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Hearing the Call of Stories

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In this Article, Professor Abrams examines the emergence of feminist narrative scholarship as a distinctive form of critical legal discourse. Arguing that the failure to debate publicly the conventions and merits of this form has perpetuated misunderstandings about its claims and disadvantaged its practitioners, she begins by examining several of the critiques that have been offered, in nonpublic settings, of feminist narratives. To provide background and context for examining these critiques, she then analyzes four recent examples of feminist narrative legal scholarship. In the final section of the Article, Professor Abrams returns to the opening critiques. She argues that their grounding in the methodological assumptions of objectivity does not render these critiques unusable, but requires that they be restated in terms more consistent with the methodological and epistemological assumptions of narrative. After discussing possible ways of reframing these objections, Professor Abrams explains how proponents of narrative scholarship might respond to them, highlighting not only the conventions of narrative scholarship but also emergent criteria for evaluating the efforts of its practitioners.

At the center of Jeanette Winterson's novel *The Passion* [1] is a visionary storyteller. Patrick is an Irish parish priest who possesses a unique

† Professor of Law, Boston University Law School. I would like to thank Adeno Addis, Greg Alexander, Jim Atleson, Kate Bartlett, Betsy Clark, Jane Cohen, Mary Coombs, Cynthia Farina, Lucinda Finley, John Forester, Mike Harper, Sheri Johnson, Bill Kell, Isabel Marcus, Martha Minow, Frank Munger, John Henry Schlegel, Steve Shiffrin, Gary Simson, Joe Singer, Avi Soifer, Carol Weisbrod, and Ron Wright for their generosity and insight in discussing these ideas with me. I am also grateful for having had the opportunity to present portions of this Article at the University of Texas Law School's Symposium on Women in Law and Literature, the SUNY-Buffalo Law School's Faculty Workshop Series, and the 21st National Conference on Women and the Law. My title is, as readers may guess, inspired by Robert Coles' 1989 book, *The Call of Stories*. To my mind, Coles exemplifies the kind of fruitful, humane attention that narrative scholars and others are beginning to bring to the law.

1. J. WINTERSON, THE PASSION (1987).

gift: a left eye that "could put the best telescope to shame."[2] Yet his glance often penetrates the private lives of those around him, revealing sights that embarrass and surprise: the petty wrongs of his parishioners, the unclothed forms of local women. He is defrocked on the ground that "no bosom [is] safe" from "the miraculous properties of his eye,"[3] and earns a reprieve only when Napoleon's generals see that his unsettling ability will make him an unparalleled lookout.

It is not just the utility of Patrick's seeing, but the credibility of his telling, that is at issue in the novel. Patrick's accounts of what he sees pervade the lives of his comrades, but provoke an uncertain response. During battles, they trust him because they have little choice; during lulls, they grow more skeptical of his apparently fantastic sightings.[4] Patrick's wry sense of humor leads him to exploit this uncertainty. His rejoinder, "Trust me, I'm telling you stories,"[5] summons up the power a storyteller holds over his audience, and the problematic character of authority based on a vision others cannot share.

The distance between the tales of a sometime lookout and the narratives of feminist scholars may be shorter than we think. Both concern the problems of a vision fixed on a different range, which is capable of invading, embarrassing, and, sometimes, of saving. Both concern the challenges of an audience to the utility of this distinctive way of seeing, and the credibility of the stories it yields. Yet Patrick seemed content with the ambivalence of his fellows. His sightings were believed when lives depended on it; and, at other times, the enigmatic loner could exploit disbelief for mutual amusement. For narrative scholars, matters are not so simple. Feminist narratives may have aesthetic value, but their purposes are also often political. They may be a bridge to those who share a similar vision, or a means of inciting change among those who do not. Narrative scholars do not, moreover, believe their stories are credited when they think it matters most. Thus, feminist narrative scholars cannot rest content with the ambivalence of their audience. This ambivalence demands, instead, discussion and examination.

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2. *Id.* at 21.

3. *Id.*

4. Late in the book, when the narrator encounters Patrick during Napoleon's ill-fated Russian campaign, he states that Patrick "was still look-out, this time watching for surprise enemy movements, but he was never sober and not all of his sightings were taken seriously." *Id.* at 84. This breakdown of trust seems, at one level, to arise from Patrick's descent into alcoholism; yet it may also be traced to the hopelessness of that campaign. The troops did not need him as they once did, for in that "unimaginable zero winter," *id.* at 80, they increasingly felt they were all doomed; so they were freer to indulge their skepticism of his accounts.

5. *Id.* at 40.

I

Feminist storytellers are not the first to use narratives in the context of legal scholarship. Legal historians and anthropologists have employed individual stories to enrich intellectual or cultural description, or respond to normative problems.[6] "Law and literature" scholars have analyzed fictional narratives to highlight problems of interpretation or expand the moral sensibilities of their readers.[7] But the use of narrative by critical scholars—a group that includes feminists as well as critical race theorists[8]—has commanded attention, and generated controversy, in an unprecedented manner.[9] Because some of the controversy surround-

6. *See, e.g.*, W. BENNETT & M. FELDMAN, RECONSTRUCTING REALITY IN THE COURTROOM (1981) (anthropological account analyzing jury decisionmaking as assessment of coherence, connectedness and consistency of competing "stories" presented through testimony); Ball, *Stories of Origin and Constitutional Possibilities*, 87 MICH. L. REV. 2280 (1989) (use of narrative in constitutional history); Lopez, *Lay Lawyering*, 32 UCLA L. REV. 1, 35 (1984) (legal anthropological account examining practical problem-solving and narratives that might inform its resolution as means of illuminating "the nature of story and argument as meaning-making acts of persuasion"); Weisbrod, *Charles Guiteau and the Christian Nation*, 7 J.L. & RELIGION 187 (1989) (use of narrative in discussion of law and religion); Weisbrod, *Divorce Stories: Readings, Comments and Questions on Law and Narrative*, 1991 B.Y.U. L. REV. 143 (use of narrative in history of American family law).

7. *See, e.g.*, West, *Authority, Autonomy, and Choice: The Role of Consent in the Moral and Political Visions of Franz Kafka and Richard Posner*, 99 HARV. L. REV. 384 (1985) (examining Kafka's fictional world to argue that consent as moral justification of wealth maximization principle rests on an inadequate theory of human motivation); Posner, *The Ethical Significance of Free Choice: A Reply to Professor West*, 99 HARV. L. REV. 1431 (1986) (interpreting Kafka's fiction as not having the particular political and economic overtones discussed by West); White, *Law as Rhetoric, Rhetoric as Law: The Arts of Cultural and Communal Life*, 52 U. CHI. L. REV. 684, 693-94 (1985) (discussing literary works to argue that as a form of rhetoric, law operates through members of a community in constructing social universe); *cf.* M. NUSSBAUM, LOVE'S KNOWLEDGE: ESSAYS ON PHILOSOPHY AND LITERATURE (1990) (arguing for importance of insights best conveyed through fictional narrative to moral philosophical inquiry).

8. *See* D. BELL, AND WE ARE NOT SAVED (1987) (use of narrative to debate civil rights issues); Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411 (1989) (use of narrative to discuss struggle of racial reform); Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323 (1987) (arguing that personal narratives are a new epistemological source for analyzing experience, history, culture, and intellectual tradition of people of color).

9. The role of race narratives is only one, yet one substantial, element in what has been labeled the "Racial Critiques Debate." In the following, I have attempted to emphasize that strain of the controversy. *See, e.g.*, Kennedy, *Racial Critiques of Legal Academia*, 102 HARV. L. REV. 1745, 1749, 1782 (1989) (arguing that critical race scholarship, including works by narrative scholars, tends to "evade or suppress complications that render [its] conclusions problematic" and that race narratives "homogenize the experience of persons of color" and fail to illuminate a distinctive perspective of racial minorities); Delgado, *When a Story Is Just a Story: Does Voice Really Matter?*, 76 VA. L. REV. 95, 103, 104-11 (1990) (arguing that Kennedy's article reflects unjustified faith in legal discourse and progress in racial justice, and that it fails to recognize paradigm shift implicit in critical race scholarship); *see also* Ball, *The Legal Academy and Minority Scholars*, 103 HARV. L. REV. 1855, 1858, 1860 (1990) (race narratives "bring[] attention to the everyday experiences of real people that too exclusive a reliance upon theory and abstraction have hidden from view" and "change one's ways of seeing and being, of talking and acting"); Barnes, *Race Consciousness: The Thematic Content of Racial Distinctiveness in Critical Race Scholarship*,

ing critical race narratives has been aired in the literature, and because these narratives, though similar and sometimes implicating gender as well as race, raise some issues that are distinct,[10] I will focus primarily on

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103 HARV. L. REV. 1864, 1865 (1990) (claim of racial distinctiveness implicit in race narratives is not a claim of privilege but a "rejoinder to the 'false universalism' prevalent in the myth of equality of opportunity"); Brewer, *Choosing Sides in the* Racial Critiques *Debate,* 103 HARV. L. REV. 1844, 1845 (1990) (noting "number and energy of the . . . condemnations [Kennedy's] article has received"); Espinoza, *Masks and Other Disguises: Exposing Legal Academia,* 103 HARV. L. REV. 1878, 1881 (1990) (Kennedy's preoccupation with methodology avoids substantive issues in the same way white scholars have).

10. As the following discussion will indicate, there is substantial overlap between the controversy over feminist narratives and that surrounding the "opposition narratives" of critical race scholars. (The term "opposition narrative" is taken from the title of Richard Delgado's article, *Storytelling for Oppositionists and Others: A Plea for Narrative, supra* note 8.) Such overlap stems partly from the fact that some feminist narratives are the work of women of color, whose experiences place them at the intersection of race and gender discrimination. *See, e.g.,* 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. I mean to acknowledge the intersection or confluence of these bodies of work when I examine in Part II the scholarship of Patricia Williams, *see infra* text accompanying notes 84-118, a scholar who allies herself both with critical race scholarship and with feminist scholarship. When I describe Williams as a feminist scholar, this brings her under the rubric of my discussion, but offers an incomplete picture of her concerns. I hope to compensate for this distortion, not only by identifying her with the emerging movement in critical race theory, but by highlighting, where possible, the way that the substance of her narratives implicates questions of race.

I treat feminist narrative separately, however, because I believe that some issues raised by these two types of narratives are distinct. Some features of feminist narrative, such as corporeality, *see, e.g.,* Ashe, *Zig-Zag Stitching and the Seamless Web: Thoughts on "Reproduction" and the Law,* 13 NOVA L. REV. 355 (1989), or the violation of privacy-related taboos, *see, e.g.,* Estrich, *Rape,* 95 YALE L.J. 1087 (1986); West, *The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory,* 3 WIS. WOMEN'S L.J. 81 (1987), as well as certain features of feminist narrative presentation, such as nonlinearity, *see, e.g.,* Williams, *The Obliging Shell: An Informal Essay on Formal Equal Opportunity,* 87 MICH. L. REV. 2128 (1989), or the rejection of abstract argumentation, *see, e.g.,* Ashe, *supra,* seem to be more characteristic of feminist narrative scholarship than of "opposition narratives" in general and tend to occur, within critical race scholarship, in the narratives of women, rather than of men, of color. Similarly, some of the issues raised by critical race narratives—the direct challenge to "meritocratic" standards, *see, e.g.,* Bell, *Foreword: The Civil Rights Chronicles,* 99 HARV. L. REV. 4 (1985); Delgado, *The Imperial Scholar, Reflections on a Review of Civil Rights Literature,* 132 U. PA. L. REV. 561 (1984), and the problems of choice that arise when scholars create composite stories rather than invoking specific experiences of their own or others, *see* Kennedy, *supra* note 9, at 1762-63 (arguing that Bell avoids addressing the hiring pool problem in his discussion of racial policies in legal academia and instead resorts to poetic license, "imagining" a conventionally qualified black candidate who nonetheless fails to be appointed to law school faculty); *id.* at 1772-76 (arguing that Delgado's race-conscious model for evaluating scholarship fails to provide specific examples to support his claim that minority civil rights scholarship is entitled to greater recognition), do not arise to the same extent or in the same way in feminist narrative scholarship.

There are also issues raised by critical race narratives—the "distinctive" insights of people of color into issues of race, *compare* Kennedy, *supra* note 9, at 1778-87 (Matsuda fails to display unity or distinctiveness of racial perspective and counterexamples suggest heterogeneity) *with* Matsuda, *supra* note 8, at 324 (claiming distinctiveness of perspectives of those "at bottom") *and* Barnes, *supra* note 9, at 1865 (racial distinctiveness claim is antidote to false universalizing of formal equal opportunity) *and* Espinoza, *supra* note 9, at 1886 (race narratives must establish distinctiveness before demonstrating diversity or risk being lost in dominant discourse)—that are implicit in some

the response to feminist narratives, beginning with mainstream objections and ultimately recasting them in light of the feminist methodologies that inhere in the narrative form. The factors that have made them problematic, in the eyes of mainstream scholars,[11] are as varied as the narratives themselves.

In some cases, the formal features of feminist narratives have made them controversial. Many feminist scholars do not simply "tell stories," but offer first-person renditions of "experience"—their own or others'—with all the immediacy and richness of detail the term implies. Some narratives may offer a striking union of the revelatory and the corporeal. They may bring to light bodily experiences—from the sensations of childbirth to rape to spousal battery—that are not frequently discussed in public, let alone in the pages of law reviews. The voices heard in the narratives are not the judges and lawmakers who conventionally occupy our scholarly attention, but women: women who may also be minorities or members of other disadvantaged groups.[12] The narratives may assume an unusually prominent position in a given scholarly work, structuring the argument or constituting the work as whole, with little or no analytic elaboration.

Other narratives have become controversial because of the political message they communicate. Some feminist scholars use narratives interchangeably with other forms of illustration as a means of making an abstract claim more tangible.[13] Yet others see in narratives the means of delivering a particularized political point. The ostensible "neutrality" of

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forms of feminist narrative, but tend to be muted in more recent examples because the author, animated in part by the anti-essentialist insights of feminists of color, presents the narrator not simply as a woman but as a woman of a particular sub-group, or a woman who has had a particular type of experience. These factors, to my mind, justify treating feminist narrative separately. I will, however, attempt to highlight areas of confluence where they arise.

11. Defining mainstream scholarship is, of course, a difficult task. So that I can share with readers at least some provisional understanding of those features to which I refer when I say "mainstream legal scholarship," or "conventional legal scholarship," I will advert to an interesting definition propounded by Edward Rubin in his piece, *The Practice and Discourse of Legal Scholarship*, 86 MICH. L. REV. 1835 (1988). Rubin identifies as "standard legal scholarship" that which "adopts a prescriptive approach," "is grounded on normative positions," and "is expressed in judicial discourse." *Id.* at 1835 n.1. All three features of mainstream legal scholarship, as well as its focus on judges and cases, turn out to be important in influencing its critical view of narrative scholarship. Mainstream scholarship's association with judicial discourse helps create some of the epistemological assumptions I discuss below, and its concern with normatively based prescription (and, I will argue, normatively based prescriptions of particular forms) contributes to the claims of insufficient normativity, which are also highlighted. Additional features of mainstream scholarship will be elaborated as the article progresses.

12. The prominence of disempowered narrators, whose voices and perspectives may be unfamiliar to legal readers, is also a distinguishing feature of critical race narratives, and has helped to make them controversial. *Compare* Matsuda, *supra* note 8 *and* Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 HARV. C.R.-C.L. L. REV. 401 (1987) *with* Kennedy, *supra* note 9.

13. *See, e.g., infra* text accompanying notes 29-30 (story of exchange between two students

the law disguises the extent to which it is premised on the perspectives of the powerful; the narratives of those who occupy a comparatively powerless position are not only evidence of what has been excluded, but testimony to the law's relentless perspectivity.[14]

Similarly, many feminist narratives contain an epistemological claim. The "scientific rationality" that prevails in our society—and in our legal argumentation—privileges universality, statistical significance, and logical deduction as ways of knowing about the world. Experiential narratives are significant not only for the substantive message they convey but for the way they claim to know what they know.[15] Feminist narratives present experience as a way of knowing that which should occupy a respected, or in some cases a privileged position, in analysis and argumentation.

Response to these innovations has been mixed. On the one hand, experiential narratives have been granted many of the perquisites of legitimate scholarship. Symposia have been devoted to narratives;[16] conferences have ventilated and celebrated women's experiences;[17] the focus on experience has been lauded as helping scholars reclaim the narrative tradition of the common law.[18] On the other hand, many mainstream scholars continue to voice doubts about feminist narratives. What is particularly troubling about such doubts is that they have rarely been voiced in public—either in spoken or published form—but have surfaced in coffeepot discussions, and in the deliberations of appointments committees. The sub-rosa character of this criticism is disturbing for several reasons. First, the absence of any public debate may communicate a kind of dismissal or casual disregard. "To be taken seriously in the business of law

illustrates critics' concern that narrative form excludes those unable or unwilling to respond experientially).

14. This is true of many critical race narratives as well. *See, e.g.,* Delgado, supra note 8, at 2413 (arguing that narratives told by powerless groups are powerful means for destroying the dominant group's mind-set that serves to uphold and justify subordination).

15. *See* C. MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE 83-105 (1989). Describing the exchange of narrative accounts that constituted consciousness-raising, MacKinnon observes that

> [t]he point of the process was not so much that hitherto-undisclosed facts were unearthed or that denied perceptions were corroborated or even that reality was tested, although all these happened. It was not only that silence was broken and that speech occurred. The point was, and is, that this process moved the reference point for truth and thereby the definition of reality as such. Consciousness-raising alters the terms of validation by creating community through a process that redefines what counts as verification. This process gives both content and form to women's point of view.

Id. at 87.

16. *See, e.g.,* 87 MICH. L. REV. 2073 *passim* (1989) (symposium on legal storytelling).

17. *See* AALS 1990 Annual Conference (Plenary Session on Outsider Perspectives); 21st National Conference on Women and the Law (panel discussion on feminist narratives).

18. *Cf.* Scheppele, *Foreword: Telling Stories,* 87 MICH. L. REV. 2073, 2073 (1989) ("law has always been concerned with narratives, with the individual plaintiff and the individual defendant in the individual case").

and legal scholarship," Martha Minow reminds us, "means becoming the subject of sustained criticism."[19] The public silence that has met feminist narrative scholarship may be sufficient to persuade those with limited exposure to the form that it is sufficiently flawed, or sufficiently marginal,[20] as to require little or no response.

Second, while discussions of appointments committees offer little in the way of public education, they are not without effect for those feminist narrative scholars who seek appointment, reappointment, or tenure. As those who have participated have discovered, such deliberations do not always provide the optimal context for educating oneself concerning a new genre of legal scholarship. Not every law school numbers among its faculty either scholars who use or scholars who read narratives, so there may be no one present who can explain the objects or innovations of the form. Even those who can offer such explanations may find it difficult to do so ab initio, because of the time pressures and the contentiousness that often surface in this context. Here, as in other areas of academic life, the absence of full public discussion of innovation tends to favor those forms of scholarship that are already established, with palpable consequences for the professional lives of innovators.

Thus I think it is crucially important that we engage in sustained, *public* examination of this new form of legal scholarship. I propose to begin by considering a range of objections that have been raised to the innovations of feminist narrative scholars. That these objections have been raised in private contexts means, of course, that there are few, if any, published sources I can draw on in setting forth these objections. I have attempted to reconstruct the objections from my own experience of discussing and debating feminist narratives, and to illustrate them with analogous examples taken from public settings, such as the classroom, the "minority critiques" debate, and the published lectures of Catharine MacKinnon. This reconstruction runs some risk of conflating, neglecting, or exaggerating particular arguments. While I regret this, it is impossible under the circumstances of this effort to do more than attempt to minimize such distortions.

Critics of feminist narratives have tended to articulate their concerns in four "families" of objections. The most frequently expressed

19. Minow, *Beyond Universality*, 1989 U. CHI. LEGAL F. 115, 116. This article provided an early model for my effort here, as Minow attempted, with respect not to feminist narrative scholarship in particular, but to feminist legal scholarship in general, to end the public silence by raising and answering several objections.

