⁷³ Specialty journals may provide a forum for us to communicate with law students and legal workers who share our outsider identities and concerns.

If the outsider community is one of the audiences for our work, our authority derives from our intersectionality, from our place as law professors.⁷⁴ We must be cautious not to demand or accept any greater authority.⁷⁵ While we are *of* the community, our double-voicedness will make problematic any claim to represent the community. We can, perhaps, speak for the community in other fora because we have an opportunity to be heard that others do not; that authority does not apply to intra-community speech.

If we wish to speak to the outsider community or to legal workers who represent it, we must, again, take into account the fora in which we speak. Some of this communication occurs in forms quite distinct from traditional scholarship such as litigation, community organizing, mentoring our students and younger colleagues, and speeches to community groups.

These forms of presentation are an important part of our work as outsider scholars, yet rarely count as the "scholarship" by which we are judged within academia. Much of the work on behalf of students and community groups is ephemeral. Occasionally, if we are lucky or clever, we can transform it into a format that will be published in journals acknowledged by the profession and thus add to our scholarly output.⁷⁶ This transformation, however, may require a more formal, abstracted, footnoted, erudite style. If we adopt that style in the first instance, we limit our usefulness in communicating with our less

72. Richard Delgado, *The Ethereal Scholar: Does Critical Legal Studies Have What Minorities Want?*, 22 HARV. C.R.-C.L. L. REV. 301, 311 (1987); Matsuda, *supra* note 13; Robert A. Williams, Jr., *Documents of Barbarism: The Contemporary Legacy of European Racism and Colonialism in the Narrative Traditions of Federal Indian Law*, 31 ARIZ. L. REV. 237 (1989).

73. Austin, *supra* note 39, at 544.

74. WILLIAMS, *supra* note 3, at 6 (describing herself as a Black female commercial law professor and reflecting on her own multiple consciousnesses).

75. Cf. Trina Grillo & Stephanie M. Wildman, *Obscuring the Importance of Race: The Implications of Making Comparisons Between Racism and Sexism (Or Other -isms)*, 1991 DUKE L.J. 397 (raising problem of authority and the appropriation of others' experiences).

76. See Cain, *supra* note 66 (noting that ideas for an upcoming article "were tested at the Women and the Law Conference").

scholarly sisters and brothers.⁷⁷ Sometimes the ideas will translate; we need to be cautious that they are not designed, in the first instance, for maximum translatability.

Specialty journals are not an unmixed blessing for practitioners of outsider scholarship. I have noted the various roles that they may play in effectively reaching certain audiences. These journals are also unusually open to experimental, non-traditional forms of discourse, such as poems and diary entries; these are sometimes peculiarly effective in breaking through resistances to argumentative forms of persuasion. In our own individual quests for academic survival and success, however, publication in such journals may impose a cost. My correspondents often appeared to feel somewhat discomfited by this dilemma.⁷⁸ For purposes of academic seriousness, they often suggested, it was best to publish all or much of one's work, at least before tenure, in elite journals. Specialty journals, it was suggested, are appropriate later, or for less weighty articles.⁷⁹ As is so often the case, the present recreates itself in the future: insofar as we choose not to place our most significant work in these journals, they are likely to remain weak placements in the eyes of tenure committees and other observers.

We must consider the particular audience we seek to reach each time we write. We must also take into account that we may wish a particular publication to reach several, overlapping audiences. Further, we have only partial control over the audiences we do reach; eavesdropping is always possible. A polemical or off-hand article in an obscure placement may come to the unwanted attention of our critics;⁸⁰ even elite placements do not guarantee consideration by the dominant scholarly community.⁸¹ Recognizing that our control over audience is imperfect, however, only makes it more important that we

77. Cf. Judith S. Kaye, *supra* note 36 (progressive judge bemoaning overly esoteric style of law review writing).

78. They dealt with the discomfort in a variety of ways. Some were committed to placing at least some of their writings in specialty journals to help legitimize the journal or show solidarity. Others chose the most prestigious placement or avoided conscious choices by responding to solicitations. Some selected specialty journals for more political or "deviant" articles, while placing the big "tenure piece" in the most prestigious journal possible. Others tried to match projected audience and placement. Specialized placements, though they risked limiting the audience, allowed one author to "write in a style that is accessible to those with concern for progressive issues."

79. While placement in specialty journals often means narrower circulation, this can be counteracted, as some of my interviewees discovered, by the liberal use of reprints. These are sent out to a wide range of compatible outsider scholars, to potentially interested practitioners and to traditional scholars with an interest in the doctrinal area being examined from a feminist or race-critical perspective. As we all know, however, unsolicited reprints may suffer the fate of "received but not read."

80. See Taunya Lovell Banks, *Toilets as a Feminist Issue: A True Story*, 6 BERKELEY WOMEN'S L.J. 263 (1990-91).

81. Cf. Delgado, *Imperial Scholar Revisited*, *supra* note 25 (describing limited recognition and use of feminist and critical race scholarship, even in elite journals, by many white male authors).

carefully consider questions of whom we seek to reach as we write and publish.

III. CRITERIA OF JUDGMENT: THE NEXT STEP

All scholarly communities, including feminism and Critical Race Theory, need to develop distinct criteria of judgment. Such criteria are an inherent part of the definition of a community; they are a means by which we understand our goals and improve our work. They are also politically valuable to outsider scholars to insulate our work from the imposition of inappropriate criteria developed by and for other scholarly communities, such as traditional legal scholarship. Given these intellectual and political benefits, the task should be undertaken, despite the danger some outsider scholars have perceived in the very concept of criteria of judgment.

