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On Telling Stories in School: A Reply to Farber and Sherry

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On Telling Stories in School: A Reply to Farber and Sherry

Richard Delgado*

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I. INTRODUCTION

It is difficult to evaluate someone who at the same time is evaluating *you*—putting you under the glass, dissecting your culture, laws, profession, and norms of political fairness.¹ The outsider's task is formidable enough: first seeing, then addressing, defects in the culture in which all of us, including the outsider, are immersed.² But when one

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1. On the general difficulty of evaluating non-mainstream legal scholarship, see Pierre Schlag, *Prefiguration and Evaluation*, 80 Cal. L. Rev. 965 (1992). On "outsider" scholarship in general, see, for example, Derrick A. Bell, *Faces at the Bottom of the Well* (Basic Books, 1992); Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 U. Pa. L. Rev. 561 (1984).

2. Immersion in the culture causes even the marginalized to internalize its precepts. See, for example, Richard Delgado and Jean Stefancic, *Images of the Outsider in American Law and Culture: Can Free Expression Remedy Systemic Social Ills?*, 77 Cornell L. Rev. 1258, 1288-91 (1992).

sets out, as Daniel Farber and Suzanna Sherry do in a recent article, to come to terms with outsider scholarship fairly and sympathetically, the task's difficulty increases by an order of magnitude.³

Empowered groups long ago established a host of stories, narratives, conventions, and understandings that today, through repetition, seem natural and true.⁴ Among these are criteria of judgment—the terms and categories by which we decide which things are good, valid, worthy, and true.⁵ Today, newcomers are telling their own versions, including *counterstories*, whose purpose is to reveal the contingency, partiality, and self-serving quality of the stories on which we have been relying to order our world.⁶ These new stories naturally strike us as challenging—as indeed they often are designed to be. Some within the mainstream have dismissed the new stories as false, manipulative, “political”—or not law.⁷ More moderate critics like Farber and Sherry urge that we take the newcomers seriously, identify when their workproduct is valid and when it is not, and lay down standards for evaluating it when it is.⁸

What both types of critics tend to overlook is that majoritarians tell stories too. But the ones they tell—about merit, causation, blame, responsibility, and racial justice—do not seem to them like stories at all, but the truth.⁹ In a series of articles, I have pointed out the difficulty confronting an outsider—one writing an abolitionist essay, for ex-

3. See Daniel Farber and Suzanna Sherry, *Telling Stories Out of School: An Essay on Legal Narratives*, 45 Stan. L. Rev. 807 (1993). Farber and Sherry set out their own version of what outsider scholarship is, focusing mainly on critical race theory and feminism; identify the role and functions of narratives in outsider scholarship; address the relationship between “voice” and narrative scholarship; and offer an approach to evaluating scholarship employing the narrative, or “storytelling,” mode. For other critiques of outsider and narrative jurisprudence, see Randall Kennedy, *Minority Critiques of Legal Academia*, 102 Harv. L. Rev. 1745 (1989); Mark Tushnet, *The Degradation of Constitutional Discourse*, 81 Georgetown L. J. 251 (1992).

4. See Catharine MacKinnon, *Feminism Unmodified: Discourses on Life and Law* (Harvard, 1987); Richard Delgado, *Shadowboxing: An Essay on Power*, 77 Cornell L. Rev. 813, 818 (1992); Richard Delgado, *Mindset and Metaphor*, 103 Harv. L. Rev. 1872, 1874-75 (1990); Elizabeth Spellman, *Inessential Woman: Problems of Exclusion in Feminist Thought* 159 (Beacon, 1988).

5. Delgado, 103 Harv. L. Rev. at 1874-77 (cited in note 4).

6. On the role and function of counterstories, see Derrick A. Bell, *And We Are Not Saved: The Elusive Quest for Racial Justice* 1-10 (Basic Books, 1987) (using myth and fiction to probe America's racial history and consciousness); Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 Mich. L. Rev. 2411 (1989) (discussing storytelling and counter-storytelling as means of oppositional reform).

