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Authority, Credibility, and Pre-Understanding: A Defense of Outsider Narratives in Legal Scholarship

MARC A. FAJER*

Two recent law review articles, one by Daniel Farber and Suzanna Sherry1 and the other by Mark Tushnet,2 critique the use of outsider narratives in legal scholarship. Both claim to be sympathetic critiques, yet both reach conclusions that are quite critical of the authors whose work they survey. Both raise two important concerns common to much criticism of narrative scholarship. The first is the question of authority: Why are these stories important enough for readers/listeners to take seriously? The second is the question of credibility: Why should we believe these stories are true?

In their critiques, Farber, Sherry, and Tushnet, like other critics of narrative, fail to consider that outsider narratives do not take place in a vacuum. When members of traditionally disadvantaged groups tell stories about their lives, they do so against a highly textured background of existing stories. Stories about what it means to be African-American, to be a woman, or to be gay, for example, inform, to a greater or lesser extent, the beliefs of everyone in society. Yet, these stories often differ dramatically from the lived experiences of members of outsider groups. The existence of these background stories, which elsewhere I have called pre-understanding,3 both necessitates and complicates the presentation of

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3. See Marc A. Fajer, Can Two Real Men Eat Quiche Together?: Storytelling, Gender-Role Stereotypes, and Legal Protection for Lesbians and Gay Men, 46 U. MIAMI L. REV. 511, 524 & n.65 (1992) (explaining that because of pre-understanding, advocates never operate on a clean slate). Gerald Lopez has used the term “stock stories” to identify these beliefs. See Gerald P. Lopez, Lay Lawyering, 32 UCLA L. REV. 1, 3, 5 (1984). I discovered the term “pre-understanding” in Anthony Alfieri’s work on poverty law, in which he uses it to describe the set of beliefs lawyers may have about their clients before actually hearing the clients’ stories. See Anthony V. Alfieri, Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative, 100 YALE L.J. 2107, 2123-24 (1991).
outsider narratives. That is, pre-understanding creates a need to present more complete or accurate versions of outsider lives; but at the same time, it complicates their presentation because stories that do not conform to our pre-understandings are more difficult for readers/listeners to accept.⁴

In this essay, I explore how the existence of pre-understanding affects the questions of authority and credibility in the context of outsider narratives. In Part I, I elaborate the concept of pre-understanding and explain how personal narratives can be used to combat it. I then examine the claims to authority that outsider storytellers reasonably can make when they use their stories to combat pre-understanding. In particular, I address concerns about whether a particular storyteller represents an "authentic" outsider voice. I argue that these concerns are misplaced, especially when a story demonstrates how an individual was treated because others understood her to be a member of a particular group.

In Part II, I argue that when outsiders recount stories that conflict with common pre-understanding, credibility questions inevitably arise. I suggest some tactics for presenting outsider stories that may minimize these questions. I reject Farber and Sherry's suggestion that we completely eschew first person narratives to avoid credibility issues. I also take issue with Tushnet's analysis of the credibility of Patricia Williams's work and his focus on narrative style as the key to the credibility issue.

In the conclusion, I briefly explain my understanding of why outsider scholars feel compelled to keep telling the stories of our experiences as outsiders, despite the discomfort these stories obviously bring to others. Throughout this essay, in keeping with its themes, I often rely on examples from my own experiences as a gay man. However, I believe my analysis also applies to storytelling by members of other systematically disadvantaged groups.

I. PRE-UNDERSTANDING AND THE QUESTION OF AUTHORITY

Running through much of Farber and Sherry's critique of narrative scholarship is a concern for what I call the question of authority. How do we know whether the story you tell is significant?⁵ Although Mark Tushnet does not ask this question directly, his piece discusses generally the role of law in mediating the particular and the general.⁶ Specifically, he is concerned that legal actors are focusing too much on particularity and not thinking enough about how individual stories relate to more general prin-

⁴. See Jane B. Baron, The Many Promises of Storytelling in Law, 23 Rutgers L.J. 79, 105 (1991) (stating that "the law is, at least some of the time, highly resistant to stories which challenge its own conventions and ideological narratives.").
⁵. See Farber & Sherry, supra note 1, at 824-27, 831-40 (discussing standards for evaluating stories as scholarship).
⁶. See Tushnet, supra note 2, at 252-58 (describing the role of adjudication as mediating the particular and the general).
Thus, indirectly, he too raises the question of authority, for when we believe that specific stories have authority, we are willing to draw general principles from them. In this Part, I will try to provide some answers to the authority question. But first I must introduce the concept of pre-understanding.

A. PRE-UNDERSTANDING AND OUTSIDER EXPERIENCE

Our culture contains a wide variety of assumptions, both good and bad, about categories of people. Although not everybody believes in the strongest versions of these assumptions—that every member of the group strongly displays the characteristic—most people understand that our society connects certain traits with certain categories. For example, society connects Jews with being cheap and clever, African-American men with being athletic and violent, and gay men with being artistic and effeminate. I refer to these assumptions as pre-understanding. Pre-understanding about a particular group can interfere with discourse about that group because many people believe they "know" important things about members of the group, things which often are not true about many group members. The pre-understanding of judges and lawyers can infect the legal process and build incorrect or overbroad assumptions into the structure of laws and legal decisions. For example, in an earlier article, I argued that the pre-understanding that lesbians and gay men live lives in which sexual activity is separate from love and family is an important part of the majority opinion in Bowers v. Hardwick, which allowed states to criminalize same-sex sexual activity.

Stories about individuals are a particularly useful way to combat pre-understanding for at least two reasons. First, because a particular form of pre-understanding may be very deeply ingrained in the culture, people may have trouble seeing its existence or significance unless confronted with specific examples of how it operates. For example, stories demonstrating the number of ways lesbians and gay men are discouraged from discussing their lives publicly can be used to show how many people believe that any discussion of homosexuality is improper "flaunting." Second, because pre-understanding often consists of gross overgeneraliza-

7. Id. at 260.
8. See, e.g., Fajar, supra note 3, at 525 (citing commonly held assumptions about differences between groups of people); Farber & Sherry, supra note 1, at 839 (citing studies showing that humans tend to engage in "what we commonly call stereotyping").
9. See Fajar, supra note 3, at 513-14, 544 (discussing the assumptions underlying Bowers).
11. See Fajar, supra note 3, at 571-91 (describing several types of discrimination that demonstrate the pre-understanding that gay men and lesbians are tolerable only to the extent they keep their sexual orientation secret). I personally have had some success conveying to non-gay people the way in which everyday, inadvertent revelations of sexual orientation are treated as improper "flaunting."
tions, it may be effectively combatted or mediated through the use of counterexamples. Credible stories about "masculine" gay men, for example, can at least help defeat the strong versions of pre-understanding that presume all members of the group share a particular characteristic—in this case, effeminacy. Similarly, some Jews offered stories of Jews aiding African-Americans to counter claims of Jewish racism made by the Nation of Islam.