20. Minow notes that "[m]arginality . . . is a construction placed on [a] work, not something inherent in it." *Id.* at 122. However, because "marginality" in legal academia is defined by reference to standards often defended as neutral and, until fairly recently, sufficiently widely embraced as to be almost invisible, many of those delivering, and many of those receiving, this charge have tended to view marginality as a quality inherent in a work.

concern is that narrative scholarship lacks normative legal content. Critics argue that such scholarship, despite the professed intentions of its authors, does not help them think about ameliorative legal reforms. This reservation may be expressed in several different ways. Some scholars argue that narratives are not presented in a way that sheds even descriptive light on a particular legal problem. Many narratives are renditions of private life experiences: what it is like to undergo an abortion, to try to care for children during episodes of spousal abuse, to feel the devaluation of a personnel officer during a job interview. Critics argue that it is difficult to see how these accounts implicate particular legal rules, and thus to know how narrative scholars want the legal system to respond. Other scholars disagree in part, acknowledging that narratives are adequately embedded in the discussion of a legal problem to implicate a particular legal rule or conceptualization. But such scholars claim that they do not see how narratives contribute to the formulation of a legal response. The experience conveyed by the narrative does not seem to translate automatically into a new rule; and the narrative scholarship seems to provide no "normative framework" for achieving that translation.[21] In still other cases, scholars may admit that solutions have been drawn from narratives, but argue that these proposals are too general or provisional: Narrative scholars, they charge, point to changes in the conceptualization of a problem rather than propounding new rules to address it.

Underlying these concerns about the prescriptive implications of narratives is a rich subtextual debate about the value of narrative as a form of legal persuasion. Although critics most frequently focus on *whether the narrative scholar has said anything normative,* many are also asking *whether prescriptions derived from narrative are entitled to be taken as normative by legal actors*. Some readers are reluctant to regard narratives as legitimate sources of legal prescriptions, either because of qualities that inhere in the narratives themselves or because of the effect they produce on debate and discussion. These concerns create the final three families of objections.

Critics sometimes express doubts about whether a narrative is "true." By this the reader usually means whether the narrative is a reliable account of something that occurred. When Patricia Williams first described the experience of being barred from a Benetton store on the

21. Feminist scholars have been slow, and at times ineffective, in responding to the demand for a "normative framework" that translates narratives into legal proposals, in part because they reject the demand for abstraction and generalization (and the implicit devaluation of particularity) that it requires. While it strikes me as important to respond to this objection, I hope to demonstrate that it is possible to do so without resorting to ill-fitting generalization and without neglecting the diversity or particularity reflected in the emerging body of narrative scholarship.

basis of race,[22] some readers challenged her credibility, citing her refusal to give "equal time" to the "other side."[23] As lawyers and liberals,[24] many scholars harbor a belief that "truth" is established through adversary exchange among competing views.[25] In the absence of adversary exchange, the safest path is to entrust a neutral decisionmaker with the task of discovering the "truth." The narrative account is suspect because it provides no "equal time," and it rejects neutrality through its explicit affiliation with a particular viewpoint.

Those narratives that provide first-hand accounts of a person's pain are also laden with emotional content. This may be viewed not only as undermining the objectivity of the writer, but as threatening the objectivity of the reader, making him increasingly reluctant to credit the account the narrative provides. Readers may have a similar response to those narratives exploring experiences that are the subject of strong social taboos. The discomfort triggered in some scholars by hearing anyone (but particularly a colleague) discuss her rape, marital abuse—or even her childbirth, in particularly graphic terms—makes them eager to discount, discredit, or otherwise distance themselves from such discussions.[26]

Even some readers willing to believe that a narrative scholar has offered a trustworthy account of a particular experience may doubt the "typicality" of the experience recounted. Catharine MacKinnon reports that when she speaks about the sexual coercion she claims is paradigmatic of women's experience, she is regularly challenged by questions about women who are not harassed, are not abused, or who claim to enjoy their sexual experiences.[27] These doubts about typicality arise in part from the fact that the experiences described are unfamiliar to main-

22. Williams states that she offered this account first on a typed sheet placed on the window of the store, and later in the article that became *Spirit-Murdering the Messenger: The Discourse of Fingerpointing as the Law's Response to Racism*, 42 U. MIAMI L. REV. 127 (1987). Patricia Williams, Remarks, 21st National Conference on Women and the Law (Mar. 23, 1990).

23. *Id.* Williams stated that this response had arisen frequently among those to whom she had retold the story at legal conferences.

24. I use the term "liberal" in the sense of "liberal theory" rather than in the sense of "political progressive."

25. The image of truth emerging from contention among competing viewpoints is not only a product of an adjudicative perspective; it also has its roots in liberal theory dating at least back to John Stuart Mill. *See* J. MILL, ON LIBERTY 15-54 (A. Castell ed. 1947).

26. *See* Henderson, *Legality and Empathy*, 85 MICH. L. REV. 1574, 1583-84 (1987) (on diverse responses, including discomfort and desire to distance oneself from the narrator/sufferer, produced by empathy).

27. C. MACKINNON, FEMINISM UNMODIFIED 217-19 (1987). I have some difficulty describing MacKinnon as a narrative scholar, because she ultimately assimilates most women's experiences to her theory that women's experience can be defined as "use and abuse by men." However, she has told, and encouraged the telling of, the stories of women who have been victimized, for example, by pornography, and response to her accounts of women's experiences also reveals the "typicality" concern.

stream readers; and those whose perceptions are ratified by dominant social norms may find it difficult to believe that a divergent experience is anything but idiosyncratic.[28] Readers may also be reluctant to rely on a single set of experiences as a basis for legal change. The expressed concern is that legal changes, which affect scores of people, cannot be based on one person's account(s); yet it is difficult to separate this argument from the deeper epistemological claim that universality and statistical significance are necessary attributes of any claim to know about the world.

Finally, some scholars are put off by an experiential form of argumentation they view as disenabling further discussion. In my feminism seminar last spring, we discussed a short story in which an overworked and emotionally frayed mother bangs the head of her child against a wall.[29] One young man in the class argued forcefully that the story depicted child abuse. An older woman in the class disagreed, stating that her own experience had shown her how easily mounting frustrations could bring any parent to the edge of violence. Before she had a chance to finish her sentence, the man interrupted her angrily, saying, "It's the old if-you-haven't-been-there-you-can't-have-an-opinion!"[30] Such claims sometimes express a fear that the embrace of an experiential epistemology will exclude from conversation anyone who has not had a given experience. They may also express a concern that almost anyone can rely on some form of experience—the young man, for example, might have cited his own childhood—but the valuation of experience itself provides no basis for choosing among different experiential claims. Such claims implicitly raise the larger question of what distinctive insights experiential argument convey that make it worth inviting the dangers of relativism.

Though feminist narrative scholars have voiced many private responses to these objections, they have generally declined to engage them in public fora. Several factors explain this silence. Some feminists have dismissed methodological objections to narrative as a pretext, a disguised attack on the substance of feminist legal change.[31] Others have perceived a need to respond, yet have found it difficult to answer objections at the level of generality at which they are framed without neglecting the diversity of purpose and style reflected in feminist narratives.[32]

28. *See* Singer, *Persuasion*, 87 MICH. L. REV. 2442 (1989) (on difficulty dominant groups have sharing in, recognizing, or understanding nondominant perspectives).

29. *See* Wolff, *As Long As You Can Remember Those Things*, 25 STORY Q. 13 (1988).

30. Discussion from Feminism and Gender Discrimination Seminar (Apr. 3, 1990).

31. *Cf.* Barnes, *supra* note 9, at 1870 ("Kennedy's analysis, with its extended forays into long-discounted notions of 'merit' and 'correct' styles of argumentation . . . neatly dodges issues of justice and institutional fairness.").

32. At the Boston University Faculty Workshop, held December 1989, I heard Clare Dalton

Still others have embraced silence as a methodological protest against objections they view as holding feminist scholarship to the very standards it questions.[33] A final group has judged response imprudent, in light of both the multiplicity of feminist views,[34] and the fact that few of these objections have been raised in public.

My own view encompasses many elements of this feminist response. I have no doubt that some methodological critiques of feminist narrative are pretexts, aimed not only at the substance of feminist legal change, but also at the challenge to objectivity that narrative implies. I also agree that many of these criticisms employ as standards the very methodological and epistemological norms that narrative feminists call into question. I finally suspect that it is futile to engage many of these concerns at the level of generality in which they are framed; we must familiarize ourselves with many diverse forms of narrative before we can begin to talk about the patterns that emerge.

Nonetheless, I do not see any of these arguments as adequate grounds for silence by feminist narrative scholars. On the contrary, I believe that challenges to narrative should be carefully examined and publicly engaged by feminist scholars. To allow even informal critiques to go unanswered may contribute to the marginalization of our innovations—innovations that not only challenge mainstream legal scholarship but bring new resources to bear in the effort to achieve feminist legal and social change. More importantly, these challenges, however flawed in form or motive, provide a call to self-scrutiny from which narrative scholars can benefit. Feminist scholars, I will argue, have a great deal to gain in both elaborating and legitimating our methodological innovation by discussing and clarifying the qualities that make narrative effective as a form of legal argument. By exposing the limiting premises of these

offer a version of this argument in response to a question about what "normative framework" translated feminist narratives into legal prescriptions.

33. In particular, some feminist scholars believe that the standards implicit in these objections reflect the methodological and epistemological assumptions of objectivity, a point that I will develop in Part III. *Cf.* Ball, *supra* note 9, at 1857, 1862 (suggesting that Kennedy's critique of critical race narratives, based on "proprieties of the conventional academy," applies "inappropriate standards").

34. Some feminist scholars may share the sense expressed by Leslie Espinoza, in the context of race, that "[a]lthough there is much individual divergence, focusing on the individual before we recapture that which is our shared difference would result in a cacophony of voices unrecognized, indecipherable, and overwhelmed by the dominant discourse." Espinoza, *supra* note 9, at 1886.

Feminist scholars of color may also be reluctant to join issue again in the wake of the debate over Randall Kennedy's *Racial Critiques*, *supra* note 9, which has proved painful for all participants. Patricia Williams recently compared the protracted debate over Kennedy's article to a scene in Ralph Ellison's *Invisible Man* in which a prizewinning black student is compelled to engage in a public boxing match with other black students, and then to run after coins that had been thrown on an electrified rug by white spectators. Williams suggested that other minority scholars were repeatedly being thrown into the ring with Randall Kennedy to compete for the "gold coinage" of scholarly merit. Williams, *supra* note 22 (discussing R. ELLISON, INVISIBLE MAN 17-23 (1947)).

mainstream challenges, yet attending the broader issues they raise, we can begin that process.

In this Article, I examine feminist narrative scholarship as a distinctive form of legal argument. Although feminist narrative scholarship has made valuable contributions to the legal consideration of gender-specific injuries, I contend that its premises and aspirations require further elaboration by feminist scholars. First, we must clarify the ways in which narratives persuade and function in arguments for feminist legal change. Second, we must begin to develop understandings that help us evaluate specific examples of feminist narrative scholarship. In Parts II and III of this Article, I address these tasks.

In Part II, I begin at the particularized level by examining several examples of feminist narrative scholarship. I highlight the stylistic features of the narratives, and the way in which each author incorporates them into the structure of her argument. I attempt to unearth the persuasive claims that are being made for each narrative, and the relationship between the narratives and the author's approach to legal change. In Part III, I consider the light cast by these narratives on the tasks of explaining the conventions of and developing evaluative criteria for assessing feminist narratives. In this section, I take as a point of departure the mainstream challenges with which this Article began. I identify the features of these critiques that make them unsuitable as standards for evaluating narrative scholarship. But, guided by the larger questions about narrative persuasion that they raise, I develop a set of understandings, consistent with the assumptions of narrative, that help us to evaluate experiential stories.

II

The term "feminist narrative"—like the terms "feminist" or "narrative"—is in some ways misleading; its apparent unity covers a multitude of things. Most feminist narrative scholars start from a few shared premises: a preference for particularity of description, a belief that describing events or activities "from the inside"—that is, from the perspective of a person going through them—conveys a unique vividness of detail that can be instructive to decisionmakers. Yet feminist narrative scholars act on these premises in a variety of ways. Narratives may depict different kinds of experience—autobiographical or that of others, physical or emotional, pain or pleasure or revelation. They may vary in their formal or stylistic features, tending toward simplicity or complex ambiguity, punctuating an analytic discussion or supplanting it. They may differ in their claims to persuade, offering stories as characteristic of the experience of a group, or as individual yet worthy of consideration; asking the reader to believe the narrator's account or compare it with her own experience.

They may display varied relationships to the process of legal change, challenging a legal rule or conceptualization, offering a replacement, or suggesting principles that might lead to a reformulation.

The first examples of feminist narrative scholarship employed narrative in a comparatively limited way. They offered straightforward personal stories to introduce an analytic discussion, illustrate a point, or establish the authority of the author. One of the earliest examples of experiential narrative in a mainstream legal publication is Susan Estrich's article *Rape.*[35] In a courageous and controversial move, Estrich opened the piece with a narration of her own rape. Her article then "examine[d] rape within the criminal law tradition in order to expose and understand that tradition's attitude toward women."[36]

On the surface, it is difficult to discern the impact that Estrich's personal narrative produces on the rest of the piece. It is contained entirely in the introduction; in the sections that follow, she rarely mentions it again. She examines the elements of the crime as they have been defined at common law, highlighting the understandings of men, women, and human relations implicit in their interpretation;[37] she probes modifications of these understandings in two recent statutory schemes,[38] and surveys the ways that enforcement is affected by discretion in the victim, prosecutor, judge, and jury;[39] she concludes by proposing a broader understanding of rape, which modifies, among other things, conventional understandings of force and consent.[40] It is, at least in external form, a conventional legal discussion, featuring minute attention to cases and commentators, and a discrete proposal for legal change. These qualities have led some legal scholars to conclude that there is little relationship between Estrich's narrative and her legal analysis: she affixed an arresting personal story to a comprehensive and methodical doctrinal exploration of the law.

To me, this view misses central features of Estrich's approach. Estrich invokes her experience to establish not only her interest in, but her authority to speak on, the subject of rape. "I cannot imagine anyone writing an article on prosecutorial discretion without disclosing that he or she had been a prosecutor," Estrich declares in her introduction. "I cannot imagine myself writing on rape without disclosing how I learned my first lessons or why I care so much."[41] In claiming knowledge based on these experiential "lessons," Estrich makes the subtle epistemological

35. Estrich, *supra* note 10.
36. *Id.* at 1090.
37. *Id.* at 1094-1132.
38. *Id.* at 1133-57.
39. *Id.* at 1169-78.
40. *Id.* at 1179-84.
41. *Id.* at 1089.

point that we learn from experience, as well as from the kind of professional training that informs, for example, the perspective of the prosecutor.

More importantly, the perspective Estrich brings to her analysis of the law is critically shaped by elements of her experience. She discovered that police were not automatically allies of the victim following a rape ("They asked me if he was a crow . . . [which] meant to them someone who is black. They asked me if I knew him. . . . They believed me when I said I didn't. Because, as one of them put it, how would a nice (white) girl like me know a crow? Now they were on my side."[42]). She discovered that their view of what was important or legally promising in her description of the crime did not correspond with her own ("They asked me if he took any money. . . . He did take money; that made it an armed robbery. Much better than a rape. They got right on the radio with that."[43]). She discovered that pursuing a criminal charge might also be unavailing ("Did I realize what prosecuting a rape complaint was all about? They tried to tell me that 'the law' was against me. But they didn't explain exactly how. And I didn't understand why. I believed in 'the law,' not knowing what it was."[44]). She discovered that the demands that criminal proof places on the victim can seldom be anticipated ("No one had ever told me that if you're raped, you should not shut your eyes and cry for fear that this really is happening. You should keep your eyes open focusing on this man who is raping you so you can identify him when you survive."[45]). She discovered that some accounts of rape are "counted" as rape, while others are not ("I learned, much later, that I had 'really' been raped. Unlike, say, the woman who claimed she'd been raped by a man she actually knew, and was with voluntarily. Unlike, say, women who are 'asking for it,' and get what they deserve."[46]). In short, she discovered that the law of rape has been formulated and implemented from a perspective wholly distinct from, and often antithetical to, the experience of the victim. It is a perspective shaped by the experience of men—exemplified by the male police whose response she found so perplexing—and it is more likely to be based on stereotyped notions of women than on women's perceptions as victims.

These observations help create the normative ground from which Estrich examines the elements of rape and the use of discretion in its enforcement. They permit her to argue that there are two potential understandings of "force"—one that "understands force as most school-

42. *Id.* at 1087.
43. *Id.* at 1087-88.
44. *Id.* at 1088.
45. *Id.*
46. *Id.*

boys do on the playground"[47] and one that "recognizes that bodily integrity means more than freedom from the force of fists"[48]—and that the first is embodied in the law of rape.[49] They permit her to cast doubt on judicial notions of "consent" by comparing them with the accounts of the victims.[50] This normative perspective also influences, though it does not singularly determine, Estrich's legal conclusions. Her description of the "better world" that law might reflect or promote appears to be derived from a woman's view of consensual sexual interaction: "In a better world, I believe that men and women would not presume either consent or nonconsent. They would ask, and be certain. . . . In a better world, women who said yes would be saying so from a position of equality, or at least sufficient power to say no."[51]

Yet it is not simply this perspective, but its pragmatic admixture with a dose of prevailing contemporary attitudes, that dictates Estrich's final proposal:

> If we are not at the point where it is appropriate for the law to presume nonconsent from silence, and the reactions I have received to this Article suggest that we are not, then at least we should be at the point where it is legitimate to punish the man who ignores a woman's explicit words of protestations.[52]

For all its experiential basis, Estrich's article would be unlikely to incite many of the objections with which I began.[53] It critiques the existing law from a cohesive, articulable perspective, which is thematically related to the insights that emerge from her experience. It offers

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47. *Id.* at 1105.

48. *Id.*

49. *Id.*

50. A particularly compelling example of this technique is contained in Estrich's discussion of Brown v. State, 127 Wis. 193, 106 N.W. 536 (1906). The victim's account revealed that she "tr[ied] to get up," "pulled at the grass," and "screamed as hard as [she] could," Estrich, *supra* note 10, at 1122 (quoting *Brown*, 127 Wis. at 196, 106 N.W. at 537). The judge reversed the defendant's conviction on the ground that "there must be the most vehement exercise of every physical means or faculty within the woman's power to resist the penetration of her person . . . . " Estrich, *supra* note 10, at 1123 (quoting *Brown*, 127 Wis. at 199, 106 N.W. at 538).

51. Estrich, *supra* note 10, at 1182.

52. *Id.* In other portions of her analysis, Estrich proposes to reform the law of rape by defining certain of its elements not according to the perspectives of women, but as they are defined in other areas of the criminal law. She argues that in defining coercion, "it would be a significant improvement if the law of rape in any state prohibited exactly the same threats as that state's law of extortion and exactly the same deceptions as that state's law of false pretenses or fraud." *Id.* Such proposals are, however, related to Estrich's analysis of the influence of gender in the law of rape; she argues that the fact that the act is intercourse and the victim is a woman have caused the element of coercion to be defined differently in rape than in other crimes. *Id.* at 1118-21.

53. In fact, in many discussions I have had with colleagues otherwise skeptical of feminist narrative scholarship, Estrich's article is often cited as an example of "good" or "effective" narrative scholarship. I suspect that the factors discussed above help to explain this positive response. While I agree with this assessment, I will argue that the category of "effective" narrative scholarship is broader than many of those who praise Estrich contend. *See infra* Part III A. 2.

clear proposals for demonstrably "legal" change, including redefinition of critical statutory terms. In this sense, it does not raise many of the questions about "normative legal content" that have made narratives difficnlt for mainstream scholars. Estrich's story also exerts only moderate pressure on the aesthetic sensibilities of its readers. She undoubtedly violates social taboos by admitting, particularly in a scholarly context, that she has been the victim of a rape.[54] Yet Estrich's narration of her rape is discrete and does not dwell on physical detail; she mixes direct rendition of her emotional pain ("[n]o one had ever told me that if you're raped you should not shut your eyes and cry for fear that this is really happening"[55]) with wry retrospective humor ("[w]hen we got [to the police station], I borrowed a dime to call my father. They all liked that."[56]).