7. See the authorities cited in note 3. On the “not law” criticism levelled at critical legal studies, see Paul D. Carrington, *Of Law and the River*, 34 J. Legal Ed. 222 (1984).

8. Farber and Sherry, 45 Stan. L. Rev. at 824-30 (cited in note 3) (Part III.B, *Stories from the “Bottom”*); *id.* at 830-54 (Part IV, *Standards for Evaluating Stories as Scholarship*).

9. Delgado, 77 Cornell L. Rev. at 818 (cited in note 4) (reasoning that majoritarian concepts and practices come to seem unexceptionable, i.e., true “the way things are”).

ample, or a novel argument for law reform.¹⁰ New stories are always interpreted and judged in terms of the old.¹¹ One that differs too drastically from the standard account will strike the listener as extreme, false, or unworthy of belief.¹² Unless the storyteller is exceptionally ingenious, the scope for change through remonstrance, argument, and other verbal means is much more limited than we like to think. Jean Stefancic and I invented the term "empathic fallacy"¹³ to describe this limitation. The difficulty it highlights confronts the reformist storyteller with a formidable task. What about the mainstream scholar who wishes to understand, empathize, and evaluate the outsider? As Pierre Schlag has put it, evaluation is very hard to do.¹⁴

Farber and Sherry have written easily the most sustained treatment of outsider scholarship.¹⁵ Their argument is detailed and scholarly; they cite us chapter and verse. Yet, a number of lapses, large and small, mar an otherwise commendable effort. Part II of this Article identifies a number of these lapses. Part III explains in greater detail why evaluation of outsider scholarship is so hard—and so easy. The Parts work together as follows: The mistakes and failures I highlight in Farber's and Sherry's treatment of outsider jurisprudence illustrate a more general difficulty, which I set out in Part III. My conclusion is that the near impossibility of fairly treating new scholarly movements counsels against laying down evaluative criteria during those movements' early stages.

II. ERRORS AND MISSTATEMENTS

The footnotes of the Farber-Sherry article disclose a broad familiarity with outsider scholarship; they quote or cite many of the major

10. See Richard Delgado and Jean Stefancic, *Why Do We Tell the Same Stories?: Law Reform, Critical Librarianship, and the Triple Helix Dilemma*, 42 *Stan. L. Rev.* 207 (1989); Richard Delgado and Jean Stefancic, *Norms and Narratives: Can Judges Avoid Serious Moral Error?*, 69 *Tex. L. Rev.* 1929 (1991); Delgado and Stefancic, 77 *Cornell L. Rev.* at 1258 (cited in note 2).

11. See, for example, Delgado and Stefancic, 77 *Cornell L. Rev.* at 1279; Delgado and Stefancic, 69 *Tex. L. Rev.* at 1957.

12. See Delgado and Stefancic, 77 *Cornell L. Rev.* at 1279. On the many ways in which some writers in the legal mainstream continue to marginalize new scholarship, see Richard Delgado, *The Imperial Scholar Revisited: How to Marginalize Outsider Writing, Ten Years Later*, 140 *U. Pa. L. Rev.* 1349 (1992).

13. See Delgado and Stefancic, 77 *Cornell L. Rev.* at 1261. See also *id.* at 1278-79 (reasoning that new stories always are screened and interpreted through the medium of the old and that ones that are radical departures always are rejected); *id.* at 1280-82 (designating the belief that we may somehow escape this limitation the "empathic fallacy").

