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Outsider Jurisprudence and the Electronic Revolution: Will Technology Help or Hinder the Cause of Law Reform?

JEAN STEFANCIC* AND RICHARD DELGADO**

I. INTRODUCTION

Legal scholarship today stands at a crossroad, its form and substance subject to transformation by two movements that are about to converge. These movements, or forces, are (i) outsider jurisprudence—the writing of Critical Legal Studies scholars, feminists, and minorities of color; and (ii) the electronic transformation of media. Our first task will be to describe the two forces—the new legal scholarship and the electronic revolution—in some detail. Following this, we shall offer some predictions on what may happen should they merge. Will one force cancel the other out, as some have suggested? Or, will computerization of legal research facilitate the work of law reform, uniting the two forces in a single powerful impetus for social and legal change? What, if anything, can lawyers and legal scholars do to assure that the second eventuality, not the first, takes place?

II. OUTSIDER JURISPRUDENCE: THE FIRST MOVEMENT

Outsider jurisprudence takes three principal forms: Critical Legal Studies (CLS),¹ feminism,² and the “New” or Critical Race Theory (CRT).³ Critical thought, in general, traces its origins to such European writers as Marx, Heidegger, Gramsci, and Foucault, as well as to the work of the

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¹ See *THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* (D. Kairys, 2d ed. 1990) [hereinafter *POLITICS OF LAW*].

² For an introduction to feminist thought, see *FEMINISM AND POLITICAL THEORY* (C. Sunstein ed. 1990); C. MACKINNON, *FEMINISM UNMODIFIED* (1987).

³ See Delgado, *Brewer's Plea: Critical Thoughts on Common Cause*, 44 *VAND. L. REV.* 1 (1990); Colloquy, *Responses to Randall Kennedy's Racial Critique of Legal Academia*, 103 *HARV. L. REV.* 184 (1990).

Frankfurt school that flourished during the 1920s.⁴ Critical thought first gained a foothold in philosophy, literature, sociology, and anthropology.⁵ Here, criticalists challenged received ideas such as universality, objectivity, neutrality, and the notion that every text had a single or determinate meaning.⁶

Law lagged behind other text-based disciplines in incorporating these new approaches. For example, hermeneutics, the science of textual interpretation, had entered the study of scriptural texts in the 1800s through the writings of Friedrich Schleiermacher.⁷ In the 1970s, structuralism and deconstruction added a radical new dimension to the interpretation of literary texts.⁸ Not until the 1980s, however, did critical legal scholars introduce deconstruction into law.⁹

They also borrowed the idea of indeterminacy and applied it to law, urging that legal reasoning rarely, if ever, has just "one right answer."¹⁰ Instead, there will be multiple interpretations of the available precedent from which judges may choose on the way to resolving the case before them. Other criticalists look behind legal reasoning to the panoply of presuppositions, agendas, and hidden assumptions that make up legal culture—the baseline from which legal argument proceeds.¹¹ Duncan

⁴ For discussion of the historical roots of CLS, see M. KELMAN, *GUIDE TO CRITICAL LEGAL STUDIES* (1989); Symposium, *Critical Legal Studies*, 36 *STAN. L. REV.* (1984) (collection of articles on CLS history, tenets, and subdivisions within movement); Unger, *The Critical Legal Studies Movement*, 96 *HARV. L. REV.* 561 (1984).

⁵ M. KELMAN, *supra* note 4; Symposium, *supra* note 4; Unger, *supra* note 4. On the origins of contemporary critical thought in these other disciplines, see R. UNGER, *KNOWLEDGE AND POLITICS* (1975); M. JAY, *THE DIALECTICAL IMAGINATION: A HISTORY OF THE FRANKFURT SCHOOL & THE INSTITUTE OF SOCIAL RESEARCH, 1923-1950* (1973).

⁶ *E.g.*, Unger, *supra* note 4; Kelman, *Trashing*, 36 *STAN. L. REV.* 293 (1984); H. GADAMER, *TRUTH AND METHOD* (1975).

⁷ F. SCHLEIERMACHER, *HERMENEUTICS: THE HANDWRITTEN MANUSCRIPTS* (H. KIMMERLE ed. 1978).