Finally, while Estrich uses her experience as a source of authority in making her argument, she does not rely on it to do all, or even most, of her persuasive heavy-lifting. She relies on her story to challenge the popular perception that rape is invited by its victims, or happens to "other people." She offers it to show the barriers that exist to rape prosecutions, even where the victim is willing to proceed. But because it is not the narration of an acquaintance rape, she cannot use it to illuminate the worst the legal system has to offer. Moreover, because her critique of rape law is offered in a meticulous analytic discussion as well as in a narrative, anything that readers are unwilling to take from Susan Estrich, the rape survivor, they can take from Susan Estrich, the erudite legal scholar.

In many of these respects Estrich's pathbreaking work occupies a transitional position in the development of feminist narrative. She addresses an injury that, at least in some of its manifestations, is acknowledged to be a social problem; it is, moreover, a problem that has been formally committed to the law for resolution.[57] This permits her to work from an established legal framework and facilitates the development of concrete, prescriptive proposals. Furthermore, because Estrich's primary goal is doctrinal reform, not methodological or epistemological innovation, her use of narrative can be comparatively contained. She can use a single story, which occupies a discrete position in her argument,

54. I recognize the distinct possibility that I will understate the extent of Estrich's departure, simply because in the intervening time we have witnessed more regnlar and more physically explicit revelations. If my memory serves, Estrich's opening narrative made her article extremely controversial at the time it came out.

55. Estrich, *supra* note 10, at 1088.

56. *Id.*

57. In her analytic approach to the problem, Estrich exploits the fact that "stranger rape" is acknowledged to be a crime, and attempts, through the reinterpretation of certain of its critical elements, to broaden the category to include many forms of "acquaintance rape." *Id.* at 1179-84.

and the "lessons" learned can be drawn out by more conventional analytic discussion.

Many recent narrative scholars have pressed further in their innovation, along both substantive and methodological dimensions. Emboldened, perhaps, by the growth of feminist jurisprudence, feminist legal scholars have turned their attention to problems not widely acknowledged by society, and problems to which legal response is still in its inception. They must often approach the task of prescription with only fragmentary legal framework and little social recognition to build on. Moreover, as feminist jurisprudence has begun to challenge the methods as well as the substance of law,[58] the use of narrative has become more varied and innovative. Multiple narratives reflecting different sources and insights may be used. They may or may not be subjected to simultaneous interpretation by the author. They may influence the structure, as well as the content, of legal scholarship, causing departures from linear argumentation[59] or a focus on experience that dwarfs the apparent focus on law. When narrative scholarship takes these new and varied forms, mainstream readers may have more difficulty glimpsing the relationship between narratives and normative legal change. They may be more perplexed by the persuasive claims on which the narratives appear to rest. In order to evaluate these critical claims in the context of more comprehensive methodological innovation, I will examine three recent examples of narrative scholarship, by Martha Mahoney, Patricia Williams, and Marie Ashe.

A. *Legal Images of Battered Women*

Martha Mahoney's article *Legal Images of Battered Women: Redefining the Issue of Separation*[60] challenges the dominant legal characterization of battered women. For Mahoney, this characterization illustrates

58. *See* Bartlett, *Feminist Legal Methods,* 103 HARV. L. REV. 829 (1990); *see also* Abrams, *Feminist Lawyering and Legal Method,* 16 LAW & SOC. INQ. — (forthcoming 1991); Littleton, *Feminist Jurisprudence: The Difference Method Makes,* 41 STAN. L. REV. 751 (1988).

59. I am reminded by Frank Munger and John Henry Schlegel that narratives are linear in their own way, and that to distinguish narrative from "linear" scholarship creates a false dichotomy. *See* letter from Frank Munger to author (Apr. 23, 1991) (the difference between traditional legal scholarship and narrative "has nothing to do with linearity. All writing is more linear than thought. Spoken narratives are more linear than thought, but can convey things that writing cannot . . . .") (on file with author); letter from John Henry Schlegel to author (Apr. 2, 1991) ("Narrative is the most linear of forms; indeed every time I choose to start a story . . . at a crucial middle event so as to make clear to the reader why I am telling the story I get told that all I am doing is confusing my reader!") (on file with author). These objections alert me to the fact that I tend to use the term "linear" to refer to "the stagewise development of an abstract idea," *see infra* note 110, rather than to the chronology or the perceived unfolding of an experience. This choice reminds me how easy it is, even for those who attend to innovation, to assimilate elements of the dominant methodological standards.

60. M. Mahoney, Legal Images of Battered Women: Redefining the Issue of Separation

the way that "cultural assumptions about domestic violence affect substantive law and methods of litigation in ways which in turn affect society's perceptions of women and women's own understanding of our lives."[61] In particular, cultural images of battered women have both informed and been shaped by a small group of highly publicized, highly charged cases in which women accused of killing their batterers assert a claim of self-defense.[62] The expert testimony on "learned helplessness,"[63] which has been critical to women's victories on such claims, has contributed to an image of battered women as pathologically weak, that is, too helpless or dysfunctional to pursue a "reasonable course of action."[64] This image has disserved battered women in other legal contexts, such as child custody, and hindered social response to the problem.[65] We can develop a more nuanced portrait of the battered woman, Mahoney argues, by focusing on the battering relationship as a struggle for power and control, which may change in character and severity when

(manuscript on file with author) (forthcoming in 90 MICH. L. REV.—(1991)) (pincites used in this Article are to manuscript).

61. *Id.* at 1.

62. *Id.* at 3.

63. The theory of "learned helplessness" was originally developed by Martin Seligman, based on experiments conducted on laboratory animals. Seligman found that caged dogs who were exposed to repeated, uncontrollable electrical shocks ultimately "ceased any further voluntary activity and became compliant, passive and submissive," and even when they were permitted to escape, remained passive and declined to leave. *See* L. WALKER, THE BATTERED WOMAN 45-47 (1979) (describing Seligman's experiments). This theory was applied to the behavior of battered women by Lenore Walker, whose work and testimony have made her a leading expert in battered women's self-defense. Walker writes:

> Once the women are operating from a belief of helplessness, the perception becomes reality and they become passive, submissive, "helpless." They allow things that appear to them to be out of their control actually to get out of their control. When one listens to descriptions of battering incidents from battered women, it often seems as if these women were not actually as helpless as they perceived themselves to be. However, their behavior was determined by their negative cognitive set, or their perceptions of what they could or could not do, not by what actually existed.

Id. at 47-48. More recently, Walker has stressed the danger of overgeneralizing about women's responses to violence, and has described the submissiveness generally associated with "learned helplessness" as one of several "survival or coping skills" that permit women to keep themselves alive in battering relationships. *See generally* L. WALKER, THE BATTERED WOMAN SYNDROME (1984). However, Walker maintains her earlier view that these survival skills are developed at the expense of escape skills. For a complete discussion of these requirements, see M. Mahoney, *supra* note 60, at 44-45.

64. M. Mahoney, *supra* note 60, at 3. Mahoney notes that expert testimony is not solely responsible for the emergence of this view. Even when feminist experts offer more complex images, they may be reinterpreted, through "the lens of cultural stereotypes," *id.*, as supporting simpler images of pathological weakness.

65. *Id.* at 4, 9-20, 60-67. In particular, Mahoney argues that the image of battered women as pathologically weak fuels a potent social tendency toward denial of battery in our society, which leads observers to underestimate the prevalence of domestic violence and perceive women in battering relationships as substantially different from themselves. *Id.* at 9-20. This image also misrepresents the psychological complexity of the battered woman, who may be alternately competent and forceful or passive, depending on the struggle and coercion to which she is exposed.

the woman tries to separate from her batterer.[66]

To illustrate and support these arguments, Mahoney offers narratives and poems from the lives of battered women.[67] These narratives reflect competence, effective parenting, and psychological complexity where the dominant image reveals inhuman passivity; they show the tendency toward the denial of battery that exists even among women in battering relationships; they reveal that battered women are often but one partner in a relational contest for power and control.

Through the vehicle of narrative, Mahoney also brings to light images of domestic battery that have developed in the lesbian community. These images, which emerged through feminist interpretation outside the legal system, convey the relational aspect of battering and present a more nuanced picture of the battered woman. They, as well as many of their heterosexual counterparts, suggest the more complex and accurate image that should be the subject of further research, and the ultimate basis for legal prescription.

At one level, Mahoney's article has several features in common with Estrich's work. Mahoney's narratives inspire and punctuate rather than organize her argument. Her article also follows a traditional structure: highlighting a problematic characterization in law, analyzing the factors responsible, and proposing a new conceptualization, with implications for law and legal research. Also like Estrich, Mahoney uses autobiographical narratives,[68] which she combines with the narratives of other strong, competent women, to establish her authority and combat the responses of distancing and denial that are evoked by her topic.

Yet in other respects, Mahoney's use of narrative presents a more radical departure. An experiential tone infuses even those portions of Mahoney's analysis that are not derived from women's stories. Estrich's work involved a daring midcourse change of hats. In the first section, she was the aggrieved victim, first of the rapist and then of the criminal justice system; in the rest, she was the committed yet dispassionate legal scholar, carefully dissecting the challenge her experience posed to the legal system. Estrich's experience influenced her scholarship, but it did

66. *Id.* at 73-80.

67. For a thought-provoking article that uses battered women's narratives to argue for a different (though not inconsistent) transformation in the way the legal system regards the battering relationship, see Littleton, *Women's Experience and the Problem of Transition: Perspectives on Male Battering of Women*, 1989 U. CHI. LEGAL F. 23 (describing changes in legal response that would result if legal system took seriously women's desire for connection with their partners and attempted to make such connection safe(r)).

68. In Mahoney's work, however, the autobiographical narratives are not distinguished from the narratives of other women. This strikes me as an extension of Estrich's technique, applied in the context of multiple narratives: Mahoney declines to distinguish her narratives from those of others, so as to deny her readers any opportunity for concluding that Mahoney alone is exceptional in her departure from the passive stereotype of the battered woman.

not transform its tenor or tone. For Mahoney, the two roles are intransigently one. The tone of passionate engagement with the problem does not waver throughout; Mahoney identifies herself simultaneously with social and legal analysts, and with the women whose lives they study. This reflects, first, a degree of authorial freedom won by the feminist critique of objectivity:[69] it is an act of bravery, but no longer an unprecedented choice, to acknowledge that one writes from a situated perspective. But the unity of these roles is also, I suspect, a part of Mahoney's message about denial and the complexity of the battered woman: one doesn't have to stop being a battered woman in order to be an insightful social and legal analyst.

Mahoney also differs from Estrich in the way she deploys narrative itself. Estrich began with a single, bounded narrative, to command the reader's attention and inspire her own analysis. Mahoney uses multiple narratives, some lengthy, some shaved to short snippets, in ways that illustrate, interrupt, and pace her argument. In the opening sections of her article, Mahoney uses very short narratives to create a counterpoint to her analytic discussion. They intervene, sometimes unannounced, to reinforce her argument in a different idiom. They are less complete stories than short exchanges, often presented in their original conversational forms. In her introduction, for example, Mahoney uses a short excerpt from an interview to illustrate her point about denial:

> [Battered] women often emphasize that they do not fit their own stereotypes of the battered woman:
>
> > The first thing I would tell you is that very little happened. I am not one of those women who stayed and stayed to be beaten. It is very important to me not to be mistaken for one of them, I wouldn't take it. Besides, I never wanted to be the one who tells you what it was really like.[70]

Or, in a later section, on the distortions of learned helplessness, Mahoney uses the voices of battered women to contest the conventional legal understanding:

> These opinions [which rely on expert testimony concerning "learned helplessness"] present an image of utterly dysfunctional women. "Such testimony generally explains the 'phenomenon' as one in which a regular pattern of spouse abuse creates in the battered spouse low self-esteem and a 'learned helplessness,' [that is], a sense that she cannot escape from the abusive relationship she has become a part of."
>
> A conversation among two friends who had violent marriages:

69. This critique has appeared in the legal literature through works such as C. MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE (1989), and Minow, *Foreword: Justice Engendered*, 101 HARV. L. REV. 10 (1987). The development of the critique in other disciplines is discussed at *infra* notes 144-48 and accompanying text.

70. M. Mahoney, *supra* note 60, at 8.

R: They say we have this thing called 'learned helplessness'

. . . .

Y: Really? I always thought it was when I was getting too *much* power.[71]

The effect achieved by these passages is not simply that of a story being told. Aesthetically, the punctuation of the analytic discussion with short bursts of narrative creates the impression of a voice being overheard, or of the interweaving of voices characteristic of drama or performance art. Analytically, the reader perceives the diverse worlds of law, sociology, and the experience of battered women interrupting one another to make a similar point.

In other sections, Mahoney uses longer narratives, and treats them as stories or texts that illustrate her analysis. In her section on lesbian narratives, and other sections in which Mahoney contrasts the stories of women known to her with published accounts of heterosexual battering, she offers us longer, more discursive passages by which to judge her claims:

> I look back and can see that there was something good. It didn't start with violence and ugliness. It started with summer nights, two women in their early 20s trying to find a way to see each other. Both lived in households where it wasn't possible to be open about the relationship. Meeting at movies and bars until early in the morning—until finally one left her home. Nights of lovemaking, not enough sleep and feeling fine at work the next day—being relaxed and happy. I had found something that I never even knew existed. . . .
>
> . . . .
>
> And who is the monster in the next room who did this? She's just a woman like you who is feeling as upset as you are and is temporarily full of remorse. She is the only friend you have, the only one who seems to care. The idea of leaving seems worse than if you try to stay and make it work and make sure it doesn't happen again. Bruises heal and resentment fades back into the routines of work, shopping, watching re-runs of *All Creatures Great and Small,* and driving her to church on Sunday morning.[72]

In still other sections, Mahoney uses narratives to provoke questions, often unconsidered, that require further research or analysis. In a section that challenges the cultural understanding of women as fully individuated and asks readers and researchers to consider the relationship between the demands of motherhood and a dynamics of battering, Mahoney states:

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71. *Id.* at 44 (footnote omitted) (quoting State v. Leidholm, 334 N.W.2d 811 (N.D. 1983), and a conversation between two women).

72. *Id.* at 49-50 (quoting Lisa, *Once Hitting Starts,* in NAMING THE VIOLENCE: SPEAKING OUT ABOUT LESBIAN BATTERING 38-39 (1986)).

> The wearing, repetitious labor of motherhood becomes part of the cycle of survival in ways we have had trouble recognizing. The constant work and need create a wearing down of the self, an erosion of borders which represents not confusion but exhaustion—a thirst for solace and protection as well as individuation. . . . Question: Was it a battered or non-battered wife who wrote this poem?
>
> A Woman's Work is Done (on the Run)
>
> . . . .
>
> Mama, I'm hurting
> you gotta make me better.
> Cure my cold, wipe my nose
> and make me wear a sweater.
>
> Mama, I'm tired
> so rock me off to sleep.
> Just give me the best
> of your life and don't weep.
>
> Baby, I'm hurting
> and need your gentle touch
> Just hold me close and rock me
> it doesn't take that much
>
> Baby, I'm tired
> so let me go to sleep
> Don't bother me with your needs
> just make my life complete.
>
> Answer: It was a nineteen year old woman in the midst of a battering relationship, . . . [but] there seems little to distinguish this woman's daily concerns from a non-violent marriage. The skills common to women in dealing with these demands easily convert to battlefield skills of compartmentalization and emergency coping with only immediate present demands . . . .[73]

From the dangers of present images of battered women and the alternatives presented by their stories, Mahoney elaborates a set of directions for change. She seeks to develop ways of describing women's lives that enable us "to change law and culture simultaneously,"[74] and proposes to begin by focusing on battering as a struggle for power and control, and on separation as a unique phase in that struggle. This focus can provide a starting point for further research, which can particularize the depiction of battered women.[75] It also points the way to reconceptualization in the legal realm. Mahoney proposes that we identify "separation assault"—an attack aimed at preventing a woman from leaving her bat-

73. *Id.* at 23-24 (footnote omitted) (quoting a poem by P.C. Clarke).

74. *Id.* at 107.

75. Mahoney suggests that scholars and legal actors should attend to factors, such as motherhood, that may affect a woman's response in a battering relationship. In her discussion of the effects of motherhood, Mahoney notes that the "blurring of borders" between self and children that is part of the usual experience of motherhood may critically affect a woman's decisions about separating from the abusive spouse. The physical, economic, and emotional responsibilities of motherhood "may combine with the pressures of violence to push women toward at least temporary compliance with a batterer's demands—while in the long run impelling her toward whatever choice (leaving, staying, seeking family or professional intervention) seems to best protect both herself and her children." *Id.* at 25-26. Mahoney argues that legal demands that women separate from battering spouses neglect these commitments and that "[w]omen are entitled to . . . legal doctrines that respect our circumstances and responsibilities." *Id.* at 27.

terer—as a distinct form of violence.[76] Describing and naming this form of assault would give the public conceptual access to a neglected and misrepresented social problem, much the way coining the term "date rape" helped to expand public understanding of the varieties of sexual assault.[77] Identifying separation assault could also have implications for the substantive law and litigation of cases involving spousal abuse. It might help courts to understand the importance of granting a temporary restraining order ("TRO") in the context of an attempt at separation, and to assess the cross-accusations of violence sometimes made by batterers.[78] It might assist women in custody disputes by exposing battering as a relational struggle rather than a problem that inheres in the woman, or by illuminating the connection between past violence and current legal disputes.[79] Describing and naming separation assault might also help courts to extend the time frame in evaluating the "imminence" of danger to battered women who kill their partners,[80] and to consider rules of evidence that permit nonlinear accounts revealing the fuller context of an assault.[81]

What can be said about the relationship between Mahoney's narratives and her proposals for change? It would be incorrect, I suspect, to claim a single relationship: the relationship appears to vary with the narrative and the way it is used. The most prominent narratives combine to suggest a complex image of the battered woman, which has not been seen. This image illustrates the denial and disempowerment perpetrated by the current legal images, but it shows a strength and resourcefulness in the midst of struggle that might inform future images and prescriptions. The lesbian narratives confirm the possibility of an image undistorted by the necessities of legal context; they also highlight the struggle for control at the heart of the battering relationship. The narratives of particular types of battered women (mothers, wives of alcoholics, now-dead women) offered in the final section suggest the distinctiveness of separation assault, and raise provocative hypotheses about particulariza-

76. *Id.* at 73-77. The language of Mahoney's complete definition is instructive:

> *Separation assault* is the attack on a woman's body and volition in which her partner seeks to prevent her from leaving, retaliate for her separation, or force her to return. It aims at overbearing her will as to where she will live and coercing her in order to enforce connectedness in a relationship. It is an attempt to gain, retain, or regain power in a relationship, or to punish the woman for ending the relationship. It often takes place over time.

Id. at 73.

77. *Id.* at 77-80.

78. *Id.* at 86-87.

79. *Id.* at 88-90.

80. *Id.* at 96-106.

81. Mahoney suggests that certain requirements of the law of evidence, such as relevance and responsiveness, may sometimes make it difficult for battered women to tell their stories in ways that offer a complete picture of the coercive realm in which they live. *Id.* at 40-41.

tion among battered women, both of which provide a spur to further inquiry.

Mahoney does not argue, however, that these directions for future action are compelled by her narratives. She does not assert the typicality of the women she describes, nor does she claim statistical significance for her sample.[82] She offers her narratives, instead, to suggest an unconsidered possibility, which inspires her reconceptualization and the call for further research.