Pre-understanding creates special tensions in the lives of members of traditionally excluded groups. Society constantly sends out messages that we must have certain characteristics because we are gay or African-American or female. We may believe these messages, in whole or in part. Yet these messages often contradict our own lived experience of ourselves and of other members of our groups. This creates a dissonance in our lives: we are immersed in a culture that tells us what we must be like because we fit into certain categories, yet we live individual lives that stray, often wildly, from the expressed norms for the category. This dissonance can be a source of insight allowing us to see more easily certain aspects of our society, particularly common pre-understandings about groups to which we belong. Thus, we tell stories gleaned from our particular perspectives

12. In addition, stories about the interaction between stereotypes and people's lives can make people see the effects pre-understanding can have. For example, stories about gay male "camping"—deliberate, overdone, stereotypically feminine behavior—suggest that it was developed as community-building, self-affirming behavior in the context of the pervasive pre-understanding that stereotypically feminine behavior is associated with male homosexuality. See Fajer, supra note 3, at 614-15 (explaining the role of camping among gay men); William N. Eskridge, Jr., Gaylegal Narratives, 46 STAN. L. REV. 607, 627 (1994) (relating accounts of camping in both gay and non-gay environments). These stories may help non-gay people understand the effects of constant exposure to pre-understanding that associates stereotypically feminine behavior with male homosexuality.

13. See Jean Soman, Jewish Soldiers Gave Their Lives in the War to End Slavery, MIAMI HERALD, Feb. 14, 1994, at 11A (noting that 7,000 Jews fought for the Union and describing the efforts of one Jewish Union officer, Colonel Marcus M. Spiegel, who fought and died at Vicksburg).

14. Certainly some gay men and lesbians have internalized the notion that we are incapable of forming lasting relationships, and gay men often assume very quickly that an effeminate man is "one of us."


16. The most famous elaboration of this dual perspective is found in W.E.B. Du Bois, The Souls of Black Folk. Du Bois explains:

[T]he Negro is a sort of seventh son, born with a veil, and gifted with a second sight in this American world,—a world which yields him no true self-consciousness, but only lets him see himself through the revelation of the other world. It is a peculiar sensation, this double-consciousness, this sense of always looking at one's self through the eyes of others, of measuring one's soul by the tape of a world that looks on in amused contempt and pity. One ever feels his twoness,—an American, a Negro; two souls, two thoughts, two unreconciled strivings; two warring ideals in one dark body, whose dogged strength alone keeps it from being torn asunder.
with the hope that they will demonstrate the existence of pre-understanding to those who are situated in more privileged positions and help them to understand how pre-understanding affects our lives.17

In an earlier work, I laid out some of the ideas about pre-understanding I apply here.18 Interestingly, although Farber and Sherry were aware of my work, they did not choose to address any of its substantive arguments about the proper use of narrative. Instead, in a footnote, they cited the article for the following proposition: “Because of the phenomenon of ‘closeting,’ information about the lives of gay men and lesbians may be unavailable to scholars. In this case, storytelling may be particularly useful as a way of filling in informational gaps.”19 This treatment of gay narrative scholarship is troubling because it indicates that Farber and Sherry have not recognized the common ground among outsider groups. Members of more privileged groups always have pre-understanding about outsiders but often are not exposed to the outsider’s own stories. As a white male, I don’t feel I have ready access to the experiences of women or people of color. Most of what I think I know about these experiences comes from narratives. Patricia Williams’s narratives about race,20 Robin West’s accounts of violence and coercion in women’s lives,21 Martha Mahoney’s stories by and about battered women22—all have greatly affected my understanding of these important issues. Students in my Identity Politics Seminar repeatedly told me how much they believe they learned from reading outsider accounts23 and from listening to their classmates relate stories about their own lives. Because pre-understanding often constitutes most of what people know about outsiders, “informational gaps” abound, and storytelling for all outsider groups “may be particularly useful.”24

W.E.B. Du Bois, The Souls of Black Folk 16-17 (reprinted ed. 1961). Other references to multiple consciousness are common among minority scholars. See, e.g., Lawrence, supra note 15, at 2239, 2274-75 (stating that the “burden/gift of dual subjectivity enables those who bear it to recognize and articulate social realities that are unseen by those who live more fully within the world of privilege”); Adrien Katherine Wing, Brief Reflections Toward a Multiplicative Theory and Praxis of Being, 6 Berkeley Women’s L.J. 182 (1991).


19. Farber & Sherry, supra note 1, at 829 n.119.


B. THE QUESTION OF AUTHORITY

A common set of concerns about the use of personal narratives involves questions of authority—how much weight a reader/listener should give the stories. These questions can take a narrow form: Is this story or this narrator typical of the group? They can also be raised more broadly: Is the group so diverse that there really is little point in assuming that any story from a member of the group carries any weight as being representative of the group? Stated bluntly, the listener wants to know why she should pay much attention to the storyteller’s individual experience.

One strong claim to authority for outsider narratives stems from the existence of pre-understanding. As outsiders, our social situation gives us a perspective that allows us to identify more easily the pre-understandings others apply to us, precisely because it so often jars with our own understanding of who we are. In addition, our constant exposure to the dissonance I described earlier makes it easier for us to see patterns where others might see isolated incidents. Moreover, our interactions with other members of the outsider group may tell us how common a particular type of incident is.

For example, last year, I was a partial season ticket holder for the fledgling Florida Marlins. A heavy-drinking man in his thirties held season tickets for seats about three rows in front of mine. Often after several beers, he began calling people who annoyed him for one reason or another “faggot” and “homo.” A non-gay person might find this troubling; certainly every gay man within hearing will. Non-gay listeners are less likely to be aware how often men in our society use these terms as the ultimate insult. Nor are they likely to think about this as yet another moment when, as a gay activist, I have to choose whether or not to come out: “Excuse me, sir, but as a gay man and a season ticket holder, I find your use of those terms as insults offensive.”

Similarly, non-gay people observing the brouhaha about lifting the ban on openly gay men and lesbians in the military might not give much thought to why Congress paid so much attention to the four minutes or so a day that enlisted personnel spend in the showers. Gay people are more


26. This should answer Farber and Sherry’s claim that “there has been no demonstration of how [the perspectives of minority groups] differ from the various perspectives underlying traditional scholarship.” Farber & Sherry, supra note 1, at 814 (footnote omitted).

27. Thus, I disagree with Farber and Sherry’s claim that narrative scholars are “less concerned than conventional scholars about whether stories are . . . typical.” Id. at 808. Rather, I think we often rely heavily on our experiences as participants in discourse within minority communities to satisfy the requirement of typicality. It may be that we could do a better job both making this reliance explicit and presenting evidence to support our beliefs that our stories are typical.

28. Indeed, given the prevalence of the pre-understanding involved, non-gay people may find Congress’s focus natural. See Fajer, supra note 3, at 537-47.
likely to see that this focus is part of the common pre-understanding that being gay means to engage in constant predatory sex. Senator Sam Nunn’s apparent obsession with showers is just an example of the way millions of complicated gay lives are reduced to “the gay lifestyle,” which means, primarily, sexual activity. I am able to make these connections more easily than most non-gay people because the underlying assumptions contradict my sense of who I am. I find the shower stories particularly jarring because I spend most of my time in the locker room at my gym staring at the floor precisely to avoid giving others the sort of discomfort on which the Senate hearings seem to focus.