14. Schlag, 80 *Cal. L. Rev.* at 965 (cited in note 1).

15. Other treatments, such as Mark Tushnet, *The Degredation of Constitutional Discourse*, 80 *Georgetown L. J.* 251; Mary Coombs, *Outsider Scholarship: The Law Review Stories*, 63 *U. Colo. L. Rev.* 683 (1992); or Edward Rubin, *On Beyond Truth*, 80 *Cal. L. Rev.* 889 (1992), in my opinion are less successful than that of Farber and Sherry.

writers and themes.¹⁶ Yet the sections of their article concerned with describing¹⁷ and identifying a range of valid functions for the new genres¹⁸ contain a number of curious lapses. These errors, committed by serious and careful commentators, cast doubt on the entire evaluative enterprise. For, if observers as well-intentioned as these two go astray, how will others less generously inclined apply the criteria they end up proposing? I point out some of the more notable errors and misinterpretations for two reasons. First, it is important to clear up the errors in themselves; I have noticed that mainstream writers frequently accept their colleagues' descriptions of outsider jurisprudence as true without troubling to consult the original sources.¹⁹ Second, the deficiencies in the Farber-Sherry article cast doubt on the entire enterprise of evaluating outsider scholarship by insider standards. In Part III, I offer a theoretical explanation for that difficulty and a suggestion for what we ought to do in the meantime. The oversights and omissions noted in Part II, then, supply the evidence for the theory in Part III.

A. *Thematic Errors and Misconceptions*

1. Equation of Outsider Jurisprudence With Narrative Scholarship

I love stories and narratives; indeed, I have written frequently in this mode myself.²⁰ Indeed, four years ago I wrote a letter to the *Michigan Law Review* that resulted in a symposium issue on legal storytelling.²¹ Yet, not all outsider scholarship takes the form of stories or chronicles. Many classics of the critical race theory (CRT) genre,²² such as Derrick Bell's *Serving Two Masters*²³ or Kimberle Crenshaw's article

16. For example, Farber and Sherry, 45 *Stan. L. Rev.* at 814-19 (cited in note 3) (Part II.B) (citing, among others, Alex Johnson, Sharon Rush, Jerome Culp, Randall Kennedy, Richard Delgado, Mari Matsuda, Patricia Williams, Derrick Bell, Lucinda Finley, Robin Barnes, Robert Williams, Stephanie Wildman, Martha Fineman, Catbarine MacKinnon, Toni Massaro, Stephen Carter, Duncan Kennedy, and Gary Peller).

17. *Id.* at 809-19 (Part II).

18. *Id.* at 819-30 (Part III).

19. For a discussion of this phenomenon, see Delgado, 140 *U. Pa. L. Rev.* at 1364-65 (cited in note 12).

20. See, for example, Richard Delgado, *Rodrigo's Chronicle*, 101 *Yale L. J.* 1357 (1992); Richard Delgado, *Derrick Bell and the Ideology of Law Reform: Will We Ever Be Saved?*, 97 *Yale L. J.* 923 (1988) (book review); Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 *Mich. L. Rev.* 2411 (1989).

21. Letter from Richard Delgado to Kevin Kennedy, editor in chief, *Michigan Law Review*, June 1, 1988 (on file with author). See *Symposium, Legal Storytelling*, 87 *Mich. L. Rev.* 2073 (1989).

22. Farber and Sherry use two examples of outsider jurisprudence to illustrate their thesis about storytelling—feminism, Farber and Sherry, 45 *Stan. L. Rev.* at 810-14 (Part II.A), and CRT, *id.* at 814-19 (Part II.B). I shall be concerned mainly with their treatment of CRT.

23. Derrick Bell, *Serving Two Masters*, 85 *Yale L. J.* 470 (1974).

on transformation and legitimation,²⁴ are written in the standard cases-policies-arguments mode. Stefancic and I recently completed an extensive annotated bibliography of CRT, in the course of which we read every article and book that arguably fell within the corpus.²⁵ At most, one-quarter of the works could be described as written in the storytelling or narrative mode. This is not a minor quibble: Farber and Sherry focus on the alleged defects of narrative jurisprudence, yet often impute them to CRT as a whole.