This loose or impressionistic relationship between narrative and legal prescription could be worrisome to some mainstream readers, who might feel compelled to raise questions about the typicality or adequacy as a basis for change. Two elements of Mahoney's analysis, however, help to combat such doubts. First, Mahoney's proposals are provisional. She acknowledges that she stands at the threshold of a new legal understanding, and details the inquiry that will be necessary before we can be sure how to proceed. Second, and more interestingly, Mahoney's argument does not require that her readers credit all or perhaps any of her narratives in order to endorse her call for reconceptualization. Because Mahoney offers many narratives, which communicate different though compatible messages, a reader need not credit all of them to see the drawbacks of the current approach. A reader might be skeptical of the parental efficacy of battered women, yet credit the struggle for control depicted in lesbian narratives.

Moreover, because Mahoney's narratives punctuate, in places duplicate, a carefully depicted debate among feminists and social scientists about the battering relationship, even those who are broadly skeptical of narratives may find bases for persuasion. Mahoney's narratives provide an emotional resonance, a vivid portrait of the battering relationship from within, that this debate often lacks. Read in combination with these discussions, they provide a multifaceted argument for change. But many of Mahoney's concerns about the deceptive simplicity of the dominant image, the struggle for control implicit in battering, and the distinctiveness of separation assault are framed in these discussions.[83] To those who are resistant to narrative forms of persuasion, Mahoney's attention to the scholars' and advocates' debate provides more "objective" grounds for dissatisfaction with the current approach.

Embedded in Mahoney's argument, however, is an epistemological claim more daring than this methodological doubling implies. A theme that runs throughout Mahoney's work is the now-familiar feminist ques-

82. On the contrary, Mahoney is quite clear in saying that her "sample" is small. *Id.* at 6-7. Mahoney combines her own narratives with those of six women with whom she is acquainted, *id.*; she intersperses these with narratives available from news coverage and cases.

83. *See id.* at 9-51.

tion: How do we know things about the condition(s) of women? Her critique of "learned helplessness" suggests that we have erred by answering from a narrow legal context, by failing to recognize the way that cultural images shape that context, and by relying exclusively on experts outside the relationship rather than including the voices of women within it. The antidote lies in a kind of pluralism. We learn, as a scholarly matter, from a wide variety of sources. We know, as an epistemological matter, in a comparably wide variety of ways. We know about battered women, Mahoney suggests, through scientifically compiled data, through the systematic yet perspectival theories of feminist analysts, and through the impressionistic evidence of individual accounts. Each of these sources may supply insights that the others fail to tap; and when they coincide, they create a stronger impression—the pieces of a puzzle falling together. Mahoney's use of narratives may offer a limited, yet salient, claim for experiential ways of knowing that are not systematic, and cannot be comprehensively verified or documented. They represent a valued, though not necessarily a privileged, way of seeing what women face.

B. The Obliging Shell

Patricia Williams, who depicts the subordination not only of women but of people of color, is a seemingly inexhaustible source of narrative. She offers the narratives of others, which her interpretation makes her own, accompanied by a wealth of stories from her own experience. *The Obliging Shell,*[84] a far-ranging meditation on *City of Richmond v. J.A. Croson Co.,*[85] casts light on the relation Williams creates between narrative and the reconstructive work of law.

Williams observes that *Croson,* with its crabbed understanding of remediable discrimination,[86] resembles nothing more than the Parol Evidence Rule: it "diminish[es] the importance of real facts . . . by . . . rendering 'extrinsic' otherwise probative evidence" of inequality.[87] She probes the meaning of the Parol Evidence Rule through the use of narrative about a sausage machine, a tale stemming from her experience in consumer protection practice:

> You have this thing called a sausage-making machine. You put pork and spices in at the top and crank it up, and because it is a sausage-

84. Williams, *The Obliging Shell: An Informal Essay on Formal Equal Opportunity,* 87 MICH. L. REV. 2128 (1989).

85. 488 U.S. 469 (1989) (Court held that localities cannot establish race-conscious minority contractor program without specific, identifiable findings of discrimination within those localities).

86. *Id.* at 505 (rejecting claims that the city of Richmond had in the past discriminated against minorities in awarding municipal contracts, statiug that the evidence of such discrimination was amorphous, ill-defined, and insufficieut to provide guidance to legislative bodies charged with remediation).

87. Williams, *supra* note 84, at 2130.

making machine, what comes out the other end is a sausage. Over time, everyone knows that anything that comes out of the sausage-making machine is known as a sausage. In fact, there is a law passed that says that it's indisputably sausage.

One day, we throw in a few small rodents of questionable pedigree and a teddy bear and a chicken. We crank the machine up and wait to see what comes out the other end. (1) Do we prove the validity of the machine if we call the product a sausage? (2) Or do we enlarge and enhance the meaning of "sausage" if we call the product a sausage? (3) Or do we have any success in breaking out of the bind if we call it something different from "sausage"?[88]

The three possibilities for understanding the workings of the sausage machine become the framework for the remainder of Williams' article. Most concretely, they correspond to the three parts of the Parol Evidence Rule;[89] they also correspond to three modes of legal interpretation.[90] Williams also suggests, as the essay unfolds, that they correspond to three dominant paradigms for thinking about discrimination against blacks and other subordinated groups: (1) the view that " '[w]hite' had an ironclad definition that was the equivalent of 'good' . . . [and] '[b]lack' had an ironclad definition that was the equivalent of 'bad' ";[91] (2) the view that " 'white' still retains its ironclad (or paradigmatic) definition of 'good,' but a bit of word-stretching is allowed to include some few consistent additional others";[92] and (3) a view "allowing increased differentiation, and celebrating 'difference.' "[93]

In *The Obliging Shell,* Williams explores these paradigms through a series of interlocked narratives. Her stories illuminate the variations in design and response that exist even within one particular view of race relations. They suggest an intransigent human complexity that is distorted or neglected by current legal rules, but that might, given the chance, become the basis for a fuller form of legal seeing. This understanding can be glimpsed in microcosm by looking at Williams' discus-

88. *Id.* at 2130-31.

89. Williams describes the three categories of the rule and their evidentiary implications as follows: (1) written contracts that are "totally integrated" are limited to their "plain meaning" and "will not suffer any additions or variation of interpretation" based on extrinsic evidence; (2) contracts that are "partially integrated" permit "multiplicities of meaning" and may be supplemented by extrinsic evidence; and (3) contracts "not integrated" may be "altogether undone by a range of possible meaning that includes the wholly inconsistent." *Id.* at 2132.

90. These are: (1) a positivist mode of interpretation, which grants literal meaning great authority; (2) a realist and "mainstream feminist" interpretation, which stretches literal meanings; and (3) a critical interpretive stance, which "explores the limits of meaning," by insisting on contextualized understandings. *Id.*

91. *Id.* at 2133.

92. *Id.* at 2137.

93. *Id.* at 2143.

sion of the second paradigm of race relations, which she labels "neutrality."

The socially, and legally, dominant paradigm of race relations is built on the assumption that "white" is good, but the conventional meaning of the word may be stretched to include a few, suitably indistinguishable, blacks; in particular, "Blacks who refuse the protective shell of white goodness"[94] and insist loudly upon their difference are bad. This thinking has been assimilated by both whites and blacks, in ways that disguise the absurdity of its logic. One white assimilation of this message is revealed in Williams' story of the Rockettes:

> In October 1987, the Radio City Music Hall Rockettes hired their first black dancer in the history of that troupe. Her position was "to be on call for vacancies." . . . As of December 26, 1987, she had not yet performed, but, it was hoped, "she may soon do so." Failure to include blacks before this was attributed not to racism, but to the desire to maintain the aesthetic of "mirror image" uniformity and precision.[95]

The Rockettes' choice to hire a black dancer yet not permit her to dance evinces the difficulty with the dominant perspective: The complex blight of racism cannot be resolved by attempting to reclassify a few blacks as "white." More interestingly, the Rockettes' rationalization highlights the conceptual vocabulary in which similar perspectives are frequently couched: The virtual exclusion of blacks is necessary to achieve "mirror image" uniformity and precision. Reliance on a neutral (i.e., "color-blind") criterion permits choosers to hide from themselves and others the subtle ways in which the "white is good, black is bad" brand of racism still colors our thinking. There are, as Williams points out, numerous ways to create a uniform lineup, virtually all of which permit a racially mixed troupe of dancers. The choice of an all-white uniformity reflects the subtle, subterranean quality of contemporary racism that makes it difficult to sanction. "The example of the Rockettes," Williams concludes, "is a lesson in why the limitation of original intent as a standard of constitutional review is problematic, particularly where the social text is an 'aesthetic of uniformity.' "[96] The lumbering standard of "discriminatory purpose" is no match for an attitude potent yet evanescent enough to leave its mark on our view of the "normal."

If the applicable legal standard fails to capture the complexity that colors the racial attitudes of whites, it is equally unresponsive to the ambivalence of blacks. In *Croson,* Williams notes, the Court refused to find that city practices had excluded blacks in the absence of evidence

94. *Id.* at 2137.
95. *Id.* at 2137-38 (footnotes omitted).
96. *Id.* at 2139.

that minority contractors even wanted to receive municipal contracts.[97] Yet in a society that regards "black" as "bad," and allows blacks who are willing to call themselves "white" to be considered "good," the affiliation and self-identification of people of color becomes a complex matter. The painful mingling of race identification and race abdication emerges from two stories of Williams' childhood.

> Our house was in Boston on the edge of the predominantly black section of Roxbury; for years the people on my street fought and argued about whether they were *really* in Roxbury or whether they were close enough to be considered part of the (then) predominantly white neighborhood of Jamaica Plain.[98]

Even more tellingly, Williams relates:

> I remember with great clarity the moment I discovered that I was "colored." I was three. I already knew that I was a "negro"; my parents had told me to be proud of that. But "colored" was something else; it was the totemic evil I had heard my little white friends talking about for several weeks before I finally realized that I was one of *them*. I still remember the crash of that devastating moment of union, the union of my joyful body and the terrible power-life of that devouring symbol of negritude. I have spent the rest of my life recovering from the degradation of being divided against myself . . . .[99]

These stories, Williams observes, reflect "a deep personal discomfort among blacks, a wordless and tabooed sense of self that is identical to the discomfort shared by both blacks and whites in even mentioning words like 'black' and 'race' in mixed company."[100] Thus for many blacks, "neutrality" provides a way of suppressing, or placing at a distance, these taboos, while also, of course, perpetuating and institutionalizing them.[101]

The confusion and ambivalence generated by the concepts of "formal equal opportunity" and "neutrality" do not, however, divide people into neat categories of whites-as-oppressors and blacks-as-victims. This insight is underscored by an event described in the conclusion to Williams' article.[102] As Williams browsed in Au Coton, a local clothing

97. *Id.* (citing *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 509-11 (1989)).

98. *Id.* at 2140.

99. *Id.*

100. *Id.*

101. *Id.*

102. Although the Au Coton story that I am about to discuss comes from the conclusion of Williams' article and not from that section in which she discusses the paradigm of neutrality, I have taken the liberty of discussing it out of context because I find it unusually compelling: It is unflinching in its self-examination; striking, even for Williams, in the complexity and ambivalence of the perspective it evokes; illustrative of both the subtle effects of formal equal opportunity, and my later point about the invocation of intergroup experience in Williams' narratives.

To restore some sense of the interesting context of Williams' conclusion, I should also add that, immediately before relating this experience, Williams tells the story of a friendship that ultimately languished because Williams was firm in rejecting a friend's casual anti-Semitism. *Id.* at 2146-47.

store, she realized that the apparently friendly salespeople were making jokes about Jews. Minutes later, this derision found a human object, as several women identified by the sales clerks as Jews entered the store. Williams saw the salespeople laughing and winking at the perambulations of these shoppers, but found herself strangely unable to speak out. Determined to get to the bottom of her uncharacteristic silence,[103] Williams examines a range of factors: her discomfort about the age difference between herself and the young sales clerks, a lingering adolescent fear of being derided by those at the center of a social group. Ultimately, she comes upon a more disturbing influence:

> I was also caught short because they were so *open* about their anti-Semitism. They smiled at me and commented on the clothing I was looking at; they smiled and commented on the clothing being looked at by the others. Their anti-Semitism was smiling, open, casually jocular, and only slightly conspiratorial or secretive. They were such nice young people; how could they possibly mean any harm? This little piece of cognitive dissonance was aided and abetted by my blackness, by the fact that I am black: I grew up in a neighborhood where blacks were the designated Jews. I can think of few instances, therefore, in which I have ever directly heard the heart, the source, the uncensored, undramatic day-to-day core of it—heard it as people think it, and heard it from the position of an "insider." And it was irresistible, forbidden, almost sexually thrilling to be on the inside.[104]

The "neutral-ized" forms of contemporary discrimination had not ouly kept Williams, as a black, distant from many whites. They had kept her so distant from the casual voice of discrimination, the unmediated tones of its derision, that she found in their revelation a glimpse of a hidden truth and a suggestion of intimacy that were irresistible. Nor is this complex reaction the end of the matter. Applying yet another lens to her discomfort, Williams sees that her "privilege" was also a form of devaluation; this insight led her to recounect herself with those on the "outside" of the circle:

> At the same time, I realized that the very fact of their faith in me was oppressively insulting. I became an anti-Semite by the stunning audacity of their assumption that I would remain silent. If I was "safe" I was also "easy" in my desire for the illusion of inclusion, in my capitulation to the vanity of mattering enough even to be included. It did not occur to me that I was simply ignored. I could have been Jewish as much as the four

103. Williams notes:

> I wanted to say something, and since I am usually very outspoken about these things, I was surprised when no words came out. It is embarrassing but worthwhile nonetheless, I think, to run through all the mundane, even quite petty components of the self-consciousness that resulted in my silence. I think such silence is too common, too institutionalized, and too destructive not to examine it in the most nuanced way possible.

Id. at 2148.

104. *Id.* at 2149.

> random souls who wandered into the store; but by their designation of me as "not Jewish" they made property of me, as they made wilderness of the others. . . .
>
> I left a small piece of myself on the outside, beyond the rim of their circle. I was those others on the other side of the store; as they made fun of the others, they also made light of me; I was watching myself be made fun of. I became "them."[105]

Beyond evoking the tangle of attitudes that conditions our response to law, Williams also considers law as a vehicle for social change. She compares the law of formal equal opportunity, exemplified by the *Croson* decision, to the experience of moving into a room in a house that once belonged to her late godmother.

> In a respectful attempt to make it my own, I cleared the bedroom for painting. The following morning the room asserted itself, came rushing and raging at me through the emptiness, exactly as it had been for twenty-five years. One day filled with profusion and overwhelming complexity, the next day filled with persistently recurring memories. . . .
>
> . . . .
>
> The phantom room is to me symbolic of the emptiness of what formal equal opportunity as promised has actually turned out to be. It is the creation of a space that is filled in by a meandering stream of unguided hopes, dreams, fantasies, fears, recollections. It is the presence of the past in imaginary, imagistic form. What is required in the law of opportunity is some acknowledgment of the room as an empty room before we can stop filling the void with the perpetuated racism of the past[,] . . . before we can stop filling it with unfulfilled promises of the future.[106]

Formal equal opportunity misses the point, because color-blind rules do not create color-blind people.[107] If the racism of the past is not to rush in to fill the emptiness of the current legal standard, some more direct attempt must be made to confront the attitudes that neutrality only permits us to hide. One means of confronting these attitudes is through affirmative action, "not just . . . programs like affirmative action," Williams adds, "but affirmative action as a socially and professionally pervasive concept":[108]

> Blacks and women are the objects of a constitutional omission which has been incorporated into a theory of neutrality. . . . It is thus that affirmative action is an affirmation; the affirmative act of hiring—or hearing—blacks is a recognition of individuality that re-places blacks as a social statistic . . . . It is an act of verification and of vision . . . .[109]

105. *Id.* at 2149-50.
106. *Id.* at 2141-42.
107. *Id.* at 2142.
108. *Id.*
109. *Id.* at 2142-43.

It is difficult to encapsulate a response to the narratives of Patricia Williams. They tumble forth in a profusion that is almost startling; yet they are woven so seamlessly into her larger critique that it inevitably blunts their power to present them, as I have, in a more linear form. Like Martha Mahoney, Williams deploys many different types of narratives, to many different ends. Yet some of these narratives, and some of these ends, are different than those of Mahoney. Like Mahoney, she presents first-person narratives that are complex in their depiction of victimization. Yet Williams also offers narratives in which she presents herself not as victim, but as a silent collaborator,[110] or as an acute but perplexed bystander.[111] Moreover, Williams uses narratives in a way that neither Estrich nor Mahoney attempt: to mediate between her readers and the perilous world of abstraction. Her narratives sometimes give a vivid, concrete meaning to complex concepts—such as the sausage machine as a metaphor for interpretation.[112] They can sometimes show that an abstraction is dangerously devoid of meaning, or has a different meaning than most people believe—the lesson of the phantom room about the cacophonous emptiness of formal equal opportunity.[113]

In the place of narrative within the structure of her argument, Williams departs strikingly from Estrich and Mahoney. Her narratives do not introduce or even punctuate her argument. They structure it, provide its raw material, create its spirit. She may step back to comment on a story, or relate its message to those of stories already told; but the stories are the focal point for the reader's attention, and provide the means of moving from one idea to the next. Williams' stories also play a different persuasive role than those examined earlier. On the one hand, more depends, for the reader, on whether you believe her narratives. Although Williams elaborates the messages to be drawn from her stories, she does not make the same points through independent, conventionally analytic arguments. If you don't see the point of the stories, you are likely not to draw a message from the article as a whole.

Moreover, Williams also seems to be making a broader truth claim for her stories than Mahoney or Estrich. She does not make audible the stories of one diverse yet situationally defined group whose voices have not previously been heard. She tells the stories of many groups, in many different positions in relation to victimization and oppression. She tells stories that are so varied, yet so similarly inflected with common themes of ambiguity, misunderstanding and self-delusion, that it is difficult to

110. *See id.* at 2149-50 (Au Coton story); *supra* text accompanying notes 102-05.

111. Williams, *supra* note 84, at 2144-46 (narrative about S, a transsexual student about to undergo a sex-change operation who confided in Williams because "as a black person [Williams] might be more understanding").

112. *See supra* text accompanying notes 88-93.

113. *See supra* text accompanying notes 106-08.

believe she is not, at one level, depicting a human condition. One senses not only that she is offering us a glimpse of a larger portion of the human race, but that she reveals its distinctive markings with great conviction.

Yet it was not my experience that the greater burden borne by Williams' stories taxed their credibility. This may have been because they persuade by a different means than the stories of Mahoney or Estrich. The latter stories persuade by encouraging the reader to believe the account of a narrator, who describes a particular experience from the "inside." The life of a battered woman is not familiar to me; nor is the life of the mother of a young infant. Yet if I read the particularized accounts of each, and if I find that they have an acceptable degree of internal consistency, create a plausible account of a particular set of events, and do not seem suspicious in tone, I begin to have a belief that is not based on my own experiences. On the basis of what these women have told me of their lives, I believe the skills that help women to deal with the endless demands of a child may translate into the "battlefield skills of compartmentalization and emergency coping"[114] that preserve and ensnare a battered woman.