Any scholarly community necessarily has, as part of its recognition of itself as a distinctive community, a set of embedded understandings of what the community's purposes are.⁸² Implicit in this is a means of evaluating the work produced according to its coherence with those goals and self-understandings. Frequently, the criteria for what counts as an example of that practice, and as a good example of it, are taken-for-granted from inside the practice.⁸³ One of the effects of the fracturing of the world of legal scholarship into different subcommunities has been the recognition that the taken-for-granted criteria of the dominant subcommunity are neither universal nor "natural."⁸⁴ As distinctive subcommunities develop, the criteria for fair evaluation will become similarly fragmented.

Criteria of excellence operate, for any scholarly community, in two distinct modes. First, they serve as part of the internal definition of the community. They guide us aspirationally in seeking to make our own work the best example of what we understand our scholarship to be. They serve a similar function when we review the drafts of our colleagues.

82. Cf. ALASDAIR MACINTYRE, *AFTER VIRTUE* 187 (2d. ed. 1984) (defining a 'practice' as a "coherent and complex form of socially established cooperative human activity through which goods internal to that form of activity are realized in the course of trying to achieve those standards of excellence which are appropriate to, and partially definitive of, that form of activity"). Rubin, *supra* note 7, at 1881, applies a similar analysis to traditional legal scholarship, asserting "the scholarship should become aware of its own purposes, and use them as a standard for evaluation." See also Robert Post, *Legal Scholarship and the Practice of Law*, 63 U. COLO. L. REV. 615 (1992).

83. Cf. H.L.A. HART, *THE CONCEPT OF LAW* 98-99 (1961) (the rule of recognition is not stated within a legal system; rather its existence is demonstrated by the way in which it is used by those inside the system).

84. See Aviam Soifer, *MuSings*, 37 J. LEGAL EDUC. 20 (1987); Pierre Schlag, *Cannibal Moves: An Essay on the Metamorphoses of the Legal Distinction*, 40 STAN. L. REV. 929, 937-39 (1988).

Criteria also, however, serve as a basis for the distribution of external rewards and punishments.⁸⁵ The judgments based on these criteria are pervasive in the lives of those within legal academia. People use them to decide which scholarly works are outstanding, which are good, and which are mediocre. We also transfer those criteria to decisions affecting the authors of those works. In particular, they are used to decide questions of lateral hiring and, more crucially, tenure.⁸⁶

These evaluative decisions (for tenure and hiring) are made by the faculty of a particular institution, a group which almost certainly includes members of distinct scholarly subcommunities. They bring to their task a range of criteria. One substantial risk is that people will apply the criteria appropriate for the work they do to the distinctive work of a different tradition. There is also a secondary risk—that we will misuse the aspirational criteria for the extraordinary, which we apply to our own work and to other's works in progress, in making the "good enough" judgment for tenure and hiring.

The distinction made here between criteria of aspiration and evaluation is concededly somewhat overdrawn. First, so long as evaluations are made by a group different than that to whom we look for aspirational criteria, we may take the former as well as the latter into account in deciding what to write.⁸⁷ Second, we also evaluate for the highest accolades: who gets to be famous, invited to give named lectureships, made the subject of symposia and of assigned reading for

85. MACINTYRE, *supra* note 82, suggests that internal and external rewards are given on different bases, e.g., external rewards can be obtained by cheating or sharp practices. Without minimizing the strategic self-promotion and use of cliques in legal academia, I would suggest that disentangling the criteria for internal and external rewards is nearly impossible in a community where there is no scale of success not quite directly dependent on the judgments of others within the community. A great legal scholar simply is one whom the community defines as great; a great article one that a substantial segment of the community treats as great. Stephen Carter's attempt to define an objective standard of quality, so that quality and reward can be systematically distinguished, founders on his assumption that he can derive a standard of judgment that is true, even though not generally held and applied by those within the practice. Carter, *supra* note 8, at 2072.

86. At least who gets tenure at elite, academic law schools and those schools with pretensions of becoming elite. There is a relatively distinct world of law schools that consider themselves essentially institutions for training lawyers and which judge scholarship by its usefulness to the bar. See Robert Stevens, *American Legal Scholarship: Structural Constraints and Intellectual Conceptualism*, 33 J. LEGAL EDUC. 442, 446 (1983); Rubin, *supra*, note 7, at 1848-49. Such schools rarely engage in searching reviews of publication records or face the questions raised by competing paradigms of legal scholarship.

87. As members of the larger community of legal scholars, outsider scholars will likely accept in large part these general criteria. Even if we feel ourselves only partly within that community, and thus only partly intellectually bound to its criteria, we recognize their power over us. A number of my informants indicated that they felt the need to produce works that their non-outsider colleagues would recognize as legal scholarship to obtain tenure. In some cases, this concern led them to design a scholarly agenda, in part, to include works more closely fitting those criteria than they would otherwise have done.

thousands of future law students? While such judgments will be made, they are not a useful focus for our discourse about criteria of judgment. The extraordinary, the path-breaking, is largely recognizable only in retrospect.⁸⁸ Intra-community consideration of standards best focuses on those questions that affect our lives.

Like other scholarly communities, practitioners of outsider scholarship by definition have criteria which they apply both aspirationally and, appropriately modified, evaluatively to the work of their community. These criteria are necessarily tentative and flexible, for the community is a young and growing one, still actively engaged in the process of self-definition. Furthermore, one of the defining beliefs of the outsider community is a mistrust of the application of evaluative criteria to those who are different⁸⁹ and a rejection of claims of universal, fixed standards. Nonetheless, we do have and use standards, for this is part of the meaning of being scholars.⁹⁰ The processes of arduous rewriting, of commenting on each other's drafts, and of fierce arguments about our movement and its place in legal academia would be incomprehensible did they not embody some vision of what we seek to accomplish with our scholarship and how we can best do so.