2. Narrative Scholarship and the "Different Voices" Debate

Farber and Sherry write that the case for stories rests on showing that minority scholars write in a different voice, something that has not yet been done.²⁶ Unlike with women, where the work of Carol Gilligan established an empirical basis for the claim of differentness,²⁷ with the voice of color, distinctness has not yet been shown. Farber and Sherry reason that there may be a political (leftist) voice, or one of the poor, but aside from these commonalities, minority scholars share little.²⁸ Some scholars of color are leftist activists, others moderate, still others conservative. What common voice could all of them have, Farber and Sherry ask—and why cannot a white progressive write in the "voice of color?"²⁹

Voice is a false issue. The best evidence of storytelling's usefulness lies in the stories themselves. One could argue as well that wolves do not howl, since some howl in a high key, others in a low one, and still others not at all, while some creatures that are not wolves howl as well. The point is not to impose some requirement (of dubious relevance) of uniqueness with respect to howling or legal storytelling, but to learn something about or from the behavior itself.

3. Stories Are Useless Without Analysis and Reasoned Argument

In oral presentations of their paper, Farber and Sherry illustrated one of their reservations about stories by telling one themselves—an anecdote about the young daughter of one of them who crayoned on an

24. Kimberle Crenshaw, *Race, Reform and Retrenchment: Transformation and Legitimation in Antidiscrimination*, 101 Harv. L. Rev. 1331 (1988).

25. Richard Delgado and Jean Stefancic, *Critical Race Theory: An Annotated Bibliography*, 79 Va. L. Rev. 461 (1993).

26. Farber and Sherry, 45 Stan. L. Rev. at 809-19 (Part II).

27. See Carol Gilligan, *In a Different Voice* 69-105 (1982); Carol Gilligan and Jane Attanuci, *Two Moral Orientations*, in Carol Gilligan, Janie Ward, and Jill Taylor, eds., *Mapping the Moral Domain: A Contribution of Women's Thinking to Psychological Theory and Education* 73 (Harvard, 1988).

28. Farber and Sherry, 45 Stan. L. Rev. at 815-18.

29. *Id.* at 818-19.

upholstered chair and, when scolded, generalized the wrong lesson.³⁰ Their point is that stories in themselves teach little unless supplemented with analysis and commentary that will enable the reader to connect the story with a more general rule or principle.³¹

True, but irrelevant³²—most of us already follow this counsel. In perhaps the most notable example of legal storytelling, Derrick Bell and his interlocutor, Geneva, agree that their conversations must include statistics, case authority, and doctrinal analysis lest their colleagues reject their work as nonrigorous.³³ Most of us instinctively follow Bell's example; only a handful of the articles we reviewed consisted of unadorned narratives. Narratives, standing alone, of the sort Farber and Sherry condemn, are rare.

4. Overlooking the Deconstructionalist Tale, or "Counterstory"

When Farber and Sherry write of outsider stories, they seem to be thinking of just one kind—the personal account or description of the author's experience. They speak of "agony tales,"³⁴ of "unadorned" narratives³⁵ and the virtues of *concreteness* in legal scholarship.³⁶ They conclude by finding a narrow place for storytelling, but only as an adjunct to traditional analysis and commentary.

This approach neglects a second, much more important type of narrative, namely the counterstory.³⁷ Majoritarians tell stories, as I noted earlier, but with the conviction that they are not stories at all, but the truth.³⁸ Accordingly, many CRT writers employ the "counterstory" to jar, mock, or displace a tenet of the majoritarian faith.³⁹ These tales are not so much aimed at setting forth a minority view, or how the writer felt about a given experience (e.g., experiencing discrimination

30. See, for example, Address by Daniel Farber and Suzanna Sherry, Yale Law School, Oct. 1992. The same story also appeared in an earlier draft of their article (manuscript on file with author).

31. Farber and Sherry, 45 *Stan. L. Rev.* at 846-53 (Part IV).

32. See text accompanying notes 77-84 (discussing the connection between practical reason and storytelling).

33. For example, Derrick Bell, *Foreward: The Civil Rights Chronicles*, 99 *Harv. L. Rev.* 4, 14-36 (1985) (cited in note 6); Delgado, 87 *Mich. L. Rev.* at 2418-22 (cited in note 6). But see Bell, *And We Are Not Saved* at 43 (observing that even dazzling analysis may fail to persuade skeptical white readers).