Note that the claim to authority by outside narrative scholars is not that nobody else is capable of seeing the things which we relate.29 Clearly we believe that they can see them, or there would be little point in retelling our stories to a general audience. Indeed, my hope in telling stories and in identifying common forms of pre-understanding regarding sexual identity is precisely that non-gay people will recognize patterns in events within their own experience once they are pointed out.30

Moreover, the claim of authority is not based on the false syllogism, “The subject of this story is a gay man. This happened to him. This happens to gay men.” Rather, the claim is, “This happened to the subject of this story, apparently for no other reason than that he was identified as a gay man. If this happened to him merely because of this identification, it is likely to happen to others if they too are identified as gay men. And, from his perspective as a gay man, he is more easily able to see that the story is part of larger patterns.” This view of authority for outsider storytelling seems to successfully counter two of the more common versions of the authority critique: concerns about “authenticity” and doubts about the existence of a unitary “voice” for an outsider group.

29. This seems to be the position that Farber and Sherry call the strong version of the different voice thesis. Farber & Sherry, supra note 1, at 814.

30. Farber and Sherry claim that the storytelling literature contains few attempts to connect the events with the experiences of nonoutsider readers. Id. at 826-27. They seem to be looking for specific parallels: “My experience here is like your’s there.” Yet part of the way outsider stories can resonate with more privileged people is by saying, “Look at this event, which your own experience should tell you is common in our society. Now think about how it feels to me.” Much of the elaboration in my earlier piece on pre-understanding of gay issues was of this type: pointing out patterns that other people might miss because of their privileges. Fajer, supra note 3, at 537-47, 571-91, 607-11. Moreover, by pointing out common forms of pre-understanding, many of the stories are specifically about the beliefs of nonoutsiders. See Delgado, supra note 17, at 671 (“The counterstory focuses not on helping a white understand a black, but on helping a white understand a white.”). The reader’s “flash of recognition” that Kathryn Abrams describes (and which Farber and Sherry question), is thus the result of discovering new perspectives about the reader’s own experiences and beliefs, rather than the result of appeals to “the reader’s preconceptions and biases.” Abrams, supra note 25, at 1024; Farber and Sherry, supra note 1, at 836-37.
1. Authenticity

I have heard variations of the authenticity critique from students and other professors. It is often leveled at scholars of color and goes something like this:

You are a relatively well-off, well-educated, upper middle class scholar, leading a very different life from most people of color in this country. You hold very progressive views on a variety of social issues, views that polling data indicate are very different from many/most members of your group. Why should we listen to your accounts of your “struggles” as a person of color? You are so atypical that we do not consider you an authentic person of color.\(^{31}\)

A response to this critique is that nothing in the claim to authority I have described relies on all members of the particular group having identical or even similar life experiences, methods of thinking, or political beliefs. The authority arises from the treatment members of the group receive on account of their membership in the group. Thus, if the police harass an African-American man because he is running in a sweatsuit in a “fancy” neighborhood, the man’s account of his experience is an authentic description of racism, whether he is a law professor, a gardener, or unemployed. His account should not be criticized as inauthentic because he employs the articulate presentation we would expect of a well-educated scholar.\(^{32}\) Moreover, because society repeatedly sends me messages that I have certain characteristics because I belong to a group, it should not be surprising that I organize my responses to those messages around being a member of that group, whether or not I am in some sense “typical” of the group.

In addition, the relative privilege of the storyteller may actually strengthen the message of some stories. I have heard people criticize Patricia Williams’s famous Benetton narrative\(^ {33} \) as a “bad” story because Williams is a relatively privileged person who was trying to enter a relatively chic establishment, and if she was unable to fully participate in consumer commercial-

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31. Farber & Sherry, \textit{supra} note 1, at 817-18, 828; see Williams, \textit{supra} note 20, at 51 (asking what makes her experience the “real black one”).

32. As Christine Littleton has suggested to me, the authenticity critique also is troubling because it seems to claim the right for those who are not members of the outsider group to decide what an authentic outsider is. To the extent authenticity analysis makes any sense, surely it must be the right of members of the group to decide for themselves what makes them authentic. See Corneli West, \textit{Race Matters} 23-32 (1993) (criticizing overconcern with authenticity among African-Americans).

33. Williams was shopping in New York and saw a sweater in a Benetton’s window that she wished to purchase for her mother. She recalls that “I pressed my round brown face to the window and my finger to the buzzer, seeking admittance.” The keeper of the door, a white teenager blowing bubble gum, denied her entrance, saying the store was closed. White people were clearly visible shopping inside. Williams, \textit{supra} note 20, at 44-45.
ism, so what? Getting into the store was not that important; many people, African-Americans in particular, have worse problems. My response to the relationship between her privilege and the story was just the opposite. Because of the large number of African-Americans living in poverty, class and race issues are often conflated, sometimes usefully, other times less so. If Professor Williams told the Benetton story about "an African-American woman," some members of the audience easily might conclude that she was rejected for visible indicia of class—something that suggested to the doorman that she did not really have the money to shop at the store. That the experience happened to a woman with Professor Williams's other privileges helps to distill the class issue out of the story. 34 What happened to her was purely the result of her race. The existence of such a pure example of racism in a middle class setting was part of what made the story striking to me when I first heard it because it tends to defeat the common pre-understanding that overt acts of racism are things of the past. 35

2. Anti-Essentialism and the Unfortunate Metaphor of Voice

Another common critique of outsider narratives is broader. It responds to the rhetoric of "excluded voices" that many outsider scholars have employed. 36 The critique basically worries that because outsider groups are very diverse, no one person can claim to speak for the group. People of color, for example, include African-Americans, Native Americans, Asian-Americans, and Latinos who belong to different classes, genders, religions, political persuasions, and sexual identities. Thus, no one person can make any believable claim to speak in the "voice of color." In one version of this critique, scholars have criticized some outsider jurisprudence for "essentialism;" that is, for assuming that all members of an outgroup share certain essential characteristics without considering the many large subgroups within the larger classes of women, gay people, African-Americans, and other groups. 37 Sherry and Farber elaborate a slightly different version of this claim. They conclude, after fairly extensive analysis, that the evidence of the existence of a "female voice" and a "voice of color" is weak. 38

Although essentialism is a danger in narrative scholarship, storytellers

34. This point is likely to be even clearer to audiences who see her recount the story in person. On the occasions I have heard her speak, she always has been as polished in her appearance as she is in her writing.

35. For example, the white students in my property law class generally have been skeptical about the continued existence of housing discrimination until confronted with recent statistics and news stories.


38. See Farber & Sherry, supra note 1, at 809-19.
can frame stories in a manner that makes them less susceptible to this failing. To do so, we can focus on pre-understanding in the way I have already described. We can tell stories about ourselves, not so much to show how we are representative of our group, but how the society makes essentializing assumptions about us because of the groups to which we belong. These stories do not purport to show that all members of the group behave a certain way. Instead, they demonstrate that people commonly believe members of a group behave in specific ways and they show that some portion of the group does not conform to the stereotype or at least that the relationship between the stereotype and reality is complex.