⁸ S. FISH, *IS THERE A TEXT IN THIS CLASS?* (1980); A. BERMAN, *FROM THE NEW CRITICISM TO DECONSTRUCTION: THE RECEPTION OF STRUCTURALISM AND POST-STRUCTURALISM* (1988).

⁹ D. KAIRYS, *supra* note 1; Symposium, *supra* note 4.

¹⁰ *E.g.*, Kelman, *supra* note 6 (indeterminacy, sometimes called "trashing" by CLS adherents); Kennedy & Gabel, *Roll Over Beethoven*, 36 *STAN. L. REV.* 1 (1984). For early exposition of law's indeterminacy from a leading Legal Realist, see K. LLEWELLYN, *THE BRAMBLE BUSH* (1926).

¹¹ Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 *MICH. L. REV.* 2411, 2412-14 (1989).

Kennedy, for example, deconstructed *Blackstone's Commentaries*, showing how their underlying structure reflected and advanced the values of Western liberal-capitalist thought.¹² Other scholars have applied deconstructionist techniques to such areas of law as contracts, property, and civil rights.¹³

Critical Legal Studies spawned and influenced two additional movements, feminist legal thought¹⁴ and CRT.¹⁵ A number of women and scholars of color found CLS attractive because it challenged the dominant liberal beliefs about law's objectivity and the sacred inviolability of texts. Feminist legal scholars (some of whom identify themselves as fem-Crits) write about the ubiquitous patriarchy of the law and other social institutions.¹⁶ Scholars such as Catharine MacKinnon and Robin West have focused on pornography,¹⁷ divorce laws,¹⁸ and sexual harassment¹⁹ in the workplace. Other writers have decried law's embrace of universality, urging instead an emphasis on context, particularity, and "voice."²⁰

Feminist legal scholars also examine legal education, addressing such issues as bias in the curriculum, silencing in the classroom, and lack of opportunities for women following graduation.²¹ They have challenged male

¹² Kennedy, *The Structure of Blackstone's Commentaries*, 28 BUFF. L. REV. 205 (1979).

¹³ Dalton, *An Essay on the Deconstruction of Contract Doctrine*, 94 YALE L.J. 999 (1985); Kennedy & Michelman, *Are Property and Contract Efficient?*, 8 HOFSTRA L. REV. 711 (1980); Freeman, *Legitimizing Racial Discrimination Through Anti-discrimination Law*, 62 MINN. L. REV. 1049 (1978).

¹⁴ See FEMINISM AND POLITICAL THEORY, *supra* note 2; C. MACKINNON, *supra* note 2; Scales, *The Emergence of Feminist Jurisprudence*, 95 YALE L.J. 1373 (1986).

¹⁵ See Delgado, *supra* note 3; Colloquy, *supra* note 3.

¹⁶ For discussion of the idea of patriarchy—that law, like most social institutions, reflects male norms and values—see West, *Jurisprudence and Gender*, 55 U. CHI. L. REV. 1 (1988); C. MACKINNON, *supra* note 2.

¹⁷ MacKinnon, *Pornography, Civil Rights and Speech*, 20 HARV. C.R.-C.L. L. REV. 920 (1985).

¹⁸ Olsen, *The Family and the Market*, 96 HARV. L. REV. 1497 (1983).

¹⁹ C. MACKINNON, *SEXUAL HARASSMENT OF WORKING WOMEN* (1979).

²⁰ Minow & Spelman, *In Context*, 63 S. CAL. L. REV. 1597 (1991). See Symposium, *Excluded Voices: Realities in Law and Law Reform*, 42 U. MIAMI L. REV. 1 (1987).

²¹ E.g., Menkel-Meadow, *Portia in a Different Voice: Speculations on a Women's Lawyering Process*, 1 BERKELEY WOMEN'S L.J. 39 (1985); Olsen, *The Sex of the Law* (1986) (unpublished manuscript); Taub & Schneider, *Perspectives on Women's Subordination*, in *THE POLITICS OF LAW*, *supra* note 1, at 117.

bias in law school appointments, promotion, and tenure standards.²² They have been concerned that unorthodox scholarship be accepted as valid and worthy.²³ Some write critiques of standard casebooks that exclude women or women's point of view.²⁴ Others write women's legal history and biography.