34. Farber and Sherry, 45 *Stan. L. Rev.* at 835-38.

35. *Id.* at 848-51.

36. *Id.* at 822-24.

37. See Delgado, 87 *Mich. L. Rev.* at 2413-18, 2429-35.

38. See text accompanying notes 2-5, 9-12; Delgado, 77 *Cornell L. Rev.* at 818 (cited in note 4).

39. See, for example, Delgado, 87 *Mich. L. Rev.* at 2438; Bell, *And We Are Not Saved* (illustrating the use of chronicles and counterstories aimed at challenging the dominant stories of race).

while shopping). Rather, they are aimed at challenging one of the inscribed and blithely repeated accounts by which majoritarians make sense of their world; stories such as: without intent, no discrimination; outright racism is rare and sporadic; we have all the civil rights legislation and case law we need—any more would disadvantage innocent whites; some cultures unfortunately have less ambition and ability than others; and so on.⁴⁰

It is curious that Farber and Sherry neglected this genre, focusing instead on the poetic *cri de coeur*. Yet, as I and others have pointed out, destruction of contingent, comforting myths is often a necessary prelude to constructing a better, fairer world.⁴¹ The counterstory focuses not on helping a white understand a black, but on helping a white understand a *white*.

5. The Question of Audience

Some stories, Farber and Sherry write, do not ring true⁴²; others leave the reader asking, "What am I to make of this?"⁴³ Still others make the reader wonder if the story is typical—how often can such a terrible thing happen?⁴⁴

Stories, of course, may be told poorly, may leave their audience guessing. But some outsider narratives may puzzle Farber and Sherry simply because they require work on the reader's part,⁴⁵ or are not written with him or her in mind at all. The intended audience may be progressive scholars, other critics, or the minority community itself.⁴⁶ In the words of a black filmmaker, "[W]e get raves from the Black community . . . [but] snarls from white male critics who insist that the film is not about anything because it's not about anything that concerns them . . . 'How dare you make a film we don't understand?'"⁴⁷

6. Stories' Purpose and Efficacy

Finally, Farber and Sherry try to ascertain the functions of outsider stories in order to evaluate how well the stories fulfill these functions.⁴⁸ Here, Farber and Sherry carry out a great deal of armchair

40. See sources cited in notes 4 and 6 (identifying and analyzing some of these stories about women and blacks).

41. See, for example, Delgado, 87 Mich. L. Rev. at 2412-18, 2429-35.

42. Farber and Sherry, 45 Stan. L. Rev. at 822-24 (Part III.A.2).

43. Id. at 825-26, 830-31.

44. Id. at 838-40.

45. See text accompanying notes 82-84.

46. On the question of audience, see Regina Austin, *Sapphire Bound!*, 1989 Wis. L. Rev. 539.

47. Patricia Smith, *Voices Struggling to be Heard*, Boston Globe A-5 (Sept. 1, 1991) (interview with Black filmmaker Julie Dash).

48. See Farber and Sherry, 45 Stan. L. Rev. at 830-31 (Part III).

analysis—stories might be good for this or that—concluding, naturally, that none of these functions is served, except the narrow, color-neutral one of illustrating practical reasoning.⁴⁹

But it is not necessary to speculate on storytelling's purposes. Minority narrativists have not been shy about meta-analysis, about telling our readers what we think we are doing.⁵⁰ And, as for judging stories' impact, why speculate in a vacuum? Book sales, reviews, and placement of articles in top-tier journals⁵¹ might enable us to gauge stories' efficacy without the guesswork.