This way of thinking about storytelling also should eliminate the unnecessary focus on the unfortunate metaphor of voice. At some point in the past decade, perhaps originating with Carol Gilligan's work, the notion of "voices" came to represent the idea of including viewpoints of outgroup members in legal discourse. While certainly outsider voices need to be part of any dialogue about legal issues, the metaphor has created its own problems.

First, the metaphor of voice focuses too much attention on the person and not enough on her experiences. Because voices are very personal, we generally do not view them as products of particular life experiences. Thus, there is a danger that in looking for gay and lesbian voices, for example, we will listen to any person who fits the category "gay" or "lesbian." Instead, we should listen for people who talk about how their experiences and self-awareness arising out of their sexual identity or their treatment by others who believe they are gay or lesbian has enabled them to see things about the substance and functioning of our society that are difficult for non-gay people to see.

39. Another issue that merits discussion is how best to avoid essentialist or solipsistic assumptions when story-telling. Tushnet’s critique of Williams suggests that stories can lose effectiveness if they demonstrate that the storyteller lacks awareness of her own privileges. See Tushnet, supra note 2, at 270-71. As a storyteller, I need to think carefully about how my experience of what I perceive to be homophobic incidents is colored by my being white and male and whether my experience can be generalized to lesbians or gay people of color. All of us who use narrative need to be open to further discussion about these problems. For discussion of this issue, see Abrams, supra note 25, at 1029-30.

40. See, e.g., supra note 12 (discussing "camping" behavior in the gay community).

41. CAROL GILLIGAN, IN A DIFFERENT VOICE (1982).


43. See Delgado, supra note 17, at 669 (noting that "voice is a false issue").

44. This sort of reasoning may underlie Alex Johnson's claim, reported by Farber & Sherry, that "[t]hose who intend to speak in the voice of color do so." Farber & Sherry, supra note 1, at 814 (paraphrasing). Those who deliberately employ the perspective gained from being a member of a particular group can be said to be speaking in the voice of that group.
I realize this sounds close to a kind of result-oriented notion of voice that has been criticized: that some academics will only accept as genuine "voices" those whose political views are consonant with their own.\footnote{45} I am, I believe, making a more subtle claim. In order for a storyteller to make claims on our attention based on her membership in a particular group, her story must demonstrate that it was her membership in the group that led to the events in the story or better enabled her to understand the significance of what she describes. These claims are likely to be strong when the storyteller is describing an experience that demonstrates or counters some pre-understanding about her group.

Second, the plural "voices" metaphor has an unfortunate tendency to drift into the singular. People concerned about voices of color, for example, may start to look for one true "voice of color," and examine stories to find it. Farber and Sherry's discussion of the existence of distinctive voices seems to assume that outsiders are claiming a right to be heard based on a distinctive or different unitary voice.\footnote{46} The existence of a "true voice" simply is not necessary to justify the use of personal stories by members of outsider groups.\footnote{47} If our claim to authority rests on how we are described or treated by others because of our group identities, we need not claim to have unitary voices or even unitary experiences to give our stories general relevance. The stories will inevitably reveal aspects of the pre-understanding about our identity groups that our identities help us to see.

In sum, as a gay, white, male, Jewish law professor, I hardly can claim to be a typical Jewish voice or gay voice or white voice. Yet, based on these categories, people make assumptions about what I am like. When others try to tell me who I am based on one or more aspects of my identity, surely I deserve to be heard when I point out the cultural stereotypes others apply to me and describe what it feels like to experience the dissonance between who I am and who I am "supposed" to be. My claim to authority is not that I am an archetypical outsider voice, but that my perspective as an outsider makes it easier to see how pre-understanding about my identity operates.


46. See Farber & Sherry, supra note 1, at 809-19.

47. Although I am agnostic on the question of a "voice of color," I am quite convinced that nothing like a unified gay voice exists. Lesbians, gay men, and bisexuals are brought up throughout society in a variety of different subcultures, classes, religions, etc. A unified gay voice would be a most unlikely phenomenon. I do think attempts to locate or develop unified voices tend to interfere with recognition of those who exist at the intersection of outsider groups. See, e.g., Kimberle Crenshaw, Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Anti-Discrimination Doctrine, Feminist Theory, and Antiracist Politics, 1989 U. Chi. Legal F. 139; Wing, supra note 16, at 191. The mutual lack of recognition between the gay/lesbian/bisexual community and communities of color seems to me a good example of the problems that can occur if groups are insufficiently aware of diversity within their midst.}
II. THE QUESTION OF CREDIBILITY AND THE USE OF FIRST-PERSON NARRATIVES

A second important issue raised by Tushnet and by Farber and Sherry is the credibility of outsider narratives. The recurrence of this issue in discussions of outsider narratives is unsurprising. These narratives often challenge widely held pre-understandings about minority groups. Faced with a conflict between deep-seated beliefs and a contradicting story, some people may adjust their beliefs, but others are likely to reject the story as untrue.\(^\text{48}\) The credibility problem is particularly acute in the case of first-person narratives, which do not obtain the presumption of objectivity and truth that attach to material written in other forms.\(^\text{49}\)

Given that credibility issues are so likely to arise, what should narrative scholars do? Farber and Sherry advocate eschewing first-person narration altogether.\(^\text{50}\) Tushnet argues that eliminating stylistic flaws and improving "narrative integrity" may limit credibility problems.\(^\text{51}\) I will discuss these critiques in turn and then suggest ways to present first-person narratives that limit the credibility problems these critics raise.

A. SCHOLARLY CONVERSATION AND FIRST-PERSON NARRATIVES

Farber and Sherry argue that first-person narratives are undesirable as a form of scholarship because they may cut off further academic discourse:

\[\text{[S]cholars should not be readily allowed to offer their own experiences as evidence. The norms of academic civility hamper readers from challenging the accuracy of the researcher's account; it would be rather difficult, for example, to criticize a law review article by questioning the author's emotional stability or veracity.}\]

This analysis implicitly rests on the determination that the harm done to scholarly discourse by self-censoring outweighs any special benefits first-person narratives may provide. Farber and Sherry both overstate the inhibiting effect these stories have on scholarly conversation and fail to consider the specific advantages of first-person narration.

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\(^{48}\) See Williams, supra note 20, at 110-14 (noting that a white student rejected the idea that Beethoven might have been black); Abrams, supra note 25, at 1024; Jane B. Baron, Resistance to Stories, 67 S. Cal. L. Rev. 255, 263 (1994) ("Background assumptions determine, in great measure, whether a particular account will be heard as a . . . persuasive or believable story."); Gary Peller, The Discourse of Constitutional Degradation, 81 Geo. L.J. 313, 323 (1992) (suggesting that credibility problems arise because people understand the implications of outsider narratives and would rather challenge the truth of the narratives than confront the implications of the stories).

\(^{49}\) See Williams, supra note 20, at 44-50.

\(^{50}\) See Farber & Sherry, supra note 1, at 835-36.

\(^{51}\) See Tushnet, supra note 2, at 311.