Within feminism itself, two debates currently are being waged. In one, feminist scholars debate the extent to which feminism can be incorporated within traditional jurisprudence, or whether, by contrast, it has a unique methodology.²⁵ A related issue is the necessity or advisability of defining a unitary ("essential") position for the movement.²⁶ Feminists of color, for example, have been urging that the privileging of white women's perspectives leads to marginalization of their own experience and inattention to their unique needs.²⁷ Further, they stress that the difference in perspective and agenda that feminists in general find between themselves and the dominant male framework must be carried further to include differences within the female community itself.²⁸ Writers such as Kim Crenshaw, Mari Matsuda, and Leslie Espinoza have been raising such issues in connection with race-remedies law, hate-speech, employment discrimination, and other areas.²⁹

²² E.g., Wildman, *Integration in the 1980s: The Dream of Diversity and the Cycle of Exclusion*, 64 TUL. L. REV. 1625 (1990).

²³ E.g., Williams, *The Obliging Shell: An Informal Essay on Formal Equal Opportunity*, 87 MICH. L. REV. 2128 (1989); Barnes, *Race Consciousness: The Thematic Content of Racial Distinctiveness in Critical Race Scholarship*, 103 HARV. L. REV. 1864 (1990).

²⁴ Dalton, *supra* note 13; Frug, *Rereading Contracts: A Feminist Analysis of a Contracts Casebook*, 34 AM. U.L. REV. 1065 (1985).

²⁵ Bartlett, *Feminist Methods*, 103 HARV. L. REV. 829 (1990); Kay, *Models of Equality*, 1985 U. ILL. L. REV. 39 (1985).

²⁶ E.g., Fineman, *Challenging Law, Establishing Differences: The Future of Feminist Legal Scholarship*, 42 FLA. L. REV. 24 (1990); Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990).

²⁷ Harris, *supra* note 26; Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139.

²⁸ Fineman, *supra* note 26; Harris, *supra* note 26; Crenshaw, *supra* note 27; Scales-Trent, *Commonalities: On Being Black and White, Different and the Same*, 2 YALE J.L. & FEM. 305 (1990).

²⁹ Crenshaw, *supra* note 27; Crenshaw, *Race, Reform and Retrenchment*, 101 HARV. L. REV. 1331 (1988); Matsuda, *Affirmative Action and Legal Knowledge: Planting Seeds in Plowed-Up Ground*, 11 HARV. WOMEN'S L.J. 1 (1988); Matsuda, *Public Response to Racist Speech: Considering the Victim's Story*, 87 MICH. L. REV. 2320 (1989);

Critical Race Theory took root in the late 1970s when Derrick Bell first questioned the adequacy of conventional race-remedies law to achieve its self-professed aims.³⁰ Minority scholars in this movement expressed dismay that the gains of the Civil Rights era were unstable, and indeed were being rolled back in the late 1970s and 1980s.³¹ New approaches were needed to take account of the complex interaction among race, racism, and American law.³² A central theme of much of this scholarship is “interest convergence”—an idea developed by Derrick Bell—which holds that the majority group advances the cause of racial justice only when it suits its interest to do so.³³

Other writers question whether race-remedies law is even designed to benefit Blacks.³⁴ Some put forward the equally surprising suggestion that civil rights law itself furthers and deepens the dilemma of persons of color.³⁵ Some explain that race-remedies law serves a homeostatic function, assuring that racial progress occurs at just the right slow pace.³⁶ Too-rapid change would be terrifying for the white majority; too-slow change could prove destabilizing.³⁷ Other writers use critical tools to address classic civil rights issues, such as federal Indian law,³⁸ reparations for Blacks and Asians,³⁹ remedies for racist speech and hate crimes,⁴⁰ immigration policy

Espinoza, *Masks and Other Disguises: Exposing Legal Academia*, 103 HARV. L. REV. 1878 (1990).

³⁰ For a history of the Critical Race Theory movement, see Delgado, *supra* note 3; Delgado, *When a Story Is Just a Story: Does Voice Really Matter?*, 76 VA. L. REV. 95 (1990).