B. Other Qualms and Reservations

Other inaccuracies in the Farber-Sherry article, while less serious, nevertheless are worth noting for the reasons mentioned earlier. They write that outsider jurisprudence has no particular content,⁵² yet writers have had no difficulty in identifying a set of characteristic themes.⁵³ They write that the new CRT scholars disdain analysis and empirical research in favor of a good yarn,⁵⁴ when their work probably contains as much writing of these harder-edged types as does a similar sample of mainstream writing.⁵⁵ They write that minority storytelling can have little impact on the reader, since the writer and reader will either share a common world or not. If not, the story will be incomprehensible; if so, it will say little new.⁵⁶ (This argument could be used to justify throwing away one's umbrella.)⁵⁷ They argue that better ways exist to correct prejudice, such as science⁵⁸ (ignoring evidence that science and prejudice have often seemed to coexist quite easily).⁵⁹ They write that stories—especially those in the first person—may be unfair, since there

49. *Id.* at 820-24 (Part III.A.1., 2.).

50. See text accompanying notes 38-40; Delgado, 87 *Mich. L. Rev.* at 2412-15, 2435-40 (identifying the functions of narratives as (i) challenging majoritarian mindset; (ii) making easy issues harder; (iii) introducing formerly excluded perspectives; and (iv) arguing for a redefinition and new understanding of social reform).

51. On the relatively favorable reception of critical and radical-feminist scholars by the law reviews but the more guarded one by mainstream scholars, see Delgado, 140 *U. Pa. L. Rev.* at 1350-51 (cited in note 12).

52. Farber and Sherry, 45 *Stan. L. Rev.* at 809-10 (Part I) (no distinctive voice or tenets).

53. See, for example, Delgado and Stefancic, 79 *Va. L. Rev.* at 462-63 (cited in note 25) (identifying ten such themes); Stephanie Goldberg, *The Law, A New Theory Holds, Has a White Voice*, *N.Y. Times* B8 (July 17, 1992).

54. Farber and Sherry, 45 *Stan. L. Rev.* at 808-09.

55. See Delgado and Stefancic, 79 *Va. L. Rev.* 461.

56. Farber and Sherry, 45 *Stan. L. Rev.* at 824-26, 847-50.

57. *Viz.*, if a wild storm is blowing, an umbrella won't keep me dry; and if the rain is extremely light, I won't need one at all.

58. Farber and Sherry, 45 *Stan. L. Rev.* at 830, 835-37.

59. See, for example, Stephen J. Gould, *The Mismeasure of Man* (Norton, 1983).

is no way to refute them,⁶⁰ while others may be “conversation-ending move[s].”⁶¹ (What about majoritarian stories, such as “We have looked everywhere for a minority professor, but the pool is so small?”)⁶² Stories may deceive the reader by leaving out relevant facts, or by failing to be typical of the situation described.⁶³ (Every narrative, however, leaves out something; their very point is to make sense out of the welter of phenomena that besiege us every moment.)⁶⁴

III. FARBER AND SHERRY ON EVALUATING OUTSIDER SCHOLARSHIP

The outsider storyteller’s task, as I mentioned earlier, is formidable indeed.⁶⁵ Speech is paradigm-dependent. If racism is deeply imbedded in the very paradigm we rely on to describe and order our world, any story that challenges that paradigm too frontally will strike the reader as incoherent.⁶⁶ The task of the *insider* who sets out to understand and order the *outsider’s* world is even more difficult—witness the above-noted lapses that Farber and Sherry commit in simply describing and analyzing outsider scholarship.⁶⁷ Consider next what they propose in the way of standards for evaluating that scholarship.

The purpose of all legal scholarship, they write, is to help the reader understand the law.⁶⁸ How does it do that? They reason that legal scholarship helps the reader by employing reason (especially practical reason) and analysis, by offering suggestions that are generalizable and testable.⁶⁹ Scholarship that takes the form of storytelling may be useful, then, but only if the stories are typical,⁷⁰ true,⁷¹ and supported by analysis and reason.⁷²

We should hesitate to adopt these criteria for outsider scholars. Consider the first criterion, that scholarship helps the reader understand the law. Outsider scholarship is often aimed not at understanding

60. Farber and Sherry, 45 *Stan. L. Rev.* at 835-38.

61. *Id.* at 851.