I believe Mahoney's stories, in other words, in the same way and for many of the same reasons that I would believe an effective witness in the courtroom.[115] I have a different response to Williams. I believe her stories beeause they resonate with something I know about myself or those around me. One might say this is because Williams tells stories about so

114. M. Mahoney, *supra* note 60, at 24.

115. When I describe the persuasion effected by narrative here and later in this article, I focus on how narrative works on an "outsider," a person who has not had the experience described. The way in which narratives persuade those who are familiar with the experience being described is a distinct question, which I treat only tangentially in this Article. It would be interesting to consider whether a woman who had experienced a battering relationship would believe Mahoney's narratives for the same reasons I do. I would guess not. I think she would probably be more likely to ask whether they corresponded with her experience of that relationship. Yet I think this correspondence with her experience would not be the same correspondence that inclines me to credit Williams' narratives. *See infra* text accompanying notes 169-77. The correspondence in the case of Mahoney would seem more likely to be a correspondence of particulars—you recognize what is being said if you have had that experience. The correspondence in the case of Williams' stories seems to go beyond the particulars to something that crosses group boundaries. Indeed "insiders" and "outsiders" are more difficult to define in the context of Williams' narratives. An "insider" would not necessarily be a person who is a member of the group(s) discussed, or even one who has had, factually speaking, the type of encounter described. It would seem to be someone who is part of a group whose experience is sufficiently comparable, or who has had an experience sufficiently analogous, that she experiences a flash of recognition on reading Williams' accounts. Given this definition, it is more difficult to say how someone who is an "outsider"—whose experience is not sufficiently analogous to yield a moment of recognition—comes to credit Williams' narratives. I found that I believed some of her narratives for which I had no experiential predicate or visceral sense of recognition—for example, her narrative about discovering she was black—because I was moved by the eloquence of the account, or startled into considering new possibilities by the presentation of a coherent view I had not previously confronted. I do not know, however, if other readers share this response.

many people in so many positions that she is more likely to find something that correlates with my particularized experience than is Mahoney.

But I do not think this adequately explains the difference. Reading Williams' stories, I constantly resonate with people whose experience I am not, technically speaking, supposed to have had. When I read about blacks straining to locate themselves in Jamaica Plain rather than Roxbury, I do not peer, over a great distance, at that response. I am reminded, immediately, of the ways that Jews have struggled to define the non-Jewish world in a way that makes us part of it. When I read her story about the saleswomen in Au Coton, I do not bristle at her confessed complicity in the derision of Jews; I think uncomfortably about all the times I have been silently complicit in the mistreatment of blacks. In short, I believe Williams' stories the way I believe a good piece of literature. Despite their attentive picture of diversity, it is not only their representation of the particular, but their subtle invocation of something common and recurring, that triggers my assent.[116]

One might wonder how Williams connects this almost literary mode of representation and persuasion with the more legal task of normative revision. A good story only rarely sets out to change the world; we are wont to call literature "didactic" when an author lets his or her normative framework show. Yet, to my mind, Williams is able to clear this hurdle as well. One strength of the narratives that comprise *The Obliging Shell* is the light they permit Williams to cast on the Sisyphean task of social reconstruction through law. This illumination occurs at several levels.

At the most general level, her narratives illustrate the almost unfathomable complexity of the human beings whom the law takes as its subject. While many narratives contest the one-sided character the law seems to ascribe to us, for the great majority the problem is to bring an additional side, an uncomprehended polar opposite, into the description. For Williams, the unappreciated truth of human beings is even more complicated: We choose words that hide our meanings from ourselves and from each other; we affirm and shrink from the racial identity that is our fate; we are inevitably divided within and against ourselves.

Law can never fully track the gyrations of such a complicated being. Yet some legal constructs fail even to acknowledge the need to try. Formal equal opportunity permits the "white is good, black is bad" attitude to go underground, and allows groups on both sides of the racial divide to engage in the kind of surface accommodation and internal ambivalence and self-delusion of which humans are distinctively capable.

116. *Cf.* M. NUSSBAUM, *supra* note 7, at 46 (1990) (good fiction presents both universal themes—such as "the non-commensurability of the valuable things"—and "particularity[,] . . . variety and indeterminacy").

Croson entrenches formal equal opportunity by excluding evidence of discrimination that is more sensitive to the varieties of human interaction, and foreclosing those race-conscious programs that affirm racial minorities and make clear that blacks need not wage a quiet struggle to be "white" in order to be "good."

Yet Williams also looks beyond the immediate decision in *Croson* to suggest that the problem is not so much evidentiary as epistemological. We must rethink the question of how we know about discrimination and other forms of injurious human behavior. Williams' stories illustrate two components of this way of knowing. First, her choice of experiential narrative—the fact that she works from the knotty details of life—suggests that decisionmakers must begin with more attentive observation of the way those humans before them live in the world. Williams' effort to work her way around the practice of discrimination from an eye-opening variety of perspectives suggests a second message: that legal actors must learn to view the world from more than a single, reflexive position.

> [T]he perspective we must learn to acquire is one beyond these three boxes that have been set up. It is a perspective that exists on all three levels and eighty-five more levels besides—*simultaneously*.
>
> It is this perspective, the ambi-valent, multivalent way of seeing that is, I think, at the heart of what is called critical theory, feminist theory, and the so-called minority critique. It has to do with a fluid positioning that sees back and forth across boundary, that acknowledges that in certain circumstances I can be black and good and black and bad, and that I can also be black and white, male and female, yin and yang, love and hate.[117]

One might wonder what new legal standard could possibly capture this way of seeing; Williams offers no precise specification. For those who seek a sense of closure, the provisional character of her direction may be frustrating. Yet for those intrigued by the possibility of a long-term transformation in legal seeing, her conclusion may be prescription enough. In the "ambi-valent" spirit of her article, she suggests at least two, conflicting possibilities. It may be that no single legal means of capturing the multivalent phenomenon of discrimination is possible—that "each day," as Williams states, "is a new labor."[118] It may also be that as we practice seeing in this new and fluid way, we will be able to find the words that can guide others in the effort. Denominating the flaws in what we have seen and spelling out what we hope to be looking for are essential steps in this direction.

117. Williams, *supra* note 84, at 2151.

118. *Id.*

C. *Zig-Zag Stitching and the Seamless Web*

A different relationship between feminist narrative and legal change emerges from the work of Marie Ashe. In her essay *Zig-Zag Stitching and the Seamless Web: Thoughts on "Reproduction" and the Law*[119] Ashe reflects on the legal regulation of the reproductive experiences of women, and the way that a new feminist method of discourse might help us rethink that regulation. Ashe proceeds in a way that makes her essay startling to many readers—through a direct embrace of the method she proposes, with little mediation by the conventions of legal argumentation.[120] Her thoughts about the legal regulation of reproduction emerge within a context provided by her narrations of her own multiple experiences of reproduction: two hospital births, three home births, one medically induced and several spontaneous abortions. Of her final birth, for example, Ashe writes:

> On July 25, 1986, at 1:30 a.m., I sat in my rocker. Awaiting the midwives. I did not want to stand, to hurry the progress of my labor, before their arrival. By 2:00 a.m., all three had come in. I cannot recall ever feeling more cared-for than I was by them and my husband in the following hours.
>
> . . . .
>
> A brief, intense labor. Encouraged by a plurality of female voices; kindness of hands that touched when I needed touching, that otherwise left me alone; understanding and courage communicated through eyes familiar with the extremities of birthing. When I stood up, in the final phases of my labor, interrupting my pushing to walk about, they laughed with me. My husband's strength supporting my back. Their bearing with me. Their confident, intelligent, patient waiting through the strenuous exertion of the end of our labor.[121]

Interwoven with these narratives are reflections on the births and deaths of others, and on the legal regulation of these events. Having told of her own first birth, Ashe moves to the story of another

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

120. The one striking exception is the footnotes to the article, which, if not encyclopedic, both simulate the elaborate and stylized nod to relevant sources that has become the hallmark of contemporary legal scholarship and even conform to "bluebook" form. Several explanations are possible. Since the author who emerges from the pages of the narrative seems to be, among other things, a lover of laughter, it seems plausible that the dutiful appending of highly conventional footnotes to a highly unconventional piece is primarily ironic. The conventions of legal discourse may be cast asunder, but the footnotes will live on. It is also possible that the footnotes represented a compromise with methodologically nervous law review editors, or (less likely) that Ashe overlooked the conventional stylistic form of that part of her piece presented below the line.

121. *Id.* at 370. This narrative is, of course, presented out of order. Ashe proceeds in chronological order through the birth of her five children. So, in the article, this is the last of her birth narratives.

"primigravida,"[122] Angie Carder, whose fetus was removed by court-ordered cesarean section immediately prior to her death:

> As A.C. submitted to the pain of her dying, as she passed through that deep and solitary inner experience of body and soul, she was offered—by medicine and law—not comfort but additional trial by torment. The representatives of medicine and law found it impossible to tolerate the mysterious unboundaried commingling which constituted the being of Angie Carder. What nature and her own strong desire and intent joined together, they set asunder. Finding insufficient her sharing the strength of every dying breath with her child-to-be, they violently wrenched from Angie Carder that not-ready-to-be-born being who died almost immediately thereafter.[123]

These intertwined narratives preview the arguments Ashe ultimately offers: that the "extraordinary" medico-legal regulations of reproduction are not different from the more "ordinary" regulations that impaired her own efforts to create a satisfying home birth experience. And that the same enforced distance from the physical truth of women's experience that shaped the medical establishment Ashe confronted as a mother also shapes the legal discourse and resulting regulation she confronts as a legal scholar. In response, Ashe calls for a new "deconstructive and reconstructive feminist critique,"[124] a new form of discourse about women's lives that will inform legal decisions regarding regulation of reproductive events. This discourse is characterized by "clarity, newness, faithfulness to bodily experience, rejection of abstraction, and refusal to be reduced or simplified to facilitate categorization."[125]

Even in an increasingly diverse and experimental genre, Ashe's narratives distinguish themselves by their pungency, intimacy, and dominance over the landscape of her article. To a greater extent even than those of Patricia Williams, Ashe's narratives *are* the substance, *create* the structure of her argument. While Williams organizes groups of stories under broad conceptual headings, Ashe's structure is rooted in experience. Her narratives are organized chronologically, in order of the birth of her children. And while Ashe offers observations on regulation that extend beyond her own experience, they are brief and cryptic and flow in large part from that experience.

Ashe's narratives also diverge, even from many first-person narratives, in their insistent corporeality. Ashe offers us the physical labors of birth and death at startlingly close range. Here she describes the delivery of her first child:

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122. "Primigravida," as Ashe notes, refers to a woman who is pregnant for the first time. *See id.* at 359 n.21 (citing STEADMAN'S MEDICAL DICTIONARY (5th ed. 1982)).

123. *Id.* at 361.

124. *Id.* at 380.

125. *Id.*

> I recognized the doctor's voice as he spoke to the nurses. Push whenever you feel the urge, the nurse said to me. I felt the urge, and I pushed. Can I raise myself up on my elbows, I asked them. That won't work on this table, the nurse said. Just push again, now, it won't be long. I pushed again and uttered a long, low moan, lasting the duration of the push. There's no need for that kind of noise, he said. I felt humiliation and fury. Damn it, he said, she's not pushing hard enough. Get me a forceps.[126]

Or, of one of her spontaneous abortions, Ashe writes:

> I remember vividly the completion of that miscarriage, which occurred during a night in the middle of November, six years ago. . . . I felt that passage—a kind of minor birthing, accompanied by the twisting and grinding pains of childbirth, though of lesser intensity and lesser duration. That tissue, the "fetus," slid from my body—purple, quivering, silent. I caught it in a porcelain bowl from my kitchen. I touched it gently. Its appearance was stunning to me—both familiar and unfamiliar; startling.[127]

Even Ashe's emotional revelations are captured with a similarly striking intimacy. In short apostrophes concluding each narrative of birth, Ashe records the first thoughts or feelings directed toward her new child ("I cried and I laughed. I could not take my eyes off you, Anna"[128]) or her aborted fetus ("Purple as sun-done plums, your fine remains"[129]). Readers may feel that they have stumbled onto an intimate scene that most outsiders lack the opportunity—and some may lack the desire—to witness.

Finally, Ashe's narratives embody a strange mix of diversity and predictability. While they are stunningly various in their physical detail—can pain and complication *really* be encountered in so many different ways?—and subtly different in their tone and mood, they offer the same normative portrait: of a medical-legal system that controls women's bodies, and separates them from the necessary physicality, the salutary "violence and bloodshed"[130] of their own reproductive experience.

Reading Ashe's article can be a jarring experience. I felt I had heard more than I ever wanted to hear about the physical labors of childbirth; and I was perturbed by the wholesale dismissal of the medical establishment and the unabashed preference for the perilous, largely abandoned terrain of home birth. I felt an abstract sense of satisfaction—and a more concrete sense of amazement—that such a relentlessly

126. *Id.* at 360.
127. *Id.* at 376-77.
128. *Id.* at 360.
129. *Id.* at 377.
130. *Id.*

physical and concrete account had ever made it into the pages of a legal periodical.

As these feelings emerged, I found myself asking the "normative question": what does Ashe's zig-zag stitching of legal narratives have to offer those who would make the law surrounding reproduction more responsive to women? I think there are several things. First is the proposal of a feminist discourse suitable to the discussion of these topics. The intimacy and relentless physicality of Ashe's stories do not reflect an arbitrary choice. They exemplify the form of a discourse that resists abstraction and attempts to reconnect our thinking to our increasingly distant bodies.

This way of talking about experience is also intended to stress women's intransigent diversity, and make sure that our stories are fully heard. For Ashe, common bodily experiences, such as birth and death, serve to connect women to each other and provide a means accessible to all of us of sharing the concrete features of our lives. But those same concrete features are striking in their variation. The differences in Ashe's five births and three abortions are emblematic of the differences that exist among women as well. Fidelity to the details of these experiences highlights this diversity in a way that the casual observation of a pregnant woman[131] and the essentialist legal categories that are built upon it do not. Ashe's image-filled accounts of reproductive life contrast starkly, for example, with the categorical thinking of an expert witness who, bristling at taking the direction of a pregnant Ashe, remarks to her colleague, "I *hate* macho mothers."[132]

Precise physical detail, not easily amenable to generalization or reification, is also a way of making sure that listeners attend the stories that are being offered. Ashe suspects—I think correctly—that many people are not actually listening to women's narratives. They are too quick to generalize and categorize, too quick to think they have understood the gist of a story, when in reality (and even in rendition) it is much more complex.[133] Having told, in careful detail, one story of her own "death-

131. In a terse and telling passage, Ashe recounts three ways she was categorized during the time that she was pregnant and working as a criminal defense lawyer that depict "[t]he confinement of pregnant women to categories. Mandated vulnerability." *Id.* at 364. One colleague couldn't understand why "given [her] condition," she didn't want to be described to the jury as "Mrs."—a suggestion that the pregnant woman is legitimated only when she is seen as the contented appendage of a man. *Id.* at 363. Another used her "illness" to excuse their tardiness on a day when Ashe felt perfectly well, thus appropriating her pregnancy and perpetuating an image of pregnant women as fragile. *Id.* A third said of the seating at counsel table, "That's a nice touch—the pregnant woman and the accused murderer sitting together. Looks good for the jury," suggesting not only that Ashe used her pregnancy for professional advantage, but that a pregnant woman is inevitably suggestive of vulnerability and innocence. *Id.* at 364.

132. *Id.* (emphasis in original).

133. Catharine MacKinnon echoed this concern when she warned her audience at a speech on

dealing"—the drowning of five of the fifteen puppies born to her dog—Ashe checks her readers for signs of hasty generalization:

> Is what I did there "right" or "wrong"? It is neither. It is only what I have done. Another woman might have done differently. Even performing what appeared an identical act, she might have done differently. The farm woman drowning kittens as a matter of course may have an experience different from mine. Another woman might have felt unable to intervene in any way to cause the deaths of the helpless pups.[134]

By insisting that there may be difference even in acts that appear the same, Ashe challenges her readers to look below the surface features of a story, and ask themselves what they have heard.

It is hard to know how to evaluate this foray into new legal discourse. Do I take from it insights into women's experience that I had not previously encountered? Yes. Am I persuaded that these perspectives have been neglected or undervalued in the legal discussion and regulation of reproduction? Probably. It appears that instances of both "ordinary" and "extraordinary" legal regulation make it difficult for some women to choose the experience of childbirth they prefer. Am I persuaded that these perspectives should be made central to legal discourse and medical-legal regulation? Less clear.

I find myself worrying, somewhat uncharacteristically, about the "typicality" of the views Ashe expresses. Ashe's narratives persuade in a way that is different from Williams but similar to Mahoney: they ask the reader to credit the narrator(s)' rendition of a particularized experience. Yet my response to the singular vision embodied in these accounts is different than my response to the complexity detailed by Mahoney. While I believe Ashe's narratives genuinely reflect her own experience of birth, I wonder whether she speaks for all women. I particularly doubt that she speaks for me—the doctor's daughter, ready to trade the life-affirming blood and pain of home birth for the security of the fetal monitor and the welcome relief of a local anesthetic. This concern, not atypically I suspect, crystallizes as a question about "normative legal content." The "typicality" of her narratives may be more or less important, depending on what legal ramifications follow from them. How, for Ashe, do these physical narratives of birth and death translate into ideas for legal change?

It is clear that Ashe wants to draw from her stories insights that can be used to change the fabric of the law; it is also clear that she is tenta-

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pornography that hers is an argument they had "never heard before." *See* C. MACKINNON, *supra* note 27, at 127.

134. Ashe, *supra* note 119, at 373.

tive, even dubious, about the possibility of succeeding at this venture. In her introduction to the essay, she muses:

> Work on the seamless web. Writing of women, of mothers, of language and law. Rather different from passing threads through my fingers, working them into subtle or dazzling color. More like the impossible task of the miller's daughter. Except—not merely to spin into golden thread a room full of straw. Beyond that, to work the threads into some recognizable shape, some better fit.[135]

As the essay proceeds, we witness a growing tension between these two strands of Ashe's thinking. We see, on the one hand, her gradually solidifying suspicion that any regulation in the area of reproduction reifies and disempowers women; we see, on the other, her concern that deregulation constitutes too comprehensive, too extreme a response. This ambivalence is reflected in Ashe's tone: through most of the essay, she presents nonregulation tentatively, as a possibility rather than a prescription.[136] Finally, strengthened by the words of Nettie Stoner—mother of Angie Carder and the "one clear expression" of the connected, corporeal voice Ashe commends[137]—Ashe moves toward a resolution:

> I want a law that will let us be—women. That, recognizing the violence inherent in every regulation of female "reproduction," defines an area of non-regulation, within which we will make, each of us, our own "mortal decisions."
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> There is a kind of embroidery called cut-work. It is executed by the careful placement of smooth satin stitch and the excision of fabric within the area outlined by that stitching. The cut-work opens up spaces within the fabric. Openness itself constitutes, then, both part of the fabric and non-part. It requires both needle and scissors. Construction and deconstruction. Within—and against—patterns of sameness, it inscribes difference.[138]

The deregulation, or nonregulation, of reproductive experience may constitute a kind of cutwork within the larger fabric of the law. It creates an open space within the law, an absence full of possibilities, both part and not part of the legal framework within which we exist. It fashions a domain for difference in a larger scheme, which, for better and for worse, categorizes and assumes similarity. We should be careful about taking a metaphor for a prescriptive pronouncement. The choice of such an allusive conclusion may evince Ashe's continuing ambivalence about her preference. But it may also be her way of rooting her most general

135. *Id.* at 357 (footnote omitted).

136. Ashe states: "When I hear varying narratives and when I recognize the various truths in different accounts, I ask whether *any* legal regulation of 'reproduction' can avoid a perpetration of violence upon women. I wonder if there is any possibility of 'equality' where regulation rests upon essentialist notions of gender and sexuality." *Id.* at 379 (emphasis in original).

137. *Id.* at 380.

138. *Id.* at 383 (footnote omitted).

suggestion in the concrete, of assuring that her proposal for law does not stray too far from the tangible details of women's lives.

If, as seems possible, Ashe concludes with a plea for the nonregulation of central reproductive events in women's lives, how might we say that she got there? How do we describe the relationship between her narratives and the legal vision expressed at the end? Elucidating such a connection is a perilous business, for in her persistent rejection of abstraction Ashe denies her interpreters many of the conceptual bridges that usually ease such a transition. But several possibilities present themselves.

One might see in Ashe a kind of radical subjectivity that maps one set of individual experiences directly into a legal rule. I saw some suggestion of this in her rejection of the medical-legal regulation of childbirth. Ashe's proposal seemed to me to rest on her own increasingly successful experience with home birth, unanswered by the stories of women who had enjoyed or benefitted from delivery in a hospital. It was my sense of a direct relation between Ashe's personal experience and her legal response, I suspect, that first led me to question the typicality of Ashe's narratives.