\(^{52}\) Farber & Sherry, supra note 1, at 835-36; see also Abrams, supra note 25, at 980 (noting similar arguments).
1. Inhibition of Discourse

The claim that stories inhibit further discourse seems a bit strange. Considerable scholarly discussion already exists regarding the works of scholars who, like Patricia Williams, employ narratives extensively. More importantly, scholars who are skeptical about the truth of narratives that demonstrate and counter pre-understanding have available a variety of responses that are consistent with both civility and scholarly dialogue. Some of these include:

"That story is quite foreign to my experience. Can you demonstrate to me that the problems it describes are widespread enough to merit legal or systemic changes as opposed to simply my personal sympathy?"

"I take it that the problem you believe that this story raises is X. Yet my interpretation of the same story would be different."

"I have trouble seeing what solutions are possible to the problems raised by your story."

"I take it that the solution you are proposing is X. I think that solution causes more problems than it solves."

These responses leave a great deal of room for further scholarly conversation. Undoubtedly, some scholars will continue to perceive the use of first-person narratives as "silencing" to some extent because of norms of civility. Farber and Sherry feel that this limited form of silencing justifies what seems to me to be a much broader silencing—discarding all first-person narratives. Yet nowhere in their analysis do they discuss the costs of preventing the use of the first-person.

2. The Strengths of First-Person Narrative

Narrative can create empathy that helps listeners to understand concepts that might be difficult for them to grasp when conveyed as abstractions. First-person narratives often are especially powerful in helping people develop empathy for members of excluded groups. The listener or reader must confront the fact that the emotional punch line of the story involves a specific person with whom the listener or reader is interacting, a person with whom the listener or reader may already have identified in some way because of the context in which the story is told. The key events

53. See, e.g., Abrams, supra note 25, at 995-1004; Culp, supra note 23, at 1030-41 & 1026 n.21 (citing sources).
54. Of course, none of these responses is possible if the reader has no idea what the point of a story is supposed to be. Farber and Sherry suggest that the absence of traditional analysis in the presentation of some stories makes discourse difficult because readers simply do not understand the significance of the stories. Farber & Sherry, supra note 1, at 847-48. Obviously, some stories are easier to understand than others, but difficulty understanding some stories does not necessitate eliminating the whole narrative genre. Indeed, much legal scholarship is not easily accessible at first reading.
55. See, e.g., Fajer, supra note 3, at 521-22; Lynne N. Henderson, Legality and Empathy, 85 Mich. L. Rev. 1574 (1987); West, supra note 21, at 85-86, 90, 144.
of the story may be hard to discount as occurring only to some easily
disableible "Other" when the listener or reader is already engaged with
the storyteller.

The lived experience of many gay men and lesbians confirms the power
of first-person narration. Many of us know that relating our own coming-
out stories to people has forced them to focus on the reality of anti-gay
discrimination. Exposure to third-person stories in the media simply does
not have the same effect. One friend confided to me recently that she had
never thought seriously about gay issues until she knew I was gay and had
a particular face to hold up against the stereotypes and comments about
gay people. Farber and Sherry's claim that "conversion stories are rela-
tively scarce"56 demonstrates a lack of familiarity with anecdotal and
statistical evidence about gay men and lesbians, much of which strongly
suggests that interactions with real individuals have changed many peo-
ple's attitudes toward gay issues.57

Another strength of the first person is that its very use can counter
pre-understanding. For example, I find Patricia Williams's stories about
her encounters with racism particularly powerful because they counter the
pre-understanding that middle class members of racial and ethnic minori-
ties are pampered and privileged people who are aided unfairly by affirm-
itive action. A third-person account of racist interactions involving African-
American law professors might have some of the same effect. Without a
particular "I" to create boundaries on the possible scope of the story,
however, a listener may well assume that there is more to the story than
they are being told and thus dismiss it due to some other pre-understand-
ing. For example, readers of Patricia Williams's first-person stories will be
aware at least that she is an articulate law professor. The confining "I"
may make some of them less likely to attribute her exclusion from Benet-
ton to the presumed existence of some of the nastier forms of common
pre-understanding about African-Americans: "She must have been one of
those women who was dirty,"58 or "had an attitude," or was "less civilized"
in some other way.

The first person creates a second type of challenge to pre-understand-
ing. As I have noted, pre-understanding often consists of very broad
overgeneralizations about characteristics presumed to be associated with
particular categories of people. A first-person storyteller will embody a
number of characteristics and categories, some of which are not supposed
to go together. When she presents stories that demonstrate her complex-
ity, she can challenge overgeneralizations her audience might otherwise

56. Farber & Sherry, supra note 1, at 826.
57. See Eskridge, supra note 12, at 614-15; Fajer, supra note 3, at 599.
58. One of my African-American students tells me this is a pre-understanding many
people associate with wearing dreadlocks.
OUTSIDER NARRATIVES IN LEGAL SCHOLARSHIP

apply to her. For example, I belong to categories such as lawyer, baseball fan, chef, Jew, homeowner, theater director, spendthrift, gay man, and sloppy dresser. For many people, sloppy dresser and baseball fan do not go with gay man, spendthrift does not go with Jew, and, surprisingly often, lawyer does not go with theater director. When I tell stories about myself that show that I incorporate several of these categories, I can help shake the audience’s belief in the pre-understandings that suggest my component parts are incompatible.

Finally, using first-person stories makes future conversation about the details of a story easier in at least one important respect. If readers or listeners need details of the story to clarify its meaning, they can raise questions in person or in print, and the author can respond. Third-person narratives, garnered from the research and writing of others, are closed in this respect; people who disagree about the story’s significance will have difficulty obtaining clarifying details.

In sum, first-person stories have significant advantages over third-party stories for countering common pre-understandings. As we have seen, using these stories might limit subsequent discourse to some extent, but many opportunities for scholarly interchange remain available. Thus, Farber and Sherry do not make a persuasive case that the harm to discourse necessitates abandoning a tool outsider scholars have found to be powerful and effective.

B. TUSHNET’S CRITIQUE OF PATRICIA WILLIAMS’S CREDIBILITY

Perhaps because of the norms of civility they invoke, Farber and Sherry restrict their discussion of credibility to general comments about narrative scholarship in the abstract. By contrast, Mark Tushnet engages in a quite particular discussion of credibility issues raised by Patricia Williams’s narratives. Tushnet argues the proper way to evaluate narrative scholarship is to assess a story’s “narrative integrity.” He uses this methodology to critique the work of Patricia Williams, concluding that her stylistic

59. See Baron, supra note 48, at 281. This is what Mark Tushnet was doing when he raised Patricia Williams’s Au Coton story. See infra text accompanying notes 70-74. Tushnet challenges Williams’s omission of the race of the salespeople, explaining why he thinks it would have been an essential element of her story.

60. Another, perhaps less important, strength of first-person narration is that it allows minority scholars to honestly lay out our thought processes. Often, a particular event will heighten the dissonance between our lived experience and some pre-understanding in a way that triggers or clarifies our thought processes. This leads to a kind of reverse Cartesian logic: I exist (in a society in which I do not quite fit), therefore I think (about the nature of that society). Having achieved what I believe to be some understanding of our mutual social condition, must I search for other people’s stories to illustrate my point? Or can I simply use the story that helped me understand the point if it is more easily accessible to me and may make the point better than other stories I can find? To my mind, intellectual honesty suggests the latter.