62. For a discussion of this standard argument, see Delgado, 103 *Harv. L. Rev.* at 1875-76 (cited in note 4).

63. Farber and Sherry, 45 *Stan. L. Rev.* at 852-53.

64. See Delgado and Stefancic, 69 *Tex. L. Rev.* at 1932-33, 1956-57 (cited in note 10); Delgado and Stefancic, 77 *Cornell L. Rev.* at 1279-81 (cited in note 2).

65. See text accompanying note 10 and sources cited therein.

66. Delgado and Stefancic, 77 *Cornell L. Rev.* at 1279. See Delgado, 87 *Mich. L. Rev.* at 2413.

67. See notes 26-64 and accompanying text.

68. Farber and Sherry, 45 *Stan. L. Rev.* at 809.

69. *Id.* at 846-51.

70. *Id.* at 838-40.

71. *Id.* at 832-35.

72. *Id.* at 850-54.

the law, but at changing it.⁷³ Or consider the requirement of typicality. Outsiders and their experiences by definition will not be typical. Of course, Farber and Sherry may be saying only that outsider stories should be typical of outsider experience. But who is to decide that—surely not one situated outside that experience.⁷⁴ Or, take the requirement of truth. Apart from mathematics and the physical sciences, truth is largely socially constructed.⁷⁵ If I pronounce society unjust, and you think it is fair and just, which of us has truth on his or her side? If, as I argued earlier, many of the dominant narratives incorporate a majoritarian perspective,⁷⁶ the requirement that outsider storytellers adhere to these versions on penalty of being labelled untruthful comes perilously close to requiring them to reject their own culture.

Finally, take the requirement of *generalizability*, which stories are said to achieve only through argument and abstraction. Whom does such a requirement benefit? Naturally, those whose experience is the norm, whose versions of the way things are are inscribed in all the cultural rules and practices.⁷⁷ Empowered groups do not need particularity, context, a focus on the individual.⁷⁸ All the general rules, presumptions, and interpretations reflect them and their understandings.⁷⁹ Stories that too forcefully call attention to injustice, particularly of novel sorts, will strike them as anecdotal, unprincipled, or unfair. They will give them pejorative labels, like “agony stories,”⁸⁰ deem them conversation-closers⁸¹—all the while overlooking that cheerful majoritarian stories, for example about how much racial progress has been made, strike us the same way.

73. See, for example, Delgado, 87 Mich. L. Rev. at 2415. See also sources cited in Delgado and Stefancic, 79 Va. L. Rev. 461 (cited in note 25) (listing CRT articles, most of which deal with social or legal transformation).

74. For works questioning that such an “essential” unitary experience even exists, see generally Stephen L. Carter, *Reflections of an Affirmative Action Baby* (Basic Books, 1991). See also Kennedy, 102 Harv. L. Rev. 1745 (cited in note 3).

75. On the construction of the social world, see generally Peter L. Berger and Thomas Luckmann, *The Social Construction of Reality* (Doubleday, 1966). For law’s role, see Delgado, 77 Cornell L. Rev. 813 (cited in note 4); Catharine MacKinnon, *Toward A Feminist Theory of the State* (Harvard, 1989); MacKinnon, *Feminism Unmodified* (cited in note 4) (discussing law’s role in constructing women’s reality).

76. See notes 3-6 and accompanying text.

77. Delgado, 77 Cornell L. Rev. at 818. See generally MacKinnon, *Toward a Feminist Theory*; MacKinnon, *Feminism Unmodified*.

78. See Delgado, 77 Cornell L. Rev. at 818-22. See generally Spellman, *Inessential Woman* (cited in note 4).

79. See sources cited in notes 77-78.

80. Farber and Sherry, 145 Stan. L. Rev. at 835-38.

81. *Id.* at 851.