When I propose, then, that feminists and critical race scholars need to develop, articulate, and examine our standards, I make only a very modest point. We necessarily have such standards; we necessarily apply them both aspirationally and evaluatively. We can do both tasks better if we recognize that we are engaged in such applications and begin a conscious dialogue about the standards best suited for our community's work.

The issue of standards for evaluative purposes must be considered in light of the fact that outsider scholars will be judged by a group in which we are almost surely a small minority: the (tenured) faculty at any particular institution. For a long period (and still at many institutions), law faculties were dominated by those who practiced tradi-

88. "We would not know a 'breakthrough' if we tripped over it." Soifer, *supra* note 84, at 23. Cf. MACINTYRE, *supra* note 82, at 93-96 (explaining that the radically new cannot be predicted, for the prediction would be the invention). In law, as in literature, we are rightly suspicious of "instant classics." Cf. Daniel A. Farber, *The Case Against Brilliance*, 70 MINN. L. REV. 917 (1986) (suggesting that the apparently brilliant legal theory is likely to be less valuable to the community than is "normal science").

89. See generally MARTHA MINOW, *MAKING ALL THE DIFFERENCE* (1990).

90. Austin, *supra* note 39, at 544 (our scholarship "must be analytical and rigorously researched and reasoned . . . to repay the debt we owe our grandmothers, mothers and sisters whose invisibility and marginality we aim to ameliorate"); Roy L. Brooks, *Civil Rights Scholarship: A Proposed Agenda for the Twenty-First Century*, 20 U.S.F. L. REV. 397, 414-15 (1986); Rennard Strickland, *Scholarship in the Academic Circus or the Balancing Act at the Minority Side Show*, 20 U.S.F. L. REV. 491 (1986) ("serious scholarship is the duty, the privilege, and the obligation of all who choose to live in the academic community").

tional legal scholarship, though the current academic landscape at the most elite schools probably consists of many, concurrent schools, none of which is dominant.⁹¹ Nonetheless, the world of traditional scholarship is still politically important, and its criteria the standard against which other scholars must struggle at many institutions. In this essay, then, I continue to use traditional scholarship as the model against which I place outsider scholarship. We must recognize, however, that the problem of inadvertent misjudgment will exist so long as there are different schools of thought and that the problem of the political misuse of inappropriate criteria could occur if any community—traditional legal scholarship, high theory jurisprudence, Law and Economics, even outsider scholarship itself—sought to achieve and maintain dominance.

To the extent that traditional legal scholarship is dominant, its evaluative criteria are crucial. Given the long history of the genre, one might expect those criteria to be quite highly developed and clearly articulated. One would be disappointed. They are occasionally the subject of vague discussions in the faculty lounge. They inform arguments in particular tenure or appointment battles (though assertions at such times are often suspiciously strategic). Traditional legal scholars rarely engage, individually or collectively, in a more general and thorough analysis of their standards.⁹²

It is thus difficult to describe or define concretely the criteria of traditional legal scholarship. With trepidation, I suggest the following: Legal scholarship, like law, should be coherent, well-reasoned, articulate, and precise. It should study law—i.e., cases, doctrines, legal institutions, and legal theories. The work should be “scholarly”: analytic, tightly reasoned, elegantly anticipating and effectively refuting counter-arguments.⁹³ The tone should be dispassionate, even if the

91. Cf. THOMAS KUHN, *THE STRUCTURE OF SCIENTIFIC REVOLUTIONS* (2d ed. 1970). In law, unlike the natural sciences, paradigm-shifts may lead to various subcommunities, responding to distinct questions with distinct methodologies simultaneously. There seems to be less sense that the old is displaced by the new; rather it remains as an alternative or, perhaps, slowly dies out as it fails to draw new adherents among those entering the profession.

Professor Priest has suggested both that law is moving toward such a situation and that this lack of coherence is a natural and desirable concomitant of the increasing integration with other academic disciplines. Priest, *supra* note 57, at 728-30.

92. There is a significant literature about legal scholarship, generally bemoaning the paucity of its quantity and/or quality and proposing explanations or solutions. See, e.g., *Symposium on Legal Scholarship: Its Nature and Purposes*, 90 *YALE L.J.* 970 (1981); *Symposium: American Legal Scholarship: Directions and Dilemmas*, 33 *J. LEGAL EDUC.* 424 (1983). The most prominent articles focusing specifically on the question of criteria for judging legal scholarship are Philip C. Kissam, *The Evaluation of Legal Scholarship*, 63 *WASH. L. REV.* 221 (1988); Rubin, *supra* note 7; G. Edward White, *The Text, Interpretation, and Critical Standards*, 60 *TEX. L. REV.* 569 (1982); Carter, *supra* note 8.

93. See Kissam, *supra* note 92 (setting out similar list of criteria).

author has a normative purpose.⁹⁴ The work should be written in a way that would appeal to decisionmakers.⁹⁵

The criteria that the traditional legal scholarly community has adopted are only implicit and ill-defined, and thus may be problematic even when applied to works and authors within that community.⁹⁶ Judgments of scholarly merit, so crucial to people's professional lives, should be capable of greater specification than some variant of Justice Stewart's "I know it when I see it."⁹⁷ Because the criteria are under-articulated, the test may in effect become one of familiarity. If we cannot say exactly what good scholarship is, we may use, as an implicit paradigm, something we wrote, or tried to write, or wished we could write. Work that is different than anything we can imagine wanting to write will not qualify.⁹⁸

The work of feminist and critical race scholars, distinct from the "normal science" of traditional legal scholars, will often fail to meet the existing, under-articulated standards, especially insofar as they are a test of familiarity.⁹⁹ This scholarship has different goals, different forms, different audiences than traditional legal scholarship.

When those of us within or sympathetic to outsider scholarship seek to challenge traditionalists' claims that this scholarship is inade-

94. Cf. Johnson, *supra* note 8, at 149 (criticizing Randall Kennedy's rejection of difference in voice as relevant to merit).