61. See Tushnet, supra note 2, at 252, 311.
"failures" may cause her readers to call into question the credibility of her stories and, therefore, detract from their power as narratives.\textsuperscript{62} I find his attacks on Williams's credibility very unpersuasive.\textsuperscript{63}

Williams's stories contain extensive detail, self-conscious self-examination, and much ambiguity and uncertainty, all of which commonly are seen as providing verisimilitude to stories. Many of Tushnet's points go not to the credibility of the stories but to their effectiveness in persuading listeners of their larger implications. For example, Tushnet is very troubled by what he calls Williams's "voice of righteousness": a tone of unself-conscious moral superiority he finds in her work.\textsuperscript{64} Tushnet points to evidence of classism and self-righteousness in her work that, for him, demonstrates that she has not carefully applied her own insights to her own behavior.\textsuperscript{65} He transforms this observation into a point about credibility:

The unsteady notes in her story show that Williams has not reconstructed her self-image to take account of the troubling behavior she reports. Readers may then transform Williams's righteousness into self-righteousness and become suspicious of the accuracy with which she recounts other stories.\textsuperscript{66}

I find Tushnet's premises suspect. Because Williams spends a significant amount of time in print struggling with her own thought processes, the claim that she is unself-conscious is unconvincing. Even if one takes the point about Williams's unself-consciousness as true, the link to questions

\textsuperscript{62} Id. at 266-71.

\textsuperscript{63} Tushnet's strongest attack on Williams's credibility concerns Williams's account of a jury argument that she made about adulterated sausage. See Tushnet, supra note 2, at 272. In the argument, Williams asks whether any junk that is put through a sausage-making machine thereby becomes "sausage." See WILLIAMS, supra note 20, at 107-09. The story contains details that seem hyperbolic, including an objection from opposing counsel on the grounds of "too much critical theory in the courtroom." Id. The story also lacks the verifying details that Williams typically employs in her other accounts.

When I read Williams's story, I never took it to be an attempt to accurately portray the courtroom scene. Instead, the point of this story is the rhetorical move that Williams sets up in her argument—she later uses the sausage machine as a metaphor for law and other things. The import of the story does not depend upon its accuracy; its point is not to demonstrate anything about Williams's (or black people's, or women's) lived experiences in the courtroom. Because the story is not offered in any sense as "evidence" of real world experience, I do not believe any hyperbole it contains raises serious questions about the credibility of the other stories she offers as evidence of lived experience. See also Abrams, supra note 25, at 1026 (questioning truth of this story but arguing that it is nonetheless effective).

Tushnet makes a similar, if more brief, attack on the credibility of Catharine MacKinnon based solely on one passage in MacKinnon's work. See Tushnet, supra note 2, at 261-62. Gary Peller has demonstrated convincingly the weakness of Tushnet's argument about the passage. See Peller, supra note 48, at 319-20.

\textsuperscript{64} See Tushnet, supra note 2, at 266.

\textsuperscript{65} Id. at 266-71.

\textsuperscript{66} Id. at 270.
about her credibility is missing. That an author is not a paragon of virtue, has not thoroughly applied her own moral reasoning to herself, is occasionally inconsistent—all add to the verisimilitude of stories. These warts suggest the recollections of a real and imperfect person dealing in a real and imperfect way with difficult issues. I would be much more suspicious of an author whose account of her own activities suggested that she had always behaved in a manner perfectly consistent with her stated ideals.67

Tushnet cites Williams’s Au Coton story as a particularly significant example of her failure of authorial integrity.68 In that story, Williams finds herself a troubled, silent conspirator when salespeople in a store in which she is shopping make anti-Semitic comments about customers they perceive as Jewish.69 Tushnet’s complaint about her account is that she does not identify the race of the salespeople, leading the reader to take from the story supposedly uncertain messages.70 Because the passage about credibility quoted above directly follows his critique of the Au Coton story, Tushnet strongly suggests that Williams’s failure to identify the race of the anti-Semites calls Williams’s credibility into question.

Again, it is not clear to me that this omission, if it even is one, is a credibility issue at all. The story is full of reality-enhancing detail. Williams’s own discomfort with the situation is apparent in her account. Even if, as Tushnet implies, she deliberately avoids difficult issues by failing to mention race, I am not sure why this suggests that the story is otherwise inaccurate.

More importantly, I read Williams’s decision not to mention the race of the anti-Semites not as an elision of an uncomfortable issue, but rather as a conscious choice to further a point. The anti-Semitic events Williams describes create a polarization in the store based not on race, but on religion. Undoubtedly, the workers in the shop assumed (not unreasonably) from Williams’s race that she was unlikely to be Jewish and thus were willing to include her in the privileged position they developed. For an African-American woman used to dealing with situations in which race is made the primary polarity, the sudden involvement in a situation in which race is not the most salient issue was, by her own account, quite striking. Thus, the failure to mention race calls attention to the way relative privilege can rapidly alter in different circumstances and focuses the

67. Another reading of Tushnet’s point might be that once a reader finds a storyteller guilty of the moral failing of self-righteousness, the reader is more likely to believe that the storyteller is capable of lying. I doubt that readers think this way, but I am willing to be convinced with better evidence.

68. See id. at 268-70.

69. WILLIAMS, supra note 20, at 126-29.

70. Tushnet argues that if the salespeople were African-American, the story would be about the difficulty of criticizing anti-Semitism within the black community. Tushnet, supra note 2, at 268. By contrast, if the salespeople were white, the story would be about “how a vicious community can sustain itself by at least fleetingly securing the affiliation of those who it demeans on other occasions.” Id. at 269.
reader on Williams's attempts to grapple with her unintended roles (presumed Christian and silent oppressor). I find the story powerful because the very removal of the race issue—putting Williams into silent complicity with the oppressors—creates the possibility of connection with whites who may have been involved in similar scenes as silent participants.\(^\text{71}\) In any event, this explanation of the story suggests that Williams's decision does not throw her credibility into question.

Tushnet concludes his critique of Williams's work with the striking observation that her work would be more credible and presumably would have more "narrative integrity" if she had labeled her stories as fiction.\(^\text{72}\) Read generously, his suggestion may simply mean that her literary style may prevent readers from thinking of her stories as real. Under this view, by calling her work fictional, Williams would engage her readers with the emotional power of her stories without the risk of alienating them by forcing them to deal with the credibility question. In short, Tushnet's critique of Williams may simply be that she has couched her stories in ways that make them less effective as rhetorical tools than they could be.\(^\text{73}\)

Tushnet never explains, however, why labelling the work as fiction would make readers more likely to confront the social and political problems that Williams's stories raise. As I noted earlier, gay people often find that presenting our own true stories is often effective in changing attitudes. There is little reason to believe that the effectiveness or credibility of minority scholars would be aided by a refusal to label our lived experience as truth. In addition, Tushnet does not explain why labelling narrative work as fiction would cure supposed stylistic mishaps. Indeed, in focusing on what he perceives to be stylistic weaknesses, Tushnet does not present any real analysis of what sort of style he believes would enhance credibility.