³¹ Delgado, *supra* note 3, at 6.

³² *Id.*

³³ Bell, *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518 (1980).

³⁴ The most prominent spokesperson for this view is Derrick Bell. See, e.g., D. BELL, *AND WE ARE NOT SAVED* (1988).

³⁵ D. BELL, *supra* note 34; Delgado, *Derrick Bell and the Ideology of Racial Reform: Will We Ever Be Saved?*, 97 YALE L.J. 923 (1988).

³⁶ Delgado, *supra* note 35, at 923–24.

³⁷ *Id.*

³⁸ Williams, *Documents of Barbarism*, 31 ARIZ. L. REV. 237 (1989).

³⁹ Matsuda, *Looking To the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323 (1987).

⁴⁰ Matsuda, *supra* note 29; Lawrence, *If He Hollers, Let Him Go*, 1990 DUKE L.J. 431.

and bilingual education,⁴¹ sentencing and capital punishment,⁴² and the elimination of bias in civil litigation and alternative dispute resolution.⁴³

Many of these writers employ innovative forms of writing, such as parables, narratives, poems, and chronicles to depict racial injustice in ways not possible in conventional legal style.⁴⁴

A group of CRT scholars met formally for the first time in Madison, Wisconsin, in the summer of 1989 to discuss the future of the movement and their common themes. Later meetings focused on neomarxism, critical methodology, the purported neutrality of law, the role of "merit," and post-Western political theory. Their voices seem to have had an impact. The Association of American Law Schools (AALS) chose as its theme for the 1990 Annual Meeting in San Francisco, California, "A Time for Sharing: Speaking Difference, Sharing Strength."⁴⁵ Plenary speakers and workshop panelists of color addressed such critical issues as narrative theory and race, the current retrenchment of American race remedies law, and majority mindset in legal institutions.⁴⁶

Recently, the movement has come under fire from mainstream writers.⁴⁷ In a recent article in the *Harvard Law Review*, Randall Kennedy attacked the scholarship of some of the group's central members.⁴⁸ He accused the group of making unsubstantiated claims and charges, of engaging in self-serving "racial politics," and of militarizing discourse in the area of racial justice.⁴⁹ Members of the group, and a few white sympathizers,

⁴¹ Olivas, *The Chronicles, My Grandfather's Stories, and Immigration Law*, 34 ST. LOUIS U. L.J. 425 (1990); Moran, *Bilingual Education as a Status Conflict*, 75 CALIF. L. REV. 321 (1987).

⁴² Delgado, *On Taking Back Our Civil Rights Promises: When Equality Doesn't Compute*, 1989 WIS. L. REV. 579.

⁴³ Delgado, *Fairness and Formality: Minimizing the Risk of Prejudice in Alternative Dispute Resolution*, 1985 WIS. L. REV. 1359; Grillo, *The Mediation Alternative: Process Dangers for Women*, 100 YALE L.J. 1545 (1991).

⁴⁴ D. BELL, *supra* note 34; Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 HARV. C.R.-C.L. L. REV. 401 (1987); Delgado, *supra* note 11.

⁴⁵ Ass'n of American Law Schools, *A Time for Sharing: Speaking Difference, Sharing Strength* (1989) (program of annual meeting).

⁴⁶ *Id.*

⁴⁷ Wiener, *Law Profs Fight the Power*, 249 THE NATION 246 (Sept. 4/11, 1989) (describing controversy over CRT in legal academia); Rothfeld, *Minority Critic Stirs Debate on Minority Writing*, N.Y. Times, Jan. 5, 1990, at B-6, col. 3 (final ed.).

⁴⁸ Kennedy, *Racial Critiques of Legal Academia*, 102 HARV. L. REV. 1745 (1989).