Yet Ashe also speaks of diversity, an insistent variousness that would be defeated were she to prescribe solely on the basis of her own experiences. Particularly in the area of abortion, she makes clear that her own feelings of loss do not correlate with other women's experiences of relief and renewal.[139] So a second way of conceiving the relation between Ashe's narratives and her normative prescription is that Ashe endorses nonregulation as the only possible legal stance that is adequately respectful of women's diversity. A background of unencumbered choice also permits women to make for themselves the "mortal decisions" that legal regulation sometimes denies them.

But it may be too simple to say that nonregulation is the legal posture that best accommodates a range of voices. For it is clear that some voices are not served by a complete absence of legal intervention. What about the woman who seeks a natural birth experience, but does not know how to choose among midwives? What about the woman who encounters complications during home birth, and loses her baby or bleeds to death in her own bedroom? We don't hear these perspectives in Ashe's narratives—she may feel they are adequately reflected in the dominant legal paradigm—but does she respond to them in any way in embracing her solution? The one suggestion that she does make comes through the testimony of Nettie Stoner. Stoner testified that the fetus should be permitted to die with Angie Carder, because "Angela is the

139. *Id.* at 379.

only one that wanted that baby to love."[140] Her view, according to Ashe, arose out of "maternal knowledge—a particular, local knowledge . . . characterized not by the sentimentality expected of and tolerated in mothers, but by a cold-eyed, unflinching strength, a clear recognition of the impossibility of finally avoiding death."[141]

In Nettie Stoner, described as the archetypal voice of women's physical knowledge,[142] we see that the diversity of women's experiences may point ultimately to a gritty substantive truth: we must honor choices that remain true to a woman's life, even when they risk or facilitate death. We may express that veneration by means of a legal approach that does not shrink from allowing women to make these choices. While this view may ascribe too much influence to Stoner's brand of hard love, it may also point to a normative claim embedded deep within Ashe's embrace of diversity that permits her to choose some voices over others.

III

We have surveyed a range of narratives that differ in style and structure, in the persuasive claims made for experience, and in the normative prescriptions derived. What light do these narratives cast on the interrelated questions with which we began?[143] As I suggested at the outset, it

140. *Id.* at 381.

141. *Id.* at 380-81.

142. *See id.* at 382.

143. These questions, or challenges, probed the "truth" and "typicality" of perspectival, experiential narratives, asked whether they implicated or assisted in the remediation of legal problems, and queried whether they disrupted scholarly exchange by excluding those who had not had a given experience and by submerging all participants in a cacophony of indistinguishable accounts. One might here ask a second, more pointed question, which initially seems to cast into doubt the utility of asking the first. If the focus of this Article is on the use of narratives to persuade the unconvinced, what good does it do to offer my own responses to a group of narrative pieces when I—as a feminist scholar who has chosen to write an Article on narratives—could hardly be described as one of the "unconvinced"? My answer is that while I inevitably use terms like "mainstream scholars" or "the unconvinced" to try to depict a group that is skeptical of the use of narratives in persuasion, these terms draw too bold a line between groups. In fact, readers may be initially suspicious of narratives for a variety of reasons: they may not share the substantive feminist commitments of the authors; they may be wary of methodological innovation in legal scholarship; they may not have had any of the experiences depicted in the narratives.

Although it may not be immediately apparent, I possess some of these characteristics myself—as do most legal scholars, feminist or otherwise, who approach narratives. I share many substantive commitments with feminist narrative scholars, and do not consider myself, as a rule, to be "wary of methodological innovation." On the other hand, I was educated to regard as "legal scholarship" work that does not share many of the structural features or epistemological assumptions of feminist narrative scholarship. And, although I admire a good deal of narrative work, I do not customarily employ many of its innovations in my own writing (though I have used scholarship embodying narratives to argue for legal change). So while I may view myself as sympathetic, I still regard this scholarship across a sort of chasm: I have not had the experience of being a feminist narrative scholar, and I approach many of the choices such scholarship makes from a more conventional set of premises. In addition, I have not had many of the experiences described by the authors whose I work I discuss: I have not (yet) been the victim of rape or spousal abuse; I have not (yet) had a

is neither necessary nor advisable to respond to all of these questions in precisely the form in which they have been framed. Challenges to the "truth" or "typicality" of narratives, for example, reflect the evaluative premises of objectivity, premises that are more problematic than their proponents often assume. Not only are these premises antithetical to the assumptions of narrative, but they are increasingly contested in legal scholarship as a whole.

The emergence of narrative as a form of legal persuasion takes place against a backdrop of radical questioning, in law as well as in other disciplines, including the history of science[144] and philosophy,[145] of the role of objectivity in human rationality. This questioning began as a challenge to those assumptions that shaped scholarly investigation.[146] Challengers questioned, first, the possibility that there was any objective "truth" or "hard facts of the matter"[147] that could be discovered through investigation. More importantly, they questioned the assumption that objectivist

child; I have not lived the life of a black woman in this racist society. The fact that I am a woman might make it easier to imagine myself having these experiences than it would be for a white man (although a black man might have a kind of access to Patricia Williams' stories, for example, that I do not). But I approach these stories largely as an experiential "outsider"—someone who has no immediate exposure to the experience depicted. On the other hand, while there might be some, including narrative scholars themselves, who are better situated to elaborate the emerging conventions of this group, I have studied enough of this scholarship, worked with and shared the norms of enough of its practitioners, that I believe I am able to explain these norms—and the evaluative criteria that follow from them—to an uninitiated audience.

144. *See* T. KUHN, THE STRUCTURE OF SCIENTIFIC REVOLUTIONS (1962). Kuhn presented a new portrait of scientific inquiry, in which investigation reflects the influence of and contestation among a succession of "paradigms" that pose questions and suggest methods for resolving them. The generation of new paradigms and the choice among competing paradigms is conditioned not simply by the data they attempt to explain, but by the historical circumstances and personal and intellectual predispositions of those who propound them. Kuhn's conclusion that there is "no neutral algorithm for theory-choice, no systematic decision procedure which, properly applied, must lead each individual in the group to the same decision," *id.* at 200, has been taken to challenge the objectivity of science. *See also* P. FEYERBEND, AGAINST METHOD 183 (rev. ed. 1988) (arguing that anarchy, not abstract rationality, is the governing principle of science and that historical facts play a decisive role in the struggle between rival methodologies).

145. *See, e.g.,* H. GADAMER, TRUTH AND METHOD 310-25, 446-47, 485 (W. Glen-Doepel trans., G. Barden & J. Cummings eds. 1975) (denying transcendental or ahistorical perspective from which to evaluate claims of truth, and arguing that claims must be evaluated according to standards and practices shaped over course of history and extended, challenged, or elaborated through dialogue within specific communities); R. RORTY, PHILOSOPHY AND THE MIRROR OF NATURE 9, 383 (1979) (describing " 'justification' " as a "social phenomenon, rather than a transaction between 'the knowing subjeet' and 'reality' " and criticizing the "attempt to answer questions of justification by discovering new objective truths" as "the philosopher's special form of bad faith—his special way of substituting pseudo-cognition for moral choice"); *see also* R. BERNSTEIN, BEYOND OBJECTIVISM AND RELATIVISM: SCIENCE, HERMENEUTICS, AND PRAXIS 1-49, 223-31 (1983) (building on movement in natural and social sciences and philosophy that challenges role of objectivity in human rationality, but avoids relativism by focusing on development of communal conversation and debate).

146. For a cogent analysis of the emergence of this challenge in an array of disciplines, which has shaped the following discussion, see Rubin, *supra* note 11, at 1840-47.

147. *See* R. BERNSTEIN, *supra* note 145, at 3.

methods for deriving or assessing knowledge—such as abstract logic or empiricism—represented universal standards or exhausted the criteria that could properly be applied to evaluate scholarly claims. These challengers argued, instead, that both the problems scholars choose to study and the methods by which they investigate and assess claims within these areas are shaped by language, personal or cultural experience, historical context, or intellectual tradition.[148]

The challenge to objectivity in law proceeded similarly, but manifested two distinct phases.[149] The objectivity of law as a substantive system came under attack relatively early, through legal realism's attack on formalism.[150] Yet because legal scholars assimilated at the level of methodology many of the objectivist claims of formalism,[151] it has required the accumulated weight of interdisciplinary questioning, and its legal application by critical scholars,[152] to bring this challenge to the method-

148. This claim has been made in a number of disciplines. *See* P. FEYERBEND, *supra* note 144 (philosophy of science); C. GEERTZ, LOCAL KNOWLEDGE 147-63, 152 (1983) (anthropology) ("ideation . . . is a cultural artifact" and "thinking . . . is to be understood 'ethnographically,' that is, by describing the world in which it makes whatever sense it makes"); T. KUHN, *supra* note 144 (history and philosophy of science).

149. *See generally* Rubin, *supra* note 11, at 1854-65. Rubin argues that legal realism effectively deposed the positivist assumptions of legal scholarship, but did not disturb the "unity of discourse" between legal scholars and judges, which embodied and reflected legal scholars' methodological assumptions of objectivity. By "unity of discourse," Rubin means the practice, prevalent among legal scholars, of adopting the normative orientation, distant stance, and abstract argumentation that are characteristic of the judges, who are both the subject and the intended audience of their scholarship. *Id.* at 1859-60. He argues that the "critique of methodology," which challenges the assumptions of objectivity, can thus finish the work that legal realism began. *Id.* at 1865. While Rubin describes a first stage of "positivism" and a second reflecting continued "unity of discourse," I find it more useful to talk about assumptions of objectivity as they relate to the "substance" (i.e., subject, substantive law) of legal scholarship and to the method or the "evaluation" of legal scholarship.

150. *See* Cohen, *Transcendental Nonsense and the Functional Approach*, 35 COLUM. L. REV. 809, 849 (1935) (arguing that "the union of objective legal science and a critical theory of social values" should guide legal analysis). *See generally* Singer, *Legal Realism Now*, 76 CALIF. L. REV. 465 (1988) (arguing that as a result of the legal realist movement, "[t]he terms of legal discourse have shifted from the deduction of consequences from abstractions to the attempt to justify the law in terms of policy, morality, and institutional concerns," and that "[t]his revolutionary change in legal discourse represents a monumental achievement.").

151. *See* Rubin, *supra* note 11, at 1859-65 (discussing "unity of discourse" between judges and legal scholars).

152. *See, e.g.*, Singer, *The Player and the Cards: Nihilism and Legal Theory*, 94 YALE L.J. 1 (1984) (critiquing traditional legal theorist's search for determinate, objective, neutral decision procedures, in part by reference to Richard Rorty's anti-foundationalist approach to philosophy). However, both exponents and commentators on this strain of legal thought note that the challenge to traditional epistemology should not be understood as leading to normative collapse or conversational chaos. *See* Cornell, *Toward a Modern/Postmodern Reconstruction of Ethics*, 133 U. PA. L. REV. 291 (1985) (criticizing the "logic of identity" in order to produce a "view of a decentered subject," yet concluding that "we are not left with nothingness" and can still reconstruct an ethical system); Singer, *supra* note 150, at 541-44 (legal realism "removed the possibility [of grounding normative commitments] by appeal to natural law or to the logical implications of abstract concepts," and liberal theory sought unsuccessfully to replace these foundations with process; yet "we cannot escape

ological and evaluative realms.

The idea that objectivity may be contested as an element of legal methodology, as well as a feature of substantive law, has produced what might be described as a "fractured horizon":[153] a dawning realization that legal scholars no longer share a set of uniform assumptions about what makes legal arguments—and therefore legal scholarship—credible and persuasive. In this context, the criteria derived from the premise of objectivity remain one paradigm for evaluation—no doubt, at this point, the dominant paradigm. But they are no longer regarded as so unproblematic that feminist scholars must respond to them as the single means of validating our claims.[154]

In law, as in other disciplines, the critique of objectivity has given

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substantive value choices," so "we must talk with each other about our competing visions of the good society if we want to achieve justice"); *Cf.* Williams, *Critical Legal Studies: The Death of Transcendence and the Rise of the New Langdells,* 62 N.Y.U. L. REV. 429, 432 (1987) (stating that contrary to assumptions made by Critical Legal Studies scholars, "[w]hile a rejection of law's traditional claims to objectivity necessarily implies that the law is not neutral but is in some sense political, this does not mean that law is ideological in the sense that it consistently functions to legitimate an inherently illegitimate order").

153. Gadamer used the term "horizon" to mean "the wide superior vision that the person who is seeking to understand must have." H. GADAMER, *supra* note 145, at 272. Nietzsche used the term in a somewhat comparable sense. *See* F. NIETZSCHE, THE GAY SCIENCE, ¶ 125 (W. Kaufmann trans. 1974) ("Who gave us the sponge to wipe away the entire horizon?").

The term "fractured horizon" is taken from Charles Taylor. *See* C. TAYLOR, SOURCES OF THE SELF 14-19, 305-14 (1989). Taylor most often uses the term to describe the modern state in which it is no longer true that "all credible moral sources involve God," *id.* at 311, and in which "no framework is shared by everyone, can be taken for granted as *the* framework tout court, can sink to the phenomenological status of unquestioned fact," *id.* at 17 (emphasis in original). I use the term, in a sense only very roughly comparable, to describe a state of affairs in contemporary legal scholarship in which it is no longer true that all claims to know and/or to persuade are based on the premises of objectivity, and in which, consequently, there is no single evaluative framework that can be taken for granted by all participants.

154. At the risk of infinite regress, I will note that this is, of course, my perspective on these scholarly developments. Many partisans of objectivity view the matter differently. Some fail to credit the questioning that has occurred, and proceed on the assumption that objectivity still creates a uniform evaluative horizon. Others see that this questioning has rendered objectivity problematic, but continue to press it as an evaluative approach, either because they see the abandonment of objectivity as portending only the chaos of infinite subjective judgments (and thus they revert to the premises of objectivity), or because they fail to see any workable alternatives. As I will suggest below, it is to scholars in this second category that my argument is primarily addressed. By elaborating nonobjective, evaluative understandings that are appropriate to narrative, I hope to persuade them that this fracturing of horizons does not portend evaluative chaos and that there is an alternative evaluative paradigm we may apply in this context.

John Henry Schlegel suggests that feminist narrative scholarship is not the only form of scholarship that is obliged to respond to challenges regarding truth and typicality. Mainstream legal scholars get such challenges as well; the difference is simply that they have developed a set of conventions to deal with them (e.g., conventions regarding sampling or the meaning of the mathematics of correlation or what "every man would know"). *See* letter from John Henry Schlegel to author (Apr. 2, 1991) (on file with author). I would add that mainstream scholars expect feminist scholars to refer to the same conventions in responding to these challenges, and question the legitimacy of this form of scholarship when they do not.

rise to an understanding of scholarship not as a uniform and objective enterprise, but as a practice that occurs within a disciplinary or subdisciplinary community, and that proceeds according to "socially-constituted modes of argument"[155] indigenous to the community. Scholars working within these communities develop specific understandings, for example, about how one learns things about the world (might experiential knowledge provide an alternative to more "objective" forms of empirical investigation?), or what qualities contribute to persuasion (might characteristics such as credibility of vision or nonexclusivity of voice serve the functions served by "truth" or "typicality" under the framework of objectivity?). These understandings not only constitute the scholarship practices or conventions of the particular group,[156] but also provide criteria for evaluating scholarly claims made by its members.

In this period of newly "fractured horizons" in legal scholarship, it is critically important for scholars to elaborate the understandings of conventions underlying work within their subdisciplinary communities. This is a particularly important task in those groups in which these conventions are only beginning to emerge, as in the group of feminist narrative scholars. Reflection on, and illumination of, these emerging understandings will be of value to feminist narrative scholars in at least two ways. First, it will make us more self-aware about, and ultimately

155. This phrase is from Rubin, *supra* note 11, at 1841. But many have contributed to the view that disciplines and subgroups of scholars create practices with their own shared modes of communication. *See supra* note 147.

156. *Cf.* R. BERNSTEIN, *supra* note 145, at 182-231 (using works of Habermas, Gadamer, Rorty, and Arendt to suggest how understanding may be developed through participation in dialogic community with others with whom one shares practices or norms); C. GEERTZ, *supra* note 148, at 155-60 (describing "metier-made mentalities" that may be reflected in and perpetuated by such features of group life as distinctive linguistic classifications for describing or praising work, or shared conceptions of a professional life cycle).

By suggesting that certain scholarly practices emerge within groups, I do not mean to deny that there is overlap—either in terms of practices of in terms of membership—among groups. I might describe my own work, for example, as being influenced by the conventions of feminist narrative scholarship, as well as those of critical race theory, as well as more mainstream civil rights scholarship, as well as the scholarship of the emerging law and literature movement. Some groups or communities may also share certain practices with other groups, while diverging from them in additional ways. Feminist narrative scholarship seems to me to share both certain members and certain scholarly conventions with the community of scholars doing critical race theory. Both have given pride of place to experiential accounts—with the varied challenges to mainstream scholarly method that entails, both have attempted to challenge the "neutrality" of the law and the false universality of what are actually perspectival rules, both have attempted systematic reformulations of doctrine or reconceptualizations of legal problems based on the perspective(s) provided by the experience(s) of group-specific oppression. Yet there are also salient differences between these two communities. Not only are many of the substantive issues addressed differently—beyond difference in doctrinal focus, even concerns that ostensibly affect both, such as the "pool problem" or the "essentializing" force of "distinctiveness" claims, have different meanings in each context—but methodological practices, even in common areas such as narrative, bear distinctive markings as well as similarities. *See supra* note 10.

more effective in implementing, our own methodological norms. Feminist scholars are constantly, if not always self-consciously, engaged in analyzing and evaluating narratives. We talk about which narratives "bring a point home," which stories help our students or colleagues understand gender oppression, which help them approach the task of legal reform. By making these implicit judgments explicit, and subjecting them to discussion and reflection, feminist narrative scholars will strengthen our ability to tell and use experiential stories.[157]

Second, elaborating or clarifying the practices of feminist narrative scholars may help address the epistemological anxiety that underlies many of the specific challenges to narrative. In their sub-rosa critiques of narrative, some legal scholars have displayed an analogue to what Richard Bernstein has called the "Cartesian anxiety":[158] a fear that any departure from the methodological premises of objectivity is likely to plunge legal scholarship into a chaos of innumerable, infinitely subjective judgments.[159] That it is possible to elaborate the conventions or understandings used by a subdisciplinary community in assessing scholarly work may help reassure critics that doing and evaluating scholarship outside the methodological assumptions of objectivity is not "just what

157. Feminist scholars may be understandably wary of discussing evaluative criteria in public fora: not only because our critique of one narrative may be used against feminist narrative generally, but because some feminist scholars have resisted the invocation of evaluative "standards," which have often been used to judge feminist scholarship harshly. Although feminist scholars will differ on this highly charged question, it is my view that carefully elaborated evaluative criteria need not have this effect. It should be clear that one criticizes a particular narrative, under such analysis, not for the epistemological premise that would make other narratives vulnerable as well, but for some failure to reflect the forms of persuasion that this premise entails. Similarly, it should be understood that feminists' criticism of "standard" does not indict the possibility of evaluation, but only eschews those forms of evaluation that lose sight of their perspectival character, and that attempt to measure work by premises that it does not share. It is my hope that the plural character of the evaluative understandings that emerge from narrative will help us to avoid these errors.

158. *See* R. BERNSTEIN, *supra* note 145, at 116-20. Bernstein describes Descartes' longing, both methodological and moral, for "some fixed point, some stable rock upon which we can secure our lives against the vicissitudes that constantly threaten us" and his fear that "hover[ing] in the background is . . . not just radical epistemological skepticism but the dread of madness and chaos where nothing is fixed, where we can neither touch bottom nor support ourselves on the surface." *Id.* at 18. Bernstein also identifies this theme in Kant's CRITIQUE OF PURE REASON, in which Kant describes the transcendental analytic of pure understanding as "the land of truth—enchanting name!—surrounded by a wide and stormy ocean." *See id.* at 18. Bernstein identifies this anxiety in the response to works in a range of disciplines that challenge the role of objectivity in human rationality, and argues that this anxiety has caused critics to see more subjectivism in these works than their authors actually subscribed to. *Id.* at 1-49.