95. See Rubin, *supra*, note 7, at 1850-51 ("the validity of the prescriptions in a work of legal scholarship can be measured . . . [by] what the group of scholars think the decision-maker should do).

One of the most heated battles between scholarly schools today seems to revolve around whether we should attempt such normative scholarship or speak directly only to others within the scholarly community. Compare Schlag, *supra* note 36, with Francis A. Allen, *Legal Scholarship: Present Status and Future Prospects*, 33 J. LEGAL EDUC. 403, 405 (1983) (in some cases "the scholarly enterprise appears to be viewed as little more than a sophisticated game reserved for those with sufficient intellect and education to play it — a kind of fiddling while Rome burns"). Martha Fineman criticizes the latter approach as discouraging the production of those forms of scholarship that are of most value to women and other subordinated groups. Fineman, *supra* note 12, at 29.

96. A vibrant discussion of criteria of evaluation within traditional legal scholarship would seem desirable. It might create enough agreement to allow genuine engagement in discussion over the application of those criteria to particular cases. Currently, even when the work under discussion fits fully within the traditional paradigm, claims and counterclaims as to its worth frequently seem to embody declamations rather than conversation.

97. *Jacobellis v. State of Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring). Professor MacKinnon points out that Justice Stewart sees with a particular perspective and then makes this perspective "law" by *his* having seen that way. MACKINNON, *supra* note 11, at 147. Similarly, the criteria of merit, were "laid down during times of relative cultural insensitivity" and are thus likely to have discriminatory effects when applied to newer forms of scholarship. Delgado, *supra* note 13, at 101.

98. I do not suggest that all scholars, or all traditional legal scholars, are so lacking in empathy and intellectual openness; it is sufficient for my point that some are.

99. See, e.g., Delgado, *supra* note 13; Robin D. Barnes, *supra* note 38. Cf. Sharon Rush, *Understanding Diversity*, 42 U. FLA. L. REV. 1, 14 (1990) (suggesting that "collegiality" as an implicit criteria for hiring disadvantages outsiders).

quate, we often meet resistance. This resistance, I suspect, is partially rooted in discomfort over the vagueness of the criteria they apply; academics do not like to acknowledge that they are exercising arbitrary power.

Concern by outsider scholars about the misapplication of criteria to their detriment have been reinforced by recent events.¹⁰⁰ Feminists have lost tenure battles because their scholarship was considered insufficient.¹⁰¹ Whether or not these decisions were a result of illegitimate politics, that perception has made other feminist scholars wary.¹⁰²

Critical race scholars have been even more agitated over the issue of the misapplication of standards to exclude them from the academy. Randall Kennedy's critique of the works of Derrick Bell, Mari Matsuda and Richard Delgado¹⁰³ engendered a tremendous outpouring of responses by minority scholars.¹⁰⁴ The debate placed the question of outsider scholarship at the center of many scholars' agendas, but it did so in a fashion that put the very legitimacy of such works at issue.¹⁰⁵

The misapplication of inappropriate, vague criteria to the work of outsider scholars creates problems for us even if it is not the result of any conscious discrimination.¹⁰⁶ One response is to attack the validity of existing standards. This may be reasonably successful in the con-

100. Outsider scholars face a variety of special problems in regard to tenure apart from the application of inapt standards for judging our scholarship. Most women and scholars of color take on a disproportionate burden of committee work and student counseling. Female professionals frequently face the double burden of family responsibilities. Cf. Kathryn Abrams, *Hiring Women*, 14 S. ILL. U. L. REV. 487 (1990). We also carry a psychic cost of constantly wondering whether we have been subject to special hurdles and scrutiny or if, in this instance, we are simply being paranoid. See Becker, *supra* note 47, at 421.

Furthermore, our scholarship, frequently dependent on such forms of "research" as consciousness-raising, is inherently time-consuming. See Cain, *supra* note 41. Similar difficulties face those who focus their research on the often-neglected lives of oppressed minorities. See Austin, *supra*, note 39.

101. Rush, *supra* note 99, at 14-16 (discussing tenure battles of Professors Drucilla Cornell, Clare Dalton, and Lucinda Finley). Cf. Soifer, *supra* note 84, at 24 (noting that non-traditional writing carries risks, given past tenure denials to "scholars . . . whose writing did not fit comfortably within established patterns"); Abrams, *supra* note 26, at 977 (mainstream scholars are casually dismissive of narrative scholarship in the context of, e.g., hiring issues).

102. Several of my informants acknowledged fears or warnings about the effects of writing outsider scholarship.

103. Kennedy, *supra* note 27.

104. See, e.g., Colloquy: *Responses to Randall Kennedy's Racial Critique of Legal Academia*, 103 HARV. L. REV. 1844 (1990); Johnson, *supra* note 8.

105. Standards of scholarship internal to outsider scholarship would entail a positive assessment of the works of Bell, Matsuda, and Delgado, given their centrality to the enterprise. Part of the task of the community is to articulate those standards in a way that clarifies them and distinguishes them from the allegedly universal criteria Kennedy seeks to enforce.

106. In a flip moment, I suggested that we should analogize this to the rule in *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971), that a practice that has a discriminatory effect on minorities or women is impermissible unless proven reliably to measure some legitimate underlying quality.

text of entry-level hiring decisions.¹⁰⁷ We are unlikely, however, to defeat the application of inapt criteria to existing works with a simple, though correct, claim that these standards cannot fairly be employed. This seems to be a case for the adage, "You can't beat something with nothing."