⁴⁹ *Id.* at 1760-87, 1789-97, 1807-15.

responded that Kennedy had failed to understand and appreciate the unique message of the insurgent scholars, that he had misread their scholarship and applied inconsistent standards to their work.⁵⁰ For now, the coalition seems to be weathering these and other criticisms. More critiques of the racial status quo appear almost monthly and show no sign of abating.⁵¹

As the foregoing indicates, legal scholarship has reached an exciting crossroad. Women, minorities, and Criticalists of the majority group have developed powerful critiques using innovative modes of expression. They have challenged law's stability and predictability, relentlessly showing its self-serving, hierarchy-maintaining quality and exposing its indeterminacy. New voices are being heard and, indeed, being accepted. Whether the current ferment will endure, and in what form, will be analyzed following discussion of the second transformation, or movement, namely the electronic revolution in media.

III. COMPUTERIZATION OF LEGAL RESEARCH: THE SECOND REVOLUTION

While outsider jurisprudence has been developing and winning acceptance, another transformation has been taking place in legal information science.⁵² The invention of electronic data processing led to the development of the two main legal databases—LEXIS and WESTLAW.⁵³ These and other proprietary research services afford attorneys and legal scholars virtually instant access to multiple libraries of data including cases, statutes, administrative materials, and law review articles. The last decade brought CD ROM technology, which allows thousands of pages of printed text to be stored on, and retrieved from a disc no larger than a dinner

⁵⁰ See generally Colloquy, *supra* note 3 (containing reply articles by Milner Ball, Leslie Espinoza, Robin Barnes and Richard Delgado); Delgado, *supra* note 3; Delgado, *supra* note 30.

⁵¹ Robert Williams, Professor of Law, University of Arizona School of Law, is currently preparing a bibliography of Critical Race Theory articles and books.

⁵² See generally M. KATSH, *THE ELECTRONIC MEDIA AND THE TRANSFORMATION OF LAW* (1989); Delgado & Stefancic, *Why Do We Tell the Same Stories?* 42 *STAN. L. REV.* 207 (1989).

⁵³ Delgado & Stefancic, *supra* note 52, at 216 n.59.

plate.⁵⁴ It allows access to pleadings, contracts, and other documents in special subject libraries.⁵⁵

These new technologies in conjunction with word processing programs allow researchers to combine materials in novel ways.⁵⁶ They make research easier and faster, prompting some enthusiasts to predict that the pace of law reform will accelerate.⁵⁷ Others, however, warn that the new technology can just as easily solidify the status quo; these issues are treated in greater detail in Part IV.

What remains clear is that changes which allow wider access to more information have affected legal knowledge itself. Free text searching allows the searcher a wider range of choice in subject searching, freeing him or her from former reliance on fixed subject headings.⁵⁸ In the future, thesaurally based subject headings may unlock powerful new avenues for legal research.⁵⁹ Law libraries need not be limited to traditional printed legal materials, but may serve as gateways to larger and more general networks of information, such as DIALOG and BRS.⁶⁰ Researchers will have quick, though expensive, access to journal literature of other academic disciplines, statistical data, news reports, and even monographs.

The first book to be published electronically may well be a legal treatise; the market is right and the technology is nearly in place.⁶¹ A century from now, books as we know them may be on their way to extinction. Scholars and attorneys may be forced increasingly to rely on online services of various types to be effective and current.

⁵⁴ Kauffman, *Electronic Databases in Legal Research: Beyond LEXIS and WESTLAW*, 13 RUTGERS COMPUTER & TECH. L.J. 73 (1987).

⁵⁵ See *Introducing the West CD-ROM Federal Civil Practice* (1989) (West, Inc. advertising brochure) (on file with authors).

⁵⁶ Cohen, *Research in a Changing World of Law and Technology*, 13 DALHOUSIE L.J. 6, 13 (1990).

⁵⁷ M. KATSH, *supra* note 52, at 259-65; Cohen, *supra* note 56, at 18-19; Berring, *Legal Research and Legal Concepts: Where Form Molds Substance*, 75 CALIF. L. REV. 15 (1987).

⁵⁸ Berring, *supra* note 57.

⁵⁹ See Dykstra, *LC Subject Headings Disguised as a Thesaurus*, 113 LIBR. J. 42 (Mar. 1, 1988); Dykstra, *Can Subject Headings Be Saved?*, 113 LIBR. J. 55 (Sept. 15, 1988).

⁶⁰ For a description of these databases, see *DIALOG on Disc: Information for Everyone* (1987) (Dialog advertising brochure).