Richard Rorty has also described this phenomenon as "the fear that there is really no middle ground between matters of taste and matters capable of being settled by a previously statable algorithm." R. RORTY, *supra* note 145, at 336.

159. *See* Singer, supra note 152, at 3-9 (traditional legal scholars argue that challenge to objectivity threatens an epistemological nihilism in which "all possible descriptions [of the world] are equally invalid because we cannot be sure that any description is reliable").

you like."[160] It may suggest to them that the methodological and evaluative horizon constituted by objectivity is not the only one that is capable of producing shared judgments among human beings, that other methodological practices may be used in creating and evaluating scholarship, and that these practices can be made intelligible, if not ultimately fully acceptable, to those in other communities.

In elaborating the methodological understandings developed within a particular subdisciplinary community, I hope to avoid two moves, which I take to be errors, sometimes associated with this effort. The first is to suggest that the understandings developed within a particular subdisciplinary community are unitary or uncontested. I regard the effort to establish methodological hegemony within a group that rejects the premises of objectivity as a kind of "redeposition" of the same errors that inspired the critique in the first place.[161] Attempting to avoid this error means that experience is not treated as something absolute or unmediated like "fact" under objectivist methodologies. It also means that certain methodological practices I will elaborate are plural, or are the subject of continuing disagreements among members of the group.[162] While there is enough agreement among group members about methodological practices to distinguish these practices from those of other groups, disagreement and contestation are palpable, and eliminating them is not taken to be a goal of the group.

The second error I hope to avoid is the suggestion that because methodological practices are "local," or characteristic of a certain community, they cannot be made intelligible to members of other groups.

160. *Id.* at 47. Although I take the phrase from Joe Singer's article, because his use of it captures so succinctly the mainstream response, I should add that his own response to it is slightly different from mine in the sentence above. He argues that in a world (such as the one we occupy) without transcendent moral or epistemological foundations, "there is nothing else to do but what you like." *Id.* at 55. However, this lack of foundational constraint does not, in Singer's view, portend the random or horrible behavior that critics fear, because people make considered decisions—through "experience, emotion, introspection and conversation, rather than by logical proof." *Id.* at 56.

161. The term "redeposition" comes from E. SPELMAN, INESSENTIAL WOMAN: PROBLEMS OF EXCLUSION IN FEMINIST THOUGHT 5 (1989). Spelman describes a need in social and political analysis, as in doing laundry, to prevent "the dirt taken out of concentrated spots from being redeposited more generally over the whole load." *Id.* In particular, she argues that feminist theory has re-created the objectivist assumptions against which it initially rebelled by positing different elements of a "woman's" experience, without reference to the fact that women vary along many indices such as race, class, and sexual orientation, which critically affect their experience, even in the context of gender-specific injuries. *See also* Minow, *Feminist Reason: Getting It and Losing It*, 38 J. LEGAL EDUC. 47 (1988) (criticizing feminist legal theory on similar grounds); Singer, *Should Lawyers Care About Philosophy?*, 1989 DUKE L.J. 1752 (criticizing Rorty for reinstating the foundationalism he banished from philosophy in the realm of politics, in a way that elevates dominant political values and renders them unproblematic).

162. Such a pluralism of views will be evident, for example, in my discussions of credibility and authority, *see infra* Part III A. 2.

Fears about the "incommensurability" of meaning created within disciplinary or subdisciplinary communities,[163] a kind of analogue to the "Cartesian anxiety," are, to my mind, overstated. While it may not be possible to make the methodological conventions of one group acceptable to another, I believe that it is possible to make them clear enough that members of another group can understand what is being said and done and see how it differs from the conventions operative within their own group.[164] This clarification is, in fact, an important goal of the kind of elaboration of group understandings that I will attempt.[165] Moreover, we will see that some of the (contested) practices elaborated actually facilitate understanding or access across group lines. By facilitating access on the part of one group to the methodological conventions of another, it may be possible to encourage discussion or even cross-fertilization among members of different subdisciplinary communities.

In the spirit of such interaction, I will take the specific challenges framed by critics as a point of departure in elaborating the conventions of feminist narrative scholars. Though their grounding in the premise of objectivity makes it unwise to accept them as framed, these challenges illustrate the elements of persuasion that comprise a particular methodological or evaluative system. By thinking about what the analogues to these elements might be under the epistemological assumptions of narrative scholarship, we can work toward a set of criteria better suited to that context.[166]

Keeping these challenges to narrative before us may also help remind feminist scholars of the audience we hope to persuade. The conventions or criteria that emerge from narrative do not yield the kind of determinative answers that arise from a regime of objectivity; there will be many hard calls about what choices aid persuasion or prescription, what moves facilitate inclusive debate. One factor we may use to guide our judgment in these close cases is a sense of what our audience is likely to recognize or accept. Unlike the visionary Patrick,[167] who could afford to keep an enigmatic distance from his fellows, innovators who must work and live within communities of diverse others occupy an ambiva-

163. *See* H. PUTNAM, REASON, TRUTH AND HISTORY 114 (1981) (describing "incommensurability thesis" as idea that "terms used in another culture [including intellectual culture] . . . cannot be equated in meaning or reference with any terms or expressions *we* possess").

164. *See id.* at 115-17 (fact that we are able to compare concepts from disparate cultures sufficiently to discover that the conceptions informing them are different means that meaning created in other cultures is not wholly unintelligible).

165. This is true, for example, of the practice of elaborating the normative content of narrative, *see infra* Part III A. 5.

166. Taking these challenges as a literal point of departure may also aid the understanding of mainstream readers by permitting them to relate the development of the narrative's premises to elements of persuasion with which they are already familiar.

167. *See supra* text accompanying notes 1-5.

lent position. Though we write according to our own premises, we must inevitably confront audiences that do not share them. Their criticisms will assist us in what I see as the critical task of remembering who audiences are.

A. Narrative Persuasion: Beyond "Truth" and "Typicality"

The first question we should consider is what features of the narratives themselves make them credible to readers. We have to think that stories are worthy of being believed before we can begin to consider their implications for legal change. As I note above, many critics of narratives have raised questions about their "truth" or "typicality,"[168] thus suggesting that these are important criteria for establishing and evaluating persuasiveness in feminist narratives. As framed, challenges to "truth" and "typicality" manifest the flaw described above: they assert the applicability of a perspectival standard in a context that challenges that standard's assumptions. But by thinking about what critics seek when they demand "truth" or "typicality," and asking what qualities might meet those needs while responding to the distinctive characteristics of the narrative form, we may be able to arrive at criteria that help us assess the credibility of narratives.

1. The Challenge to Truth

When a reader challenges the "truth" of a narrative account, he is often responding to the unmitigated subjectivity involved in its rendition. The narrator recounts an occurrence—always personal, sometimes uncomfortably "private"—which the reader did not observe, which is probably foreign to the reader's own experience, and which is difficult to verify in any nonexperiential way. Asking whether an experience related "actually happened"—usually the meaning of "truth" in such circumstances—is one way of reintroducing objective standards for evaluation. It asserts the importance of verifying the author's account, if only according to the experience from which it is claimed to be taken. Such invocation of the "truth" of an experience neglects feminism's challenge to the notion that there is one, aperspectival version of "what happened"

168. Others sympathetic to narrative scholarship have defined the distinction(s) in other ways. Frank Munger argues, for example, that conventional legal or social science scholarship "attempts to reduce the influence of idiosyncratic interpretation of events on what is conveyed to another person . . . by adopting conventions of data collection, interpretation and presentation" whereas narrative scholarship is "deliberately first person. The idiosyncratic and personal experience is part of the intended message." Letter from Frank Munger to author (Apr. 23, 1991) (on file with author). I see this characterization as compatible with my own, although I would describe my characterization as looking at mainstream scholarship from a position somewhere within (or close to) feminist narrative scholarship, and Munger's as looking at both mainstream legal and feminist scholarship from a position outside both.

that can be used as a standard for measuring subjective accounts. Yet there are two ways in which the challenge to "truth" could be used to derive more appropriate norms for assessing the persuasiveness of narrative accounts.

First, we could interpret "truth" more broadly, as some quality or qualities that, if present, incline the reader to credit the account of reality being advanced through narrative. Correspondence to some single, external reality is not what creates credibility under the assumptions of this form. But might there be qualities that do? The examination of specific narratives undertaken above suggests that there are not one but several such qualities, which vary, depending on the type and purpose of the narrative.[169]

In some kinds of narratives, more pointedly those I will refer to as "first-person agony narratives,"[170] the pain experienced by the author encourages readers' assent to her account. In agony narratives the author reveals a painful experience—often one whose exposure is interdicted by social taboos—in order to challenge the unapprehended harm inflicted by a practice or rule. Marie Ashe relates in breathtaking detail the indignities of her hospital births so her readers will understand the violence done to women's experience by legal regulation. The pain[171] is

169. I should note here my belief that this discussion of the bases of persuasion in narrative only begins to develop a list of such criteria. Absent this qualification, I might legitimately be charged with solipsism, as I am drawing substantially on my own responses in developing these criteria for persuasiveness. I have little doubt that were additional readers to discuss what they understood to be the grounds for their assent to narrative, we could identify additional qualities that trigger readers' assent.

170. I first heard this term used by Carol Weisbrod; whether it has a longer lineage, I do not know. I think it nicely captures the type of narrative that asks us to reevaluate an accepted rule or social practice on the basis of the pain it causes the narrator of a particular story. Although the lines between categories of narratives are not clear-cut, I would be inclined to say that Ashe's reproductive narratives belong within the category of "first-person agony narrative" while Mahoney's and Estrich's do not. I would say this, first, because Ashe focuses explicitly on sensations of pain (and pleasure), particularly corporeal pain, whereas Mahoney and Estrich intermingle brief accounts of the pain of the experience with lengthier, textured accounts of the social or relational context of the injury, or its intersection with the legal system. One might say that Mahoney and Estrich, even as they narrate their experience, adopt a position of slight distance from its elements of pain (and from this vantage point are able/willing to see other elements as well), whereas Ashe seems to narrate from within the painful or pleasurable experience. Second, it might also be argued Ashe sees as her primary goal bringing into view her corporeal experience, and is only secondarily concerned with using that experience to develop normative proposals, whereas Mahoney and Estrich might be described as primarily concerned with developing the proposals that they draw from their experiential narratives. However, I have reservations about this interpretation, as it reflects a narrow interpretation of the "normative." Ashe's cryptic proposal to deregulate reproduction is only one (and arguably a less important) normative feature of her article: her effort to forge a new discourse in the area of reproductive experience is a more central normative effort, with which her corporeal narratives are integrally connected.

171. It is possible to present a "third-person agony narrative," as when Catharine MacKinnon describes the coercion of Linda Marchiano in the filming of *Deep Throat*. *See* C. MACKINNON, *supra* note 27 at, 128-29. While some readers may find such a narrative credible, others may find it

the primary message the author seeks to communicate, usually because it reveals a human cost that has previously been ignored. Readers may believe these narratives for a variety of reasons,[172] most of which derive from the description of the pain itself. The pain described may elicit readers' sympathy or disarm their skepticism. The author's willingness to expose herself to social stigma through revelation of the painful experience may convey to the reader the author's belief in the importance of her message.[173] Readers may also believe the narrative because it sounds like a contextually convineing description of pain endured, a quality the first-person agony narrative shares with a second type of narrative.[174]

This second category of narrative, which I have described as providing an "insider perspective," persuades by offering a complex, highly particularized account of an experience unfamiliar to many readers. In this kind of narrative, it is not so much the author's pain, or the risk of exposure undertaken, as the "inside information" the narrative provides that enlists the receptivity of the reader. Narratives in general, and this kind of narrative in particular, persuade by depicting a conflict or event with a vividness that is impossible to achieve through abstract expression. The author attempts to offer some detail or juxtaposition of details that will, by virtue of sheer concreteness, provide a sense of "what it must be like."

Martha Mahoney successfully employed this approach when she

less credible than a first-person agony narrative because the author is not taking the risk of exposing her own experience. Also because the author did not have the experience, her account may lack the particularity of an insider's account. For a discussion of third-person agony narratives, see *infra* notes 174-77 and accompanying text.

172. I should add that some readers do not believe them at all. I think it is fair to say that "first-person agony narratives" are regarded with greater suspicion, even within the community of feminist scholars, than the other forms of narrative discussed. The problem is not so much that readers disbelieve the experiences recounted, it is that because of problems that are best grouped under the rubric of "typicality," they distrust them as a basis for legal prescription. Having experienced a particular kind of pain may make you credible in your account of that experience, but it may not equip you to think about any more than your individual experience. One danger with "first-person agony narratives," to which I allude in my discussion of Marie Ashe, *supra* text accompanying notes 119-36, is that a narrator will generalize, and ultimately prescribe, on the basis of her individual experience, without asking whether the experiences of others have been different. Although this is a problem with any use of experience, there are qualities inherent in the other types of narratives (the expertise revealed by a narrator such as Mahoney with an entire category of experiences; the ability of a narrator such as Williams to evoke experiences that cross group boundaries) that make their translation of experience into prescription less likely to be solipsistic. For a fuller discussion of the risks of exclusion in translating experience into legal prescription, see *infra* text accompanying notes 231-51.

173. This basis for credibility might be analogized to the rule making admissions by a party-opponent "not hearsay," *see* FED. R. EVID. 801(d)(2) or, particularly, to the exception to the hearsay rule recognized for statements against interest, *see* FED. R. EVID. 804(b)(3). One premise of these rules is that the speaker exposes herself to so salient a risk of disadvantage in making a statement that there would seem to be no motive for making it beyond its truth.

174. By raising this point, I mean to suggest more generally that it is possible for narratives to straddle two or more of the categories I have described, as well as to partake of two or more forms of credibility.

explored the lives of battered women who are mothers.[175] The qualities that create credibility in Mahoney's discussion are similar to those that induce trust in an (expert) witness.[176] The concreteness, particularity, and internal consistency of the account command the reader's assent. These may also be enhanced by the authenticity of the authorial voice. Much as one finds a witness credible through subtle nuances of diction or tone, the tone or language in which an experiential account is rendered can persuade a reader that a narrator should be believed.[177]

Still other narratives command the reader's assent not through some quality inherent in the narrative itself, but by some response it evokes. Some of these narratives use experience to give concrete meaning to an abstract idea; others use experience to reveal the exclusivity or rigidity of a dominant rule or perspective. Yet both types persuade by inducing in the reader a flash of recognition: either because their concreteness has made some abstract idea accessible or because, notwithstanding the particularity with which they are recounted, they have illuminated a com-

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175. *See* M. Mahoney, *supra* note 60. In this piece, Mahoney raises the possibility that the endless, minute demands of women's caring for small children become continuous with their predicament as battered women, and make it difficult for them to focus on leaving a battering relationship.

> Two days after he broke the glass in the door, it was the middle of a hot summer afternoon. My son was asleep in his crib in my room, my daughter was taking a nap in hers. I was lying in bed reading. Suddenly, I heard a popping noise, and glass started crashing to the floor. Someone was shooting through my windows. There were no bullets flying around—I remember wondering if it was an air rifle. The windows kept shattering, and I didn't know what would happen if anything hit the baby.
>
> I grabbed him out of the crib, got down toward the floor, and half-crawled out of the room. I took him downstairs. Of course, he was only three months old, when he woke up he had to nurse. Then I had to change his diaper. Then my daughter started crying—she had waked up from her nap. Then I had to change her diaper. Then she was hungry. Then I had to change his diaper again. By then he had to nurse again . . .
>
> At 5:30 when I took them upstairs for their baths, I noticed the glass all over the floor. That was when I remembered what had happened. It was the worst moment of all of it . . . because I couldn't even rely on myself any more. I started crying and I called my mother long-distance. I said, "Mama, it finally got to me, I've finally lost my mind. If your window is shot out and you crawl out of the room with your baby in your arms, you're not supposed to forget about it. It should at least be the main event of the day!"

M. Mahoney, *supra* note 60, at 24-25. Had Mahoney said "the endless tactical coping required by parenting can make a battering relationship seem continuous with the rest of a woman's life, and distract her from the need to escape her predicament," I might have been skeptical. But a minute narration of the multitude of acts that go into an afternoon's care of two small children, and the mother's remarkable yet contextually credible report that they supplanted her awareness of an otherwise terrifying episode, struck me as far more persuasive—as a portrait both of the demands of mothering and of the denial that may take place among battered women.

176. *See generally supra* text accompanying notes 115 & 132.

177. For me, the credibility of this type of account is also enhanced by the surprise factor—the fact that it is a portrait I never would have created had I been guided by my own "outsider's" perspective. It suggests the humbling, but also energizing, possibility that there are entire, consistent, particularized worlds that we are prevented from seeing by the narrowness of our own perspectives. I recognize, however, that many people specifically distrust an account that does not correspond to their own experience, no matter how different their experience is from that of the narrator. So I hesitate to attribute this reason for receptivity to readers beyond myself.

mon thread in diverse experiences. I believe Patricia Williams' "Au Coton" narrative because I see, in all its particularity, an experience whose ambiguity, complexity, and mingling of identities evokes elements of my own experience. It is that moment of recognition, like the glimpse of ourselves provided sometimes in literature, that commands the reader's assent.

Once we recognize that "truth," as correspondence to some single, external reality, is an epistemologically circumscribed conception, we can begin to think about analogues that are more appropriate under the epistemological assumptions of narrative scholarship. The above discussion suggests that we should be less concerned with correspondence than with credibility or other related qualities that command the assent of the reader to the account conveyed. Armed with this reformulation, we can see that there are multiple ways that a narrative can achieve credibility—through revealed pain, through the cohering, particularized knowledge of the expert witness, through the ignition in the reader of a flash of recognition—and that many narratives already do satisfy the criterion on which challengers had argued they fell short.

2. *Experience and Authority*

But there is a second way in which we might use the challenge to "truth" to illuminate the conventions of narrative scholarship. We might begin by interpreting this concern as a challenge to the authority of the author. The reader, who may not have shared or witnessed the author's experience, may need some reason—distinct from the content of the story—to believe that the author can be trusted. Comparison of the author's story with some external account of "what happened" is not the way to support the author's authority, under the assumptions of this form. But what about the source of authority on which most feminist narrative scholars claim to rely—concrete life experience? What sort of authority should be drawn from this source? Implicit in the challenge Patricia Williams describes to her Benetton story[178] is the suggestion that she did not actually have the experience she relates, or that her experience differed in salient respects from her narrative. The question of whether an author has had (precisely) the experience she relates is not often a question that it is possible for the reader to answer. However, it arises for a good number of readers in their encounters with narratives. This feeling may arise from a failure of any of the forms of credibility described above; it may arise from a stereotype about the nature or victims of gender-specific injuries ("a *law professor* as the victim of rape or spousal abuse?"); it may reflect the kind of bafflement many people feel

178. *See supra* notes 22-23 and accompanying text.

when they confront an account that is distant from their own life experience. Whatever its source, this response, which helps to animate the challenge to "truth," raises some interesting questions about the authority conferred by experience in narrative. If the reader suspects that the author did not have (precisely) the experience she reports, how should that affect the credibility of the narrative? And, conversely, if the reader genuinely believes that the author had the experience described, how should that affect the way the reader views the larger account of which the narrative is a part?

In my view, the effect of the reader's doubts on the credibility of a narrative should depend upon the kind of narrative being offered. In the "first-person agony narrative," it seems particularly important that the pain described was experienced, in some similar form, by the author. In this type of narrative, it is not just the authority ostensibly conferred by experience, but the hardships endured or the risks taken in exposing a controversial experience that enlist the reader's support. If the reader suspected that the author only pretended to endure this hardship or take this risk, it might generate in the reader a feeling of betrayal, as well as casting a shadow over any prescriptive arguments that arose from the author's account. If I had reason to suspect, for example, that the doctor did not forbid Marie Ashe to moan during labor, or did not speak about her to the nurses as if she were not there, I would likely feel exploited rather than be fascinated by her account; I would certainly feel less inclined to question the social acceptance of hospital births. An agony narrative that lacks the authority conferred by experience will probably dwindle in both credibility and normative force.