If traditional legal scholars and members of other communities recognize outsider scholarship as a legitimate form of scholarship, with its own criteria, they are more likely to apply those criteria when called upon to make evaluative judgments of us and our work. I do not believe the legitimacy of outsider scholarship as one of the valid contemporary forms of legal scholarship can seriously be disputed.¹⁰⁸ Furthermore, the more thoughtful traditional scholars have acknowledged that standards are developed in and through the relevant communities, rather than being referable to any external, objective criteria.¹⁰⁹

Members of other scholarly communities can ensure that their judgments of outsider scholarship are made according to criteria appropriate to it in one of two ways. Some may sufficiently understand those criteria, and be capable to apply them directly.¹¹⁰ Others may recognize that their unfamiliarity with, e.g., narrative scholarship, make it impossible for them to evaluate it directly. In such a situation, they could turn to those they recognize as experts in the genre for their assessment.¹¹¹ Outsider scholarship will be more fairly evaluated if others use one of these approaches. They will do so, however, only insofar as they recognize that the field has criteria and that the experts are applying them to distinguish evaluatively among works of outsider scholarship when such judgments are called for.¹¹²

107. Cf. Duncan Kennedy, *A Cultural Pluralist Case for Affirmative Action in Legal Academia*, 1990 DUKE L.J. 705 (arguing that the operation of "colorblind meritocratic fundamentalism" in hiring is mistaken since experience shows that the standards exclude potential scholars of color and do not lead to wise hiring decisions in any event).

108. See notes 5-6 and accompanying text.

109. See, e.g., Rubin, *supra* note 7; Kissam, *supra* note 92.

110. Those whose own writing falls within the traditional paradigm (or other non-outsider genres) are not precluded from judging outsider scholarship. However, direct participation in the application of criteria "requires the reader to understand a particular genre before criticizing." Matsuda, *supra* note 25, at 11.

Since the different genres are only partially distinct, and particular works of recognizably outsider scholarship may vary in the extent to which they defy the conventions of traditional scholarship, issues of capacity to judge an outsider work are necessarily work-specific.

111. For example, I would feel comfortable evaluating many works of Law and Economics scholarship, accepting for purposes of doing so underlying assumptions of the field that I would otherwise fiercely dispute. Some works in the field, however, presume and build upon a body of quite technical economic or mathematical concepts. When required to evaluate such an article or its author, I would rely heavily on the opinions of those whom I considered leading scholars within that genre.

112. Imagine, for example, that my school is considering a lateral hire. I would prefer that the

The standards we develop for judging outsider scholarship will be partially similar but partially distinct from those appropriate to traditional and other schools of scholarship, just as the schools themselves are only partially distinct.¹¹³ Outsider legal scholarship is sufficiently distinct in its goals, its audiences, and its paradigmatic forms that criteria of judgment appropriate to it will be different than those of, say, traditional scholarship. It is also sufficiently within legal scholarship that some of those criteria will be the same or variations on common themes that are constitutive of legal scholarship itself.

Those standards will have an aspirational form, applied most rigorously to our own scholarship and, in a more gentle way, to press our colleagues—in conferences, in conversation, in comments on drafts—to improve their works according to the community standards of excellence as we understand them. We also use our criteria evaluatively for tenure or for lateral hiring decisions. In these contexts, we apply substantively similar criteria, but with an intensity reflecting the level of excellence we deem necessary for these decisions, rather than the never fully satisfied striving that is reflected in standards as aspiration.

The question remains of what those aspirational and evaluative criteria should be. To some extent the appropriate criteria would track those applied to traditional legal scholarship. We could all agree that scholarship is better to the extent that it is well-written, factually accurate, and comprehensible to the desired audience, that it exhibits a knowledge of the relevant literature, and says something new about an interesting subject.¹¹⁴ We could all agree that a more ambitious arti-

person hired be a feminist, for reasons quite apart from merit. In considering a particular feminist candidate, however, I would also apply evaluative criteria to her work and would not advocate someone who seemed to have "good politics" but wrote third-rate feminist scholarship. A false claim that there is no such thing as third-rate feminist scholarship would only lose me the credibility that allows my colleagues to accept my evaluation of much feminist scholarship as first-rate.

113. As George Priest perceptively notes in his commentary on this essay, legal scholarship today consists of many overlapping communities. *See* Priest, *supra* note 57, at 730. Each, then, faces the issue of developing appropriately distinctive criteria. Much of what I say here may then have broader applications. I limit my attention to outsider scholarship because that is the community within which I locate myself and therefore, on my own analysis, the one as to which my thoughts about appropriate criteria for judgment are legitimately part of the discourse out of which those criteria are developed. Kissam, *supra* note 92, is thus correct that traditional criteria are unsuitable for the broad range of scholarship currently being produced. What is needed is the specification of criteria relevant to particular disciplines within the broader practice of legal scholarship, rather than rewriting a universal set of criteria.

114. *See* Kissam, *supra* note 92, at 228. Carter, *supra* note 8, makes a strong form of these claims, arguing that scholarship is all to be tested by whether it both shows a knowledge of the relevant literature and asserts a new argument that is "not obvious in light of past work." *Id.* at 2082. Such a standard, assuming we knew enough to apply it and that we could distinguish the new and valuable from the merely eccentric, might provide a criteria for the superb. It would do little to help us differentiate the mediocre from the competent and often valuable scholarship that makes small moves within

cle, equally well-executed, deserves greater accolades. These criteria, however, are uncontroversial only because they say so little. No one admires badly-written material or works that, through ignorance or stupidity, simply repeat what has already been stated or shown to be invalid. Furthermore, there is no objective means, external to the particular scholarly community, of defining the relevant audience or the relevant literature. Nor is there a neutral meta-criterion for determining the relative value, above some bare minimum, of clarity versus originality versus significance of topic.¹¹⁵ Both for evaluation and for aspiration, the criteria to be applied to the works of a particular scholarly community must be specified in light of the goals and methodologies of that community.