⁶¹ Cohen, *supra* note 56, at 13.

IV. SYNERGY? WHAT WILL HAPPEN WHEN THE TWO MOVEMENTS CONVERGE?

Will computer-based research assist oppositionist lawyers and scholars in their efforts to reform the law? Word-based computerized search strategies do enable the searcher to devise searches that are flexible; they avoid the constraints of preconstructed keynotes and subject headings.⁶² For example, let us suppose that the West digest system lacks a key number for discrimination cases affecting black women: it has categories for "sex discrimination" and "race discrimination," but not both.⁶³ A searcher employing conventional means would find the relevant cases only with great difficulty. A searcher employing computer search techniques could find the cases easily, by simply constructing a search containing words such as "black female employee" or "African-American female worker."⁶⁴ Still, computer-based research does not solve all problems. Articles and cases dealing with ideas like civil disobedience or legitimation may not refer to these by name; others that do so may not be included in standard databases.⁶⁵ Further, for a search to be successful, the court and the searcher must use the same word or phrase for the idea in question.⁶⁶ Computers may be quite useful tools for finding cases about children who injure themselves on trampolines. They are less helpful for finding cases dealing with abstract or complex socio-political ideas, like those of interest to oppositionist law reformers.⁶⁷

Moreover, errors may occur in entering items into databases.⁶⁸ For example, a leading critical scholar recently was surprised to learn that two of his articles were included in Legaltrac under a misspelling of his name.⁶⁹ A searcher trying to find these articles would have been unlikely to do so. In addition, several journals and other sources of critical writing are not included in standard periodical index databases, so that even the most diligent

⁶² Berring, *supra* note 57.

⁶³ Delgado & Stefancic, *supra* note 52, at 219-20.

⁶⁴ *Id.*

⁶⁵ *Id.* at 221.

⁶⁶ *Id.* at 220-21.

⁶⁷ *Id.* at 220.

⁶⁸ *Id.* at 213 n.42.

⁶⁹ Telephone conversation between Jean Stefancic (who noticed the error) and Richard Delgado, Professor of Law, University of Colorado School of Law (Jan. 28, 1991).

search might miss a leading article.⁷⁰ Finally effective research must allow for intuition and synchronicity; it should encourage browsing and analogical reasoning.⁷¹ Computer-assisted research can sometimes be too literal, thereby discouraging innovation and law reform.⁷²

Computer-assisted research is also costly. Since many law reformers and oppositional scholars are located at small schools or practice with small law firms, they may not have access to unlimited computerized resources. Thus, although computer-assisted research potentially affords a means by which to break legal lockstep and reassemble data in novel ways, it can impair as well as promote outsider jurisprudence and the cause of law reform.

There is one level at which computerization is likely to increase the influence of an outsider group. Because of mounting caseloads, courts and court administrators have been turning increasingly to computer-assisted treatment of cases and dockets.⁷³ One approach to streamlining judicial work is a "cut and paste" approach to opinion writing—a kind of recombinant CPA (cut and paste adjudication).⁷⁴ Although such routinized, bureaucratized law could bode ill for the cause of law reform—since cases presenting novel issues may fail to be perceived or treated as such—a recent study of women judges shows that the situation may also work in reverse. The National Organization of Women Legal Defense and Education Fund sponsored a project to gather data about gender bias in the courts.⁷⁵ The study generated fourteen volumes detailing discrimination in all phases of court activity.⁷⁶ As a consequence, several states decided to initiate studies or reforms of their own.⁷⁷ The National Association of Women Judges, one

⁷⁰ Wise, *Of Lizards, Intersubjective Zap, and Trashing*, 8 LEGAL REFERENCE SERVICES Q., nos. 1–2, at 7 (1988); Delgado & Stefancic, *supra* note 52, at 220. More recently, one of us discovered that a much-cited article on "intersectionality" (the dilemma of, *e.g.*, black women) did not appear on Legaltrac, because the journal in which the article appeared was not included in the database.