C. CREDIBILITY AND THE STORYTELLER

Farber and Sherry never acknowledge that credibility issues are a natural and expected response to outsider narratives. Credibility issues arise because of the tension between the outsider storyteller's sense of identity and the common pre-understanding of these groups. Tushnet acknowledges this\(^\text{74}\) but focuses his credibility analysis more on literary style than

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\(^{71}\) Interestingly, the students in my Identity Politics Seminar came to differing conclusions on this issue. Like Gary Peller, most assumed that the salespeople were white, but a significant minority assumed that they were black or were unsure about the salespeople's race. See Peller, suprat note 48, at 325 (concluding that Williams left "clear textual signals that the reader should understand that the salespeople were white").

\(^{72}\) Tushnet, suprat note 2, at 277.

\(^{73}\) If this is Tushnet's major point, however, it is unclear why he ties his discussion of her effectiveness as a storyteller to issues of credibility.

\(^{74}\) See id. at 265. In addition to his explicit acknowledgment of this, Tushnet also supports it through his discussion of Stephen Carter. Tushnet contrasts the problems he perceives with Williams's credibility with a story he tells about Carter. Id. at 263-65. Carter
on substantive content. Although I reject Farber and Sherry's and Tush-net's "solutions" to the credibility problem, the probable recurrence of the credibility issue suggests that narrative scholars should confront it directly. Although we may feel insulted to have to address stated or unstated concerns that we are fabricating, we need to recognize that our stories challenge established pre-understandings and are thus apt to raise credibility questions for many people. As scholars, we certainly have a duty to recount our stories accurately within the limits imposed by incomplete perception and perspective. We should be sure to differentiate, for example, between what someone else said or did and what their actions felt like to us. We should be willing to discuss with doubters the facts surrounding our stories and to clarify elements of the stories that others find unclear.

In addition, we might try to package our stories in ways that are less likely to make our readers/listeners believe that our credibility is crucial to the points we are making. If a major purpose of a story is to demonstrate or to counter pre-understanding, then by presenting the story in conjunction with other evidence demonstrating the same point, we can limit the significance of the credibility issue. If the presentation of the story causes many readers/listeners to recognize the story as depicting important problems, because it clarifies things they themselves have experienced, or is packaged along with a variety of other evidence demonstrating the same point, they should find its precise historical accuracy less significant.

Narrative scholars and our critics all should recognize that stories challenging the pre-understandings of the dominant culture will frequently raise credibility questions. As outsiders, however, we will have a hard time changing incorrect or overbroad pre-understandings unless we tell counter-stories. In the face of challenges to our credibility, we can aver honesty, present stories carefully, and try to focus our critics on the significance, rather than the credibility, of the stories. As I demonstrated earlier, much gave an account of an event that occurred in his youth—an account that later turned out to be false—that was given credibility by readers because it accorded with common pre-understanding about the effects of affirmative action on African-Americans. See id. Tushnet refers to Carter's account as "more successful" than Williams's stories because readers found it believable. Id. at 265. The success of Carter's story suggests the difficulty of convincing readers of the truth of accounts that contradict common pre-understanding.

The issue arises elsewhere in Farber and Sherry's critique and in other discussions of storytelling. Abrams, supra note 25, at 978-79, 1020-24; Baron, supra note 4, at 92; Farber and Sherry, supra note 1, at 808, 835-38.

Similarly, I agree with Farber and Sherry that we should differentiate between factual accounts of a particular incident and composites of a number of incidents. See Farber & Sherry, supra note 1, at 834.

See Abrams, supra note 25, at 994 (arguing that Martha Mahoney successfully accomplishes this in her writings on battered women).

See West, supra note 21, at 144 (arguing that women must start speaking about the quality of their internal lives).
productive discussion about substantive issues can ensue if readers/listeners assume truth and continue from there. After all, lawyers do not function entirely by determining and using “truth.” Legal actors regularly use fictional hypotheticals to further their analyses and engage in discussions assuming facts to be true arguendo. Once we make good-faith efforts to deal with concerns about credibility and civility, we should not allow these issues to silence outsider voices.

III. CONCLUSION: MEDIATING THE PARTICULAR AND THE GENERAL IN OUTSIDER LIVES

Farber, Sherry, and Tushnet profess to be sympathetic critics. Read generously, their work is part of an important discussion about how to bring outsider perspectives on law to privileged individuals most effectively. 79 As my discussion here and elsewhere suggests, 80 I agree with Farber and Sherry 81 and Kathryn Abrams 82 that simultaneously presenting stories in the context of explicit discussion of the stories’ significance and integrating statistical evidence and traditional legal analysis may well be the most effective way to reach a wide audience. 83 I have discovered in teaching that hammering a point home in a number of different ways may help the maximum number of people grasp it. Yet I am certainly open to the idea that, in the context of extensive ongoing scholarly debate, “naked” stories may connect sufficiently to the reader’s existing knowledge to reach a sizeable audience. 84 Moreover, it is possible that some of the raw

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79. See Delgado, supra note 17, at 666-67 (noting the difficulty outsiders have reaching insiders). Of course, some stories are aimed only at members of the group itself. Id. at 671. As I have noted elsewhere, narratives are very effective in building solidarity and strength among members of a particular group. See Fajer, supra note 3, at 517-18 (citing sources); see also CATHERINE MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE 83-105 (1989) (discussing the importance of women telling stories to one another as part of feminist consciousness-raising); Abrams, supra note 25, at 1044 (noting that storytellers may design narratives for this purpose). To accomplish serious change in the legal and social systems, however, members of outgroups must convince some more privileged people to join their cause. Thus, the question is how best to do that. This is not to say we have some sort of duty to write and rewrite our stories until they are acceptable to the majority. Nevertheless, as a matter of politics and demographics, it is important to talk about how best to reach people.

80. Fajer, supra note 3, at 568-70.
81. Farber & Sherry, supra note 1, at 852-54.
83. For a particularly fine example of the integration of stories into legal scholarship, see generally Mahoney, supra note 22. I agree with Jane Baron that connecting stories with more traditional forms of legal analysis is not necessary for the work to be good or useful scholarship. See Baron, supra note 48, at 30-31, 34-35. Still, such connections may be the most effective way of reaching actors in the legal system in order to effect social change.

84. See Delgado, supra note 17, at 668-69, 670 (noting that much critical race theory is written in more traditional scholarly styles and that very little consists of “naked” stories).
power of narrative can be diluted by over-explanation. More discussion on this issue would be productive.

Despite their contributions to this important discussion and their protestations of friendliness, I experienced a large part of Farber and Sherry's and Tushnet's critiques as attacks. Reading their pieces, I felt discouraged from telling the stories of my own life and proclaiming them as truth. This is particularly disturbing coming from Farber and Sherry, who, in a follow-up piece, try to take on the mantle of defenders of truth. Their reminder that truth "can take on a form of moral heroism" is not needed by people who daily risk jobs, the support of family and friends, and their physical safety to truthfully discuss their sexual identities. Yet it is these very discussions that Farber and Sherry seem to find inappropriate in legal discourse.