It would be presumptuous, as well as foolhardy, to propose here a fully developed set of criteria for judging outsider scholarship.¹¹⁶ Standards must grow organically from the paradigms that the community is in the process of constructing.¹¹⁷ The community and the standards by which it judges its work develop together. Indeed, one important reason for race-conscious hiring is the need to create a community large enough to create and nurture a new scholarly paradigm.¹¹⁸

existing paradigms. Perhaps Carter and his colleagues at Yale can use such a standard in their tenure decisions; most of us could not do so with a straight face.

115. Cf. Abrams, *supra* note 26, at 1041 (describing the multiple criteria for assessing narrative scholarship).

116. As noted earlier, *see supra* note 8, the criteria are to be applied to particular writings, not to persons who may be double-voiced and write in both outsider and traditional modes. Each article should be judged by the standards of the discourse in which it participates. Johnson, *supra* note 8, at 154.

A significant portion of outsider-produced scholarship is currently a kind of meta-scholarship: reasoned, analytic discussions of the new forms of scholarship and attempts to persuade other scholars of the value of this enterprise. *See, e.g.*, Abrams, *supra* note 26; Weisbrod, *supra* note 59; Colloquy, *supra* note 104. These articles themselves are predominantly written within the paradigms of traditional scholarship and thus are to be judged by its standards.

Outsiders who are scholars, when they write traditional scholarship, remain subject to the risk that some evaluations will, in practice, be applied in a way that is directly discriminatory, i.e., favoring not just traditional scholarship but traditional, white male scholars. The fear that this is the case is not entirely unreasonable, and it is corrosive. This risk of unconscious racism, which exists apart from questions of evaluating different schools of scholarship, is beyond the scope of this article but must be considered as well when evaluative decisions are being made.

117. The need for and possibility of new paradigms has been an underlying theme of much of the more self-conscious feminist and critical race scholarship. *See, e.g.*, Bartlett, *supra* note 8; Jerome McCristal Culp, Jr., *Firing Legal Canons and Shooting Blanks: Finding a Neutral Way in the Law*, 35 ST. LOUIS U. PUBLIC L. REV. 185 (1991); MACKINNON, *supra* note 11; WILLIAMS, *supra* note 3.

118. *See* Matsuda, *supra* note 25, at 11 ("Intellectual criticism directed against vulnerable, isolated, untenured, and disempowered scholars, however, carries different political implications than criticism of outsider scholars surrounded by a critical mass of other empowered outsiders").

Outsiders who are legal scholars do not necessarily (or always) write within the developing paradigm of outsider scholarship. *See* Johnson, *supra* note 8. A more controversial issue is whether white

The conversations within the community serve as a primary means for developing such standards. In particular, we define ourselves and develop our internal standards of excellence in the conversations and criticisms that occur at our special conferences. Feminist and critical race scholars have created a number of such structured fora for consciousness-raising, encouragement of junior scholars, and/or lively argument, such as the Conference on Critical Race Theory, the Feminist Legal Theory Workshop, the North East Corridor Black Women Law Teachers Collective, and the various fem-crit reading groups around the country.

While I suggest that we can and should be self-conscious about the development of criteria of judgment, those criteria are already implicit in the consensus that has developed about our heroes and canonical works. My informants repeatedly referred to certain authors as influential. These are the people whose work must be read, whose ideas must be built upon or distinguished, if one is to operate within these scholarly communities. The criteria for feminist and critical race scholarship definitionally give high marks to the works of Patricia Williams, Catharine MacKinnon, Martha Fineman, Mari Matsuda, and Derrick Bell. Each has transformed the way we think about law and legal culture. Each has also transformed the "we" that is to be talked about and talked with as part of legal discourse.

The standards of judgment must develop out of the discourses of the outsider communities. Those movements have a long enough history so that one can begin to describe what defines the practice and thus what its practitioners are likely to consider as good work.¹¹⁹ I do

male scholars can develop sufficient empathy and knowledge to write scholarship of this genre, and to be judged by its standards. Mari Matsuda has suggested that membership in an outsider community is a prerequisite. Matsuda, *supra* note 16, at 326. I remain agnostic, though I think someone who has grown up conscious of her connections to an outsider community can more easily develop the capacity for such scholarship. See Milner S. Ball, *The Legal Academy and Minority Scholars*, 103 HARV. L. REV. 1855, 1861 (1990). This comparative advantage suggests that, if we wish to nurture such scholarship, we should exercise an affirmative preference for outsiders in entry-level hiring.

119. Admittedly, outsider practices, especially critical race scholarship, are still quite young. We should not expect fully developed criteria in a practice still in the process of being formed. Cf. Kim Lane Scheppelle, *Foreword to Symposium on Legal Storytelling*, 87 MICH. L. REV. 2073 (1989) (suggesting that legal narrative is still in a stage of youthful exuberance, insisting on its own legitimacy while discovering its own possibilities).

Nonetheless, I find Professor Delgado's metaphor of Critical Race Theory as an infant to criticize my arguments here ill-chosen, quite apart from its suggestion that I am guilty of metaphorical child abuse. Richard Delgado, *Legal Scholarship: Insiders, Outsiders, Editors*, 63 U. COLO. L. REV. 717 (1992). Even if one accepted the vision of CRT as a three-year old child, one might respond that we do socialize infants, teach them to walk and talk, prepare them to survive within the civilization in which they will grow up. More fundamentally, the metaphor is deeply false. First, I am proposing the development of standards by the community, not the imposition of them by persons separate from the community. Second, Critical Race Theory as a coherent, self-conscious movement may be quite young, but

not claim any authority to prescribe what those standards ought to be; I do claim a membership in the community that grounds my observations/proposals as part of the discourse.