⁷¹ Childress, *The Hazards of Computer-Assisted Research to the Legal Profession*, 55 OKLA. B.J. 1531 (1984); Cole, *Thoughts from the Land of And*, 39 MERCER L. REV. 907, 924–26 (1988); Dabney, *The Curse of Thamus: An Analysis of Full-text Document Retrieval*, 78 LAW LIBR. J. at 19. See also Delgado & Stefancic, *supra* note 52, at 221.

⁷² See Childress, *supra* note 71; Cole, *supra* note 71; Dabney, *supra* note 71; Delgado & Stefancic, *supra* note 52.

⁷³ M. KATSH, *supra* note 52, at 108–12; interview with ex-student now clerking for a state Supreme Court (December, 1990) (name withheld upon request).

⁷⁴ M. KATSH, *supra* note 52; Interview, *supra* note 73.

⁷⁵ Cox, *Reports Track Discrimination*, Nat'l L.J., Nov. 26, 1990, at 1, col. 4.

⁷⁶ *Id.*

⁷⁷ *Id.*

of the study's cosponsors, has been meeting in an effort to increase the influence of women judges' opinions in areas such as family law and employment discrimination.⁷⁸ Although it is too early to predict with any certainty, it seems possible that the cut-and-paste method of opinion writing may allow these judges' approaches to enter the mainstream more rapidly than they otherwise would have.

One of us has offered a more pessimistic view of the likely effect of computerization in the field of civil rights. In a recent article in *Wisconsin Law Review*, Richard Delgado shows that as plaintiffs' attorneys in civil rights cases offer ever more powerful statistical showings of discrimination, courts merely redefine legal doctrine so as to cancel out any gains.⁷⁹ Yet, on reflection, this bleak scenario is not the only possible one. Fact patterns demonstrable with computerized statistical analysis may spur helpful reform. For example, the General Accounting Office, responding to congressional inquiries, was able to demonstrate that women were being excluded from biomedical research in federally sponsored programs.⁸⁰ This finding led to legislation prompting equitable treatment of women in the health care system.⁸¹ The same may happen in law. Just as the authority of abstract legal principles has been weakened by deconstructors and other criticalists, so has the stability of printed texts been challenged by computerization. Precedent will become more manipulable; arguments and lines of cases for opposing viewpoints will be readily available, arguably to the advantage of law reform. New legal theories may arise to reshape legal thought. If so, the path of the oppositional scholar and advocate may become easier, not harder.

V. CONCLUSION

As the foregoing has shown, our tools of thought are changing. These changes are mirrored in changes in legal scholarship. As society has become less monolithic, less monocultural, legal boundaries have become more fluid. In the short run, this may be accompanied by turmoil, as the legal status quo resists both the new voices and the newly broadened horizons made available through the electronic revolution. Yet, in the long run, diversity and inclusiveness may be enhanced.

⁷⁸ Symposium, Nat'l Ass'n Women Judges, 14 GOLDEN GATE U.L. REV. 469 (1984).

⁷⁹ Delgado, *supra* note 42.

⁸⁰ Myers, *NIH to Require Researchers to Include Women in Studies*, 37 CHRON. HIGHER EDUC. 4 (Sept. 19, 1990); La Follette, *Daring Steps Are Needed to Increase Women's Role in Science*, 37 CHRON. HIGHER EDUC., A-56 (Oct. 3, 1990).

⁸¹ Myers, *supra* note 80; La Follette, *supra* note 80.

In this Article, we began by observing that two forces, outsider (oppositional) jurisprudence and computerization, are currently in full development in the law. Each has the potential to reshape drastically the nature of legal thought in the years ahead. We described each movement and detailed the ways in which each is beginning to affect the other. In the final section, we offered some cautious predictions on the ways in which the two movements could combine to strengthen the cause of legal and social reform. Yet, they may have little—or even a negative—effect on one another. The question is still open. The situation is elastic. The final contours remain to be completed. As one of us has put it: “Reality, like our hopes for it, is not fixed. We construct it through conversations, through our lives together. The sad fact of race is that too few of these conversations ever take place; to that extent our lives are diminished.”⁸²

Oppositional scholarship—and, with luck, computerization—may increase the number and quality of those conversations. If that convergence does take place, our prediction is that our lives will not be diminished, but much enriched.

⁸² Delgado, *supra* note 35, at 947.