As a gay man, I may be too quick to perceive this form of silencing because one of the more important forms of pre-understanding about gay people in our culture is that our life stories are inappropriate for public discussion. We are constantly told that we should not be telling our stories, that nobody cares who we sleep with, and that they get tired of having us "shove" our "lifestyle" "in their faces" or "down their throats." Farber and Sherry's rejection of first-person narratives and Tushnet's apparent discomfort with the particularity of outsider narratives seem to come from the same roots as these expressions of concern with gay "flaunting." Thus, I feel a need to defend my choice to speak out openly about my sexual identity and how it affects my experience of the world in which I live.

At the conclusion of his article, Mark Tushnet invokes as a model of integrity Justice Frankfurter's dissent in one of the flag salute cases, in which the Justice dissociates himself from his Jewish heritage and concludes that "as judges we are neither Jew nor Gentile, neither Catholic nor agnostic." Tushnet applauds Frankfurter for "fighting rather than succumbing to his particularity." Although Tushnet seems to acknowledge that narrative scholarship may raise different concerns than judicial opin-

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86. Id. at 661.
87. See Fajer, supra note 3, at 570-607 (describing examples of the existence and costs of the pre-understanding that gay issues are unsuitable for public discussion).
89. Id. at 311 (footnote omitted). Ironically, as Gary Peller has noted, Frankfurter's statement can be seen as an example of an unstated compromise by which Jews are allowed to participate in American society if we suppress our Jewishness in public. See Peller, supra note 48, at 340. This compromise obviously parallels gay closeting.
ions, the structure of his article suggests that he is quite concerned about narrative scholars' overcommitment to the particular. This concern seems to me misguided. In the common law system, as Tushnet himself acknowledges, the relationship of the particular to the general flows both ways. Advocates may have to explain why a particular incident warrants a general principle, but they often also must explain why a general principle should not bend or yield to accommodate a particular incident to which the general principle seems inapplicable.

Our society is filled with general principles about outsider groups that take the form of pre-understanding. Two salient examples of this pre-understanding come to mind. First, during 1993, the media was filled with endless discussion, much of it quite hateful, about the propriety of allowing otherwise qualified lesbians and gay men the right to serve their country in the military. Second, in 1994, lesbians and gay men in several states will have to endure statewide political battles to keep alive the possibility of obtaining equal treatment in jobs and housing. The 1992 experiences in Colorado, Oregon, and Tampa suggest that these battles will be bitter, divisive, and violent. The public discourse about both of

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90. See Tushnet, supra note 2, at 251 n.2 (noting that his use of the term "degradation" is appropriate for Supreme Court opinions but not for narrative scholarship); see also id. at 311 (positing that "missteps in narrative jurisprudence" might be "less important than the Supreme Court's decision").

91. See generally id. Farber and Sherry make a similar point. See Farber and Sherry, supra note 1, at 838-39 (noting concern that people may overly rely on atypical narratives).

92. See Tushnet, supra note 2, at 255 (noting that when a particular situation arises that challenges the response demanded by a general precedent, a precedent-oriented system can rework the general principle).

93. See, e.g., Ellen Goodman, Homophobia in the Ranks, BOSTON GLOBE, Jan. 28, 1993, at 15 (discussing columnist's bombardment with letters from people opposed to lifting the ban on gay people in the military); Peggy Landers, Church Petitions Oppose Gays in the Military, MIAMI HERALD, May 21, 1993, at 6F (discussing nationwide petition sent to President Clinton); Catherine S. Manegold, The Odd Place of Homosexuality in the Military, N.Y. TIMES, Apr. 18, 1993, at E1 (relating various opinions on gay people in the military); Joseph C. Myers, Respect Opposition to Gays in the Military, MIAMI HERALD, Nov. 28, 1993, at 2M (arguing that proponents of gay people serving in the military should respect the views of their opponents); Robert L. Steinback, Fair Compromise Still Upsets Gays, Military, MIAMI HERALD, July 23, 1993, at 1B (acknowledging that the "don't ask, don't tell, don't pursue" policy on gays in the military has upset both sides of the debate); Jill Ellen Steinberg, Why is it Different for Men?, N.Y.TIMES, May 30, 1993, at E11 (discussing differences between male reaction to gay men and female reaction to lesbians in the context of the debate on the military).


95. See Bettina Boxall, Battle Lines Drawn Over Oregon's Anti-Gay Measure, L.A. TIMES, Oct. 22, 1992, at 1A (discussing effect of initiative to amend Oregon constitution to morally condemn homosexuality); Steve Bousquet, Activist: Gay Rights Vote May Just Polarize Florida, MIAMI HERALD, Oct. 26, 1993, at 5B (discussing the possibility of a vote to amend the Florida constitution to allow discrimination against gay men and lesbians); Jana Mazanec, Colo. Gays Say Harassment Escalating, USA TODAY, Nov. 12, 1992, at 3A (stating that gay people have reported an increase in "gay bashing" since state constitutional amendment condoning homophobic discrimination was approved).
these issues has been filled with common pre-understanding about gay people, particularly that we are obsessed with sex and unable to control our desires. These "general principles" need to be challenged with specifics from the quite different realities of gay life.96

As is true for other scholars, my sexual identity is not the sum and substance of who I am. When I choose to emphasize it in my scholarship, I do so not out of some random or anarchistic desire to emphasize my particularity. I do so because that aspect of myself has been chosen as an important characteristic by society, in ways that are largely beyond my control;97 and society uses that characteristic to make sweeping assumptions about who I am and what I am like, assumptions that permeate the legal system that governs me. I simply do not accept that it constitutes a failure of "integrity" or a breach of "norms of civility" for me to attempt to explain as best I can that who I am has little to do with these assumptions.

96. See Lawrence, supra note 15, at 2247 (describing teaching methodology incorporating narrative as follows: "The law remains, but we are always involved in testing its ability to incorporate and respond to our experience.").

97. In a follow-up work, Farber and Sherry worry that minority communities, if not organized around essentialist assumptions, must instead be organized around "their status as victims." Farber & Sherry, supra note 85, at 652. They argue that organizing around victimhood may be disempowering, may yield a frail sense of community, and may not foster "scholarship in the sense of a reasoned search for truth." Id.

I do not see how organizing a community in order to defend against political and social attacks and to combat harmful pre-understanding constitutes identifying on the basis of "victimhood." Even if one accepts this characterization, the harms suggested by Farber and Sherry do not follow. Gay people's sharing of stories that demonstrate common patterns of oppression has forged bonds between us, empowered people to come out, and given us strength to fight in the legal and political arenas. Cf. Lawrence, supra note 15, at 2281 n. 134 (describing storytelling as part of "active political struggle"). Moreover, a community created by identifying and questioning pre-understanding is well situated to provide alternative stories that challenge it, thus furthering "reasoned search for truth." And I certainly do not see attempts to provide these stories as merely "a form of group therapy." See Farber & Sherry, supra note 85, at 652 (arguing that if the "homosexual" label is socially constructed as a means of oppression, then in the gay community pain becomes the index of membership and scholarship becomes less an effort to understand the world than a form of therapy).