As I have suggested earlier, outsider scholarship is defined by its commitment to the interests of people of color and of all women, by its rejection of abstraction and of objectivity, by its preference for narrative and other engaged forms of discourse, and, implicit in all this, by a range of audiences with which it seeks to engage. Those characteristics suggest, in turn, certain criteria for judging such scholarship.

First, outsider scholars, unlike traditional legal scholars, neither seek to achieve nor value dispassionate neutrality.¹²⁰ Outsider scholars are likely to produce a wide range of works, directed to quite disparate audiences, that may all be described as legal scholarship, i.e., work drawing on a knowledge of law and legal culture and intended to affect the audience's understanding of those phenomena. In judging each such work, we should consider its suitability for its chosen audience in terms of its language and its sensitivity to the audience's relevant pre-understandings.¹²¹

Second, the work should be judged in terms of its ability to advance the interests of the outsider community through law and legal cultures. Outsider scholarship is defined, in part, by a particular perspective. It is intended to reconceptualize legal doctrines, theories, and institutions, from the perspective of women and minorities, as a means of improving their conditions. While we may dispute among ourselves what those needs are, scholarship which cannot reasonably be understood as responding to them is bad outsider scholarship or,

the scholars who constitute it are as mature, sophisticated and scholarly as those engaged in other practices. The standards by which they judge themselves and each other may be in flux, and ought not to be writ in stone. But the development of such standards is both inevitable and necessary as part of the self-definition and growth of the movement.

120. An explicit encouragement of passionate engagement with one's subject, I suspect, helps us produce better scholarship. Cf. Soifer, *supra* note 84 (suggesting that good scholarship is a form of tested and structured passion).

Such passion may drive traditional scholarship as well; for outsiders it is appropriate that the passion be evident on the face of the scholarly product. Open passion is a grounds for criticism only insofar as it reduces the effectiveness of the scholarship, by delegitimizing it in the eyes of the intended audience. More often, I suspect, sorrow or anger may help persuade or energize some of the audiences for outsider scholarship. See, e.g., Culp, *supra* note 117, at 192 ("[f]or many black scholars anger becomes a cleansing force that permits a discourse that does not assume that the process is free of emotion"); Lucinda Finley, *The Nature of Domination*, 82 NW. U. L. REV. 352, 361 (1988) (defending Catharine MacKinnon against charges that her work is too angry to qualify as scholarship); Robin West, *Love, Rage and Legal Theory*, 1 YALE J.L. & FEMINISM 101 (1989) (asserting that legal feminist thought is weakened insofar as we have internalized and repressed our feelings in the topics we choose and the forms in which we write).

121. See *supra* Part II.

perhaps, not outsider scholarship at all.¹²²

Third, many of the criteria of judgment particular to outsider scholarship will reflect its narrative and often personalized style. Standards for traditional scholarship provide only limited means for distinguishing better or worse narrative scholarship. This task we feminist and critical race scholars must undertake for ourselves.¹²³ Professor Abrams suggests that narratives ought to be judged by criteria of authenticity and representativeness.¹²⁴ As works of scholarship, rather than pure fiction, they should embody something true. Not, of course, universally true, but true to the vision of those for whom the work purports to speak. Like any form of scholarship, they must be presented in good faith and be as honest as the author can make them.¹²⁵ Simultaneously, the narratives ought to serve some larger

122. For example, one could imagine someone applying a narrative, contextual approach to telling the story of the law's effects on a skinhead or a man denied the opportunity to prevent the abortion of his child. Cf. Massaro, *supra* note 49, at 2109 (suggesting that the arguments for empathy do not help legal decisionmakers decide with whose story they should empathize). Such scholarship would be outside the community, though its overlap in form might make some of the criteria of judgment developed for and by outsider scholars appropriate.

123. Abrams, *supra* note 26; Ball, *supra* note 118, at 1862. Professor Abrams proposes that narrative scholarship should be persuasive and also, as a part of the world of legal scholarship, capable of generating legal prescriptions. Her criteria seem highly appropriate for what might be termed constructive narrative. Such scholarship accepts the assumption that legal scholarship ought ultimately to be normative, but asserts that narrative provides a better alternative, or at least an important addition, to the traditional analytic forms of normative scholarship.

Other narrative legal scholarship may be intended as a form of jurisprudence, challenging the reader's faith in the possibility of normative scholarship or law itself. Arguably, the chronicles in BELL, *supra* note 51, represent this genre. While such scholarship cannot fairly be judged according to its capacity to generate normative prescriptions, it remains subject to the other standards for narrative legal scholarship, such as authenticity and representativeness. For example, Randall Kennedy may be wrong when he suggests that Derrick Bell's *The Unspoken Limitation on Affirmative Action: the Chronicle of the DeVine Gift in AND WE ARE NOT SAVED* (1987), misrepresents the situation facing would-be scholars of color today. See Kennedy, *supra* note 27, at 1762-70. He is correct, however, in arguing that Bell's claim is persuasive only insofar as it fairly, though imaginatively, represents at least some significant aspect of that situation.

124. We are just beginning to explore what it means for a narrative to be authentic or representative. We have a general sense that "some accounts of experience are more consistent, coherent, inclusive, self-critical, and so forth," Rhode, *supra* note 11, at 626. We can draw on the rich theory developed in such scholarly disciplines as history and literary theory in developing criteria regarding the appropriate uses and limits of narrative.

125. All stories are, of course, constructed. But scholarship, unlike advocacy, ought always to represent the author's self-believed accounts.

It is, perhaps, too early to develop any standard regarding the appropriate mix of narrative and other new forms with more traditional analyses of legal material. Professor Abrams suggests a minimum content that is recognizably legal. (Although there may be legal scholars who also produce first-class novels or poetry, query if these works should be considered as part of their corpus of legal scholarship.)