Consider how these requirements might converge in the case of Patricia Williams' famous Benetton story.⁸² A casual or unsympathetic reviewer easily could criticize Professor Williams for making too much of an atypical experience. Most retail stores with which he is familiar are happy to sell to blacks. The unsympathetic reviewer may reason that Williams invites us to see her experience as common—which it is not, thereby violating the criterion of truthfulness. Moreover, she offers little in the way of reasoned argument, thereby missing an opportunity to connect her anecdote with legal doctrine and thereby aid the reader's understanding of the law. For example, she might have drawn a lesson about the public-private distinction, inviting the reader to question the way various spaces in our society are relegated to the private sphere, from which one may exclude others without giving a reason.

But this interpretation would miss Professor Williams' point. The Benetton story is intended to prompt consideration of a new legal category, namely spirit-murder. Spirit-murder is a kind of crime; like most crimes one may not commit it with impunity even on one's own property.⁸³ Spirit-murder occurs frequently in the lives of minority people—that is why her story rings true. Her point in telling it was not to urge a small, incremental change in the locus of the public-private line. Rather, she intended to call attention to the law's inadequacy in a recurring situation. Focusing on the Farber-Sherry requirements—truth, typicality, and conventional reasoned argument—might easily lead the reader to miss the deeper truth at the heart of Professor Williams' story.

IV. CONCLUSION

All this counsels caution in evaluating outsiders. Empathy and understanding are difficult across large gaps of culture and experience. Even careful observation is in short supply—slaves observed their masters far more carefully, and with more reason, than the latter did them. Majoritarian tools of analysis, themselves only stories, inevitably will pronounce outsider versions lacking in typicality, rigor, generalizability, and truth. The purpose of many outsider narratives is to put our very

82. In the story, the author goes to Benetton to buy Christmas presents for her mother. She presses the buzzer, the only way to gain entrance. But the young sales clerk, after scrutinizing her face, denies her entry, even though other customers are present and it is not yet closing time. Patricia Williams, *The Alchemy of Race and Rights* 44-45 (Harvard, 1991). For Farber's and Sherry's doubts about this story, see Farber and Sherry, 45 *Stan. L. Rev.* at 835 & n.146.

83. Patricia Williams, *The Obliging Shell: An Informal Essay on Formal Equal Opportunity*, 87 *Mich. L. Rev.* 2128, 2139-43 (1989); Patricia Williams, *Spirit-Murdering the Messenger: The Discourse of Fingerprinting as the Law's Response to Racism*, 42 *U. Miami L. Rev.* 127, 129, 135-36, 147-54 (1987).

ordering principles, including these, in question. Empowered groups long ago inscribed their favorite narratives—ones that reflected their sense of the way things ought to be—into myth and culture. Now they profess to consult that culture, meekly and humbly, in search of standards for judging challenges to that culture.

Neat, but circular. A better approach would be to postpone efforts to evaluate new scholarly movements. There is little urgency; most of the voices have tenure.⁸⁴ And, while the scholars may not all be young, the movements are. Critical race theory, for example, held its first national workshop in the summer of 1989. As I pointed out on another occasion, there are many things one can do with an infant—nurture it, get to know it, observe and interact with it.⁸⁵ But should we rush in with evaluative criteria to rank its eyes, teeth, limbs, and brain? Sometimes it may be better to live with uncertainty a little longer, tolerate a degree of experimentation, rather than shut off a world-crossing experiment that may one day benefit us all.⁸⁶

84. For the manner in which well-meaning senior professors often counsel young scholars of color to postpone writing about race until they have first demonstrated their skills at mainstream doctrinal analyses, see Delgado, 132 U. Pa. L. Rev. at 561-62 (cited in note 1).

85. Richard Delgado, Comment on Mary Coombs, University of Colorado Law Review Symposium on Legal Scholarship, Boulder, Col., Feb. 1992, reprinted in part, 63 Colo. L. Rev. 721 (1992).

86. Richard Delgado, *When a Story Is Just a Story: Does Voice Really Matter?*, 76 Va. L. Rev. 95, 103-05 (1990).