If paradigmatic outsider legal scholarship blends narrative and analytic approaches to the material, the standards for judgment must be suitably complex and fluid. The narrative can be judged as narrative, the analysis, like that in traditional legal scholarship, as analysis. It is also necessary to

purpose. Narrative and other non-analytic work is intended to transform the understanding of its audience.¹²⁶ Good outsider scholarship (indeed, all good scholarship) will make its audience see differently the world it has illuminated.¹²⁷

Finally, of course, many of the criteria for excellence applicable to traditional scholarship such as clarity, originality, and ambition can also be applied, though with some modification, to evaluate narrative legal scholarship. This last is not wholly unproblematic. Surely, a work that transformed our understanding of the field of criminal law would be a more important piece of scholarship than an equally well-written one which examined the effects of misstatements of rape law in a particular textbook.¹²⁸ The concern for scope and ambitiousness has costs for our practice of feminist/critical race scholarship. Our movements are new and much remains to be accomplished. These transformative tasks may be best carried out by the accumulation of numerous modest works written by many people. If too many of us are paralyzed by the felt need to carry out grand theory or grand narrative, the community's goals of deconstructing and reconstructing law will be frustrated.

I have suggested that the development and application of standards of judgment is inevitable, intellectually necessary, and politically desirable, but that it is not risk-free. The self-definition of the community excludes as well as includes; a judgment of what is excellent implies a judgment of what is mediocre.¹²⁹ Some community members,

consider how the various parts of the work interrelate and whether the author has created a synergy between the elements of her work that advances the purpose she has set herself. *See generally* Abrams, *supra* note 26; Linda S. Greene, *Breaking Form*, 44 *STAN. L. REV.* 909 (1992) (reviewing Williams, *supra* note 3). *See also* West, *A Phenomenological Critique*, *supra* note 12, at 108 (criticizing some feminist narrative scholars for "[t]he practice of bracketing, footnoting and prefacing these stories [which] partially reinforces . . . the complacent and usually false belief that the objective legal analysis contained in the 'real text' of the piece can be understood on its own"). These issues of the range of appropriate, complex forms seems particularly appropriate for the kinds of conversation this article seeks to evoke.

126. *Cf.* Ball, *supra* note 118, at 1860-61. This transformative function suggests a corresponding obligation to be humble before our materials. We seek to transform our audience's understanding; we must ourselves be open to such transformation as we engage in the scholarly enterprise.

127. Professor Abrams refers to this as the capacity of a good narrative to generate a moment of recognition even (especially?) in a reader who has not had the same experience. Abrams, *supra* note 26, at 1003-04.

128. A narrative that seeks to persuade us about a wider topic is, on the other hand, more likely improperly to efface the experiences of others who would also be affected by the change implicitly advocated. *See* Abrams, *supra* note 26, at 1010 (suggesting that Ashe, *supra* note 2, ignores the concerns of women for whom medically assisted birth is a positive good). If the purpose of the narratives is to shake up the reader or to falsify the law's claim to do no harm, however, the demands of representativeness are much weaker. Similarly, if the narrative functions as a parable, its literal truth becomes meaningless.

129. As suggested earlier, we cannot as honest scholars deny that we make such judgments. Fur-

seeing the effects of the actual or attempted misapplication of inappropriate criteria to our work may react by seeking to deny that any criteria may be applied.

It is, perhaps, understandable that any call for the development of standards that might be used to criticize particular works of outsider scholarship might be seen as a betrayal.¹³⁰ Such a circle-the-wagons mentality, however, is both politically and intellectually counter-productive. As noted earlier, the development of more fully articulated paradigms and criteria of judgment may protect us against the *misapplication* of criteria properly applicable only to other forms of legal scholarship.¹³¹

The most important reason to develop and articulate our own standards is positive, not self-protective. "By making these implicit judgments [of the effectiveness of narratives] explicit, and subjecting them to discussion and reflection, feminist narrative scholars will strengthen our ability to tell and use experiential stories."¹³² If we are to take ourselves seriously as scholars, and to be taken seriously by our non-outsider colleagues, we must become rigorous in our judgments.¹³³ Our work is important; much of it is good: we now need to establish our community as both safe and critical, as a source of more and better scholarship for us and for those for whom we write.

ther, we ought not pretend to those from other communities that the exercise of judgment is per se impermissible: such claims are neither fair nor plausible.

130. See Abrams, *supra* note 26, at 1017 n.157; Matsuda, *supra* note 25, at 10-11.

It is also true that the meta-discourse in which we discuss and define standards is likely to be carried out in a critical, abstracted, non-narrative style. Those who work best in the engaged, narrative form of scholarship may find the voice necessary to write *about* it an unnatural one. See Weisbrod, *supra* note 59, at 187.

One of the best attempts to set out goals and standards for outsider scholarship is Matsuda, *supra* note 13, at 1331-32 (using personal experience, expressing emotion and desire, drawing on diverse disciplines, rejecting neutrality, and striving "to meet the standards of rigorous inquiry and concern for justice"). Professor Matsuda, however, does not use these criteria as a basis for judging others, but as a set of aspirations for and within her own scholarship.

131. Professor Kennedy suggests that existing criteria, whatever their objective validity, are "significant features of the social landscape that one must master in order to accomplish certain goals." Kennedy, *supra* note 27, at 1765. Thus, he suggests, outsider scholars have no legitimate complaint if they are judged and fail under the criteria of the community. While a dominant community may have the *power* to continue to impose its own standards on us, the creation of a distinct, but overlapping, set of criteria of our own is far more likely to blunt this move than the negative claims (even if true) that existing standards are both indeterminate and biased.

132. Abrams, *supra* note 26, at 1017.

133. See Austin, *supra* note 39; Brooks, *supra* note 90.