In narratives that relate "insider" experiences, the need for a perceived correspondence between the author's narrative and the author's life is somewhat less clear. On the one hand, if readers are to take the narrator as an "expert," we obviously want to know that her account bears some relationship to something she has experienced. If I believed neither Mahoney nor any of the women she describes had had experiences that showed them the labors of caring for small children can occupy enough of a woman's consciousness to blot out awareness of a life-threatening assault, I might be skeptical of her account. But, on the other hand, as I explained above, I believe Mahoney's narratives not only because they come from self-described victims of spousal abuse (i.e., "experts" or "insiders"), but because their particularity, internal consistency, and tone render them coherent, illuminating, and compelling. Were I to learn that these stories did not track the life experiences of their narrators in all particulars, or that they were composites, I wonld not be particularly disturbed. An "insider" narrative that turned out to be a complete fabrication, however, would be a greater problem. Femi-

nist scholars such as Angela Harris have argued for the embrace of an "ethics of representation" that would require narrative scholars to make clear who is speaking in their stories, and on what bases the speaker claims authority.[179] Surely a fabricated "insider" narrative would violate this ethic, and cast doubt on a range of legitimate renditions of women's experience. But beyond this case, the waters become murkier. Creating any narrative involves a process of mediation, of muting and amplification, of selection among details. What sorts of modifications "insider" narrators should be required to disclose to their readers is a difficult question about which feminist narrative scholars continue to differ.[180]

For stories that provide a metaphor for an abstract concept, or generate recognition in the reader that crosses group or experiential boundaries, correspondence to the details of some person's life seems even less important. I have always wondered whether Patricia Williams' courtroom delivery of her sausage narrative was actually interrupted by opposing counsel, objecting to "too much critical theory in the courtroom."[181] But even if we assume it was not, that Williams was amusing herself and her readers by imagining the interpenetration of different layers of her analysis, would it diminish the efficacy of the narrative? Not in any way that I can imagine. It is, as I have argued, an illuminating metaphor for three conceptual structures integral to her argument.[182] The fact that it gives tangible, accessible meaning to a difficult abstract point is what matters, not its correspondence to some event in the world.

Something similar can be said of stories that persuade by prompting a flash of self-recognition, even in a reader who has not had the precise experience described. I have no reason to doubt that Williams' narrative about the salespeople and the Jewish customers happened in approximately the way she relates. But imagine that Williams never walked into

179. A. Harris, Presentation at Feminist Practice: A Symposium on Women in Law and Literature, University of Texas Law School (Mar. 2, 1991) (draft remarks on file with author). I also credit Sheri Johnson with raising this question in my mind.

180. The view that a feminist, critical race, or other scholar holds on this question is a function of a variety of things: the role that one believes selective rendition or interpretation plays in the recounting of experience, for example, or the extent to which one believes that most narratives persuade by inducing a partially inexplicable "moment of recognition" that abstract argument cannot engender. Because I believe there is inevitably a healthy component of interpretation and reconstruction in the rendition of narrative, and because I believe that many narratives—even those in the "first person agony" or the "insider information" category—persuade in part by prompting a feeling either of recognition or intuitive understanding, full disclosure regarding the precise correspondence of narrative to "life" does not seem to me imperative, nor am I disturbed by the use of purely fictitious narratives to make a point, so long as they are identified as such. As noted above, however, I do not believe that a narrative scholar should attempt to pass off fictitious narratives as her own experience.

181. Williams, *supra* note 84, at 2131.

182. These are: (1) conceptual structures and the parol evidence rule, (2) the stances of contemporary interpretation, and (3) the paradigms for the relationship between blacks and whites. *See supra* notes 89-93 and accompanying text.

Au Coton—would that mar the effectiveness of the story? Perhaps in some respects. Williams' unflinching dissection of a narrative that presents her in an ambivalent light enhances her credibility and opens up a largely unexplored possibility for first-person examination of experience.[183] If this had not, in fact, been her experience, some of these benefits might have been lost. But as far as highlighting the thrill of complicity for a longtime "outsider," or illuminating the ways that we can be simultaneously inside and outside a discriminatory "circle" drawn by others, it makes little difference whether the incident actually unfolded in the way that Williams describes. What matters is that it is a vivid depiction of a deeply ambivalent experience, and that it is capable of evoking in readers a moment of recognition that connects Williams' ostensibly particularized story with their diverse experiences.[184]

Thus the extent to which a reader's doubts about the narrator's experience should affect the authority—and ultimately the credibility—of the narrative should depend upon the type of narrative offered. We should now consider the converse: if a reader believes that the author has had the experience in question—as do many or most readers of narratives—how should that belief affect the reader's view of the author's work? Under an epistemological approach that questions objectivity, and values experience as a source of knowledge, it seems clear that the belief that an author has had a particular experience should make some difference to the reader. This belief should render her initially receptive to the author's view: eager to learn from the concrete details of the author's life, willing to check herself if she finds that the divergence of the author's account from her own (different) life experience is making her suspicious. Yet it need not trigger her assent to either the author's experiential account or her ultimate conclusions. The reader may find that the narrative communicates no discernible message about the experience in question;[185] she may feel that it lacks the sorts of credibility described above; she may feel that the author has focused on an unilluminating part of her experience, or has drawn a conclusion at odds

183. Williams makes herself vulnerable in a way that is different from the author of a "first-person agony narrative." She is vulnerable not to the stigma of having had, and described, a taboo experience, but of having been complicit in an act of discrimination. Yet this vulnerability is not, to my mind, the primary means through which she establishes the credibility of her story.

184. This may be the reason that many readers find credible those critical race narratives that are not based on the experiences of any one, specific individual. *See, e.g.*, Bell, supra note 10; Delgado, *supra* note 8.

185. This is less frequently the case with written, published narratives, where the author has had many opportunities to pore over the narrative and think about the message it is supposed to communicate. But it sometimes occurs, and is more likely to be the case, with an unrehearsed oral narrative. Not everyone with an interesting experience is a good storyteller. I have sometimes had the experience of listening to a person describe his or her interesting or celebrated life, and finding myself bored, distracted, or otherwise unilluminated.

with the very details she relates. The reader may also wonder about the relationship between this particular narrative and the narratives of other people who have had the author's experience; this concern dovetails with the challenge to "typicality."

3. *The Challenge to Typicality*

The challenge to "typicality" of narratives I described at the outset invokes the evaluative horizon of objectivity, yet in a different sense than the challenge to "truth." These critics are concerned not only with objective verifiability but with universality. Experiential "data" seem perilously unsystematic in the way that they have been "gathered": we often do not know how the "subjects" have been selected, and we have no "controls" by which to evaluate the results generated. We remain uncertain as to whether they are "statistically significant" or how broadly they are applicable. But these difficulties are important primarily when one works within the methodological constraints of scientific rationality. The fact that these difficulties concern critics who attack the "typicality" of a narrative reveals that typicality itself is rooted in the distinct epistemological approach of scientific rationality.

To invoke a scientific epistemology in the context of feminist narrative is a peculiar choice. The entire point of the feminist epistemology reflected in narrative is to argue that there are forms of knowledge that may not be generated or validated by scientific objectivity, through which we may nonetheless learn critical things about ourselves and our world. Yet feminist narrative scholars have indigenous concerns that may help to create common ground with proponents of the "typicality" objection. First, most of those who credit experiential knowledge recoguize that the perspectives it creates may vary among individuals, even within a group that is by some indices similarly situated. Feminist scholars, for example, have increasingly glimpsed the drawbacks of offering a "woman's perspective" on particular problems, when women's experience may vary with race, class, or sexual orientation.[186] This insight has made feminist scholars concerned about reifying or universalizing a partial experience: not only does it risk re-creating the objectivist tendencies to which experiential arguments were intended to respond,[187] but it risks elevating the

186. Martha Minow, Elizabeth Spelman, and Angela Harris have pursued this argument in two distinct, but mutually complementary directions. Minow emphasizes the way this mistake re-creates the partiality and unconscious perspectivity for which feminists have criticized liberal legalism. *See* Minow, *supra* note 161. Spelman and Harris emphasize that characterization at this level of abstraction has little correspondence to women's actual experiences, and distorts the stories of both white women and, particularly, women of color. *See* E. SPELMAN, *supra* note 161; Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990). All three argue that the "woman's perspective" is likely to be that of white, middle-class, heterosexual women.

187. *See* Minow, *supra* note 161, at 47-50.

experience of the most powerful or vocal groups.[188] Second, other feminists who credit experiential knowledge have argued that it is highly factually contingent: apparently small changes in circumstances, as well as new information or experiences, might change the perceptions of a single narrator or the message that she draws from her experience.[189] These arguments suggest an additional difficulty with the "typicality" objection: not only is it objectivist and universalizing, but it may be difficnlt to apply in the context of heterogeneous and highly contingent experiences. "Typical" of what group, one might ask, under what circumstances? More importantly, however, these arguments may suggest a way of reformulating the "typicality" objection that is appropriate to assumptions of the narrative form. Instead of asking whether a narrative is "typical" we might ask whether a particular narrative scholar displays an awareness that her story is factually contingent and may not reflect a universal experience, and whether she seems alert to the dangers of transforming a partial experience into a prescriptive proposal applicable to subgroups whose experiences may be different.

Feminist scholars may attend this goal by looking to the ways in which they present their narratives. While it may not be necessary that narrative arguments comprehensively detail all relevant variations in perspective, some awareness of possible variations and their implications for remedial proposals seems appropriate. Although her proposals are admittedly provisional, Maloney provides an example of such awareness. She argues, in general, that battered women are not the inert victims that the theory of "learned helplessness" suggests, yet her narratives highlight the complexity in their psychological makeup, and reveal a range of competencies in adapting to and exiting a battering relationship. Similarly, Patricia Williams' narratives display the ambivalence and ambiguity in the response of both victim and victimizer, capturing a range of social variation in microcosm.

Feminist scholars can also respond to the dangers of unreflective partiality in their movement from narrative perspectives to legal prescriptions. This task seems particularly important; for while a partial description may mislead, a prescription based on it may actively disadvantage those whose experience was not considered. It would seem most desirable to develop prescriptions that respond, in some degree, to multiple perspectives. Williams' "multivalent seeing," if in fact it could be implemented in law, might accomplish this goal. Yet Marie Ashe's effort

188. *See* E. SPELMAN, *supra* note 161, at 4 ("feminist theory provides a friendly home for white middle-class privilege"); Harris, *supra* note 186, at 585-90 ("feminist legal theory is in danger of silencing those who have traditionally been kept from speaking . . . including black women").

189. *See* Bartlett, *supra* note 58, at 880-81 ("truth" depends on an individual's background and perspective); Littleton, *supra* note 67, at 29 (the multiplicity of experiences of battered women cannot be synthesized into a single story).

to prescribe an approach to reproductive regulation that accommodates women's diversity should sound a cautionary note. It is difficult to formulate a remedy that is responsive to the entire range of women's perspectives. Ashe's regime of nonregulation does not necessarily prejudice women who seek high-technology deliveries, but it does seem to pose problems for those choosing natural birth who need guidance in selecting midwives or who encounter unsuspected complications in their preguancies. It may be better for feminist narrative scholars to attempt a frank assessment of the costs of a particular proposal to women with nonconforming, and therefore less fully accommodated, perspectives, than to seek the holy grail of an all-inclusive solution. Yet this approach also has its own problems. Susan Estrich fully understands that not all women are able to say "no" when confronted with sexual aggression; yet her proposal that the law take "no" or tears for an answer prejudices those women whose fear or panic renders them silent or who say "yes" in response to coercion.[190] The acceptability of a partial proposal may depend upon the urgency of the need for some change, the availability of more inclusive alternatives, and the position in which the partial proposal leaves the excluded group relative to the status quo.[191]

4. *Conveying the Normative Implications of Narratives*

Establishing previously unheard perspectives as credible accounts of a social problem is the first step in feminist narrative persuasion. But it is also necessary for feminist scholars to convince their readers that these perspectives can contribute to legal change. This is, of course, another area in which some critics of feminist narrative have expressed doubts. These critics argue that narrative accounts do not clearly implicate particular legal rules or choices; that authors do not make clear the way in which narrative descriptions translate into normative proposals; and that the normative proposals suggested by narrative scholars are insufficiently developed to provide guidance to legal actors.[192] In this case, it is not so clear that critics are asking the wrong question: it seems reasonable to ask of narrators who are, in fact, legal scholars that their stories be framed in such a way as to shed light on legal questions. It is also not clear, however, that mainstream critics have the appropriate criteria in mind when they look for answers.

The relationship between narrative and normative prescription

190. *See* Estrich, *supra* note 35, at 1182.

191. The question of typicality takes on a different meaning in narratives such as those of Patricia Williams, where readers are not asked to rely on narrators' accounts of an unfamiliar experience. Because the experiences evoked are not simply specific to a group, but cross group lines, their "typicality" may be established by the same means as their "truth": by asking whether they strike a resonant chord in the reader.

192. *See supra* text accompanying note 21.

presents a complicated picture, as the narratives discussed above reveal. At one level, the work of these authors displays palpable normative, legal components. Each of these pieces, for example, focuses on the role played by law in the ongoing subordination of victimized groups. From Mahoney's concern with the legal model of "learned helplessness"[193] to Ashe's indictment of the medical-legal regulation of reproduction,[194] each author highlights problematic features of the legal order and argues for their modification.

Furthermore, each of these works of scholarship carries with it the normative message that experiential narratives have an important role to play in the task of reforming the law. In some contexts, experience provides a vantage point outside the legal system, from which one can glimpse its partiality or subordinating effects. Mahoney's narratives, for example, suggest the competence and strength of battered women who are excluded by the legally created image of "learned helplessness."[195] In other contexts, narratives provide raw material or convey normative messages that can be used in creating a new legal regime. Williams' narratives, taken as a group, illustrate an "ambi-valent, multivalent" way of seeing our relationship to others. It is this kind of seeing—not the crabbed formality of the *Croson* standard—that must inform future legal definitions of when "discrimination" has occurred.[196]

Yet on another level, the ways in which narratives inform legal prescription, and in some cases the legal prescriptions themselves, can be difficult for readers to grasp. The legal prescriptions that follow from the narratives are rarely deduced, through any evident logical progression, from the themes or features of a narrative. Narratives are more likely to reveal a neglected perspective or theme that needs to play a role in legal decisionmaking, or to establish a new context or backdrop for legal discussions. The difficulty readers may have in understanding these relationships is complicated by the fact that some authors have abandoned central conventions of legal argument. Few of the essays discussed above, for example, are organized to highlight the stagewise development of an abstract idea. They unfold according to a logic that may be only gradually accessible to the reader: the three possibilities of Williams' sausage narrative or the chronology of Ashe's births. When legal readers are confronted with this less predictable mode of discourse, they may

193. *See supra* text accompanying notes 65-68.

194. *See supra* text accompanying notes 121-25.

195. *See supra* text accompanying notes 71-73.

196. *See supra* text accompanying notes 117-18. Ashe's work also displays this characteristic. Her stories of corporeal struggle press the reality of women's physical experiences and their diversity against the confines of legal abstraction; they point to a nonregulated regime that allows each woman to make her "mortal choices," yet may favor some "maternal" or death-confronting choices over others. *See supra* text accompanying notes 126-30, 138-42.

find it difficult to find the relationships that exist among legal problems, narrative insights, and legal solutions.

In addition, mainstream readers may find it difficult to recognize the prescriptions presented in narrative scholarship because these prescriptions often take unfamiliar forms. First, legal solutions may be cryptically presented, or may occupy a comparatively brief portion of an essay that is full of sounds and smells, voices and silences. Even Martha Mahoney, who is most tenacious in her focus on the legal system, offers only a handful of suggestions for future directions.[197] For Williams and for Ashe, the law is addressed through the occasional paragraph or pithy sentence—which may appear unannounced in the midst of a torrent of physical or emotional imagery.[198] Second, prescriptions may take unconventional forms, which mainstream readers may not recognize as legal. Mahoney's call to reinterpret the "imminence" of danger in cases of battered women's self-defense[199] may signal to readers that they are on familiar prescriptive ground; when she calls for a more complex legal imagery of battered women, and ways of talking about battered women that challenge law and culture simultaneously,[200] readers may have more difficulty analogizing to proposals in more conventional legal scholarship. Williams' call for a "multivalent way of seeing"[201] is, similarly, a proposal few legal readers are likely to have encountered before.[202] Disoriented by the distance between such proposals and more conventional rule changes and statutory amendments, readers may wonder whether such proposals can be implemented by or are even directed toward legal actors.

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197. *See supra* text accompanying notes 74-81.

198. Ashe, for example, presents this juxtaposition:

> Does the strongest of stitching come from our bodies? The mother of Snow White stained her sewing with blood. What if we wrote with words from the deepest parts of our bodies, our selves. . . . A writing inscribed with lineaments of female bodies. Marked by our varying rhythms and cycles. Our stitches will seldom be straight.
>
> Zig-zag stitchings and zig-zag thought. Useful (as in buttonholing) for definition; (as in edging seams) for strength; (as in embroidery) for beauty.
>
> It has seemed to me that the major attributes of legal discourse concerning women and mothers are these: it originates in men; it defines women with certainty; it attempts to mask the operations of power; it silences other discourse.

Ashe, *supra* note 119, at 358 (footnote omitted).

199. *See supra* note 80 and accompanying text.

200. *See supra* text accompanying notes 74-77 & note 75.

201. *See supra* text accompanying notes 117-18.

202. Proposals involving multiple or oscillating vision are not completely unprecedented in the legal literature, however. Martha Minow and Elizabeth Spelman advocate a judicial stance that includes, inter alia, ways of considering cases that might be described as "multivalent." *See* Minow & Spelman, *Passion for Justice*, 10 CARDOZO L. REV. 37 (1988). Mari Matsuda also describes the multivalent way of seeing that she believes is typical of women of color in her keynote address at the Yale Law School Conference on Women of Color and the Law, presented April 16, 1988. *See* Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 WOMEN'S RTS. L. REP. 7 (1989) (reprinting Professor Matsuda's keynote address).

Readers who look for the same relationships between narrative and legal prescription that they find, for example, between doctrinal analysis and mainstream legal prescription are likely to be dissatisfied. Yet it would seem to be an error, a form of unreflective perspectivity, to expect the same kinds of relationships between narrative and prescription that we find in conventional scholarship. It would be more productive, I suspect, to assess innovative methodology by asking the following questions: first, what factors influence the choice of narrative rather than conventional methodology and narrative's divergence from the conventions of legal argument, and, second, do the factors that account for the difference themselves yield standards by which the relationship between narrative and legal prescription can be judged.

One reason that feminist narrative scholars' prescriptions may differ from those of traditional scholarship is that narrative scholars confront different problems. In the great bulk of legal scholarship, a "legal problem" is a difficulty in the conceptualization or application of a particular legal rule, which has arisen in response to the social recognition of a problem and its commitment to the legal system for resolution. Problems of this sort can often be addressed at a high level of specificity: by proposing a modification in the existing rule.

Feminist scholarship, in contrast, addresses a range of gender-specific injuries, which have achieved varying levels of social and legal recognition.[203] To illuminate this variety, it may be useful to think briefly about how feminist narratives have emerged, both in law and other disciplines, and at what junctures their authors have attempted to intervene in the process of recognizing and remedying a gender-speeific injury. The first narratives to emerge, chronologically speaking, might be described as "excluded voices" narratives: they offered the stories of women who were victims of some gender-specific injury, whose voices had not been heard in social discussions of a problem, or in legal discussions of the proper remedial response. These narratives served a number of different goals. Some were offered to get a social problem on the map: early narratives depicting date rape served this function.[204] Some were offered to challenge the neutrality of legal categories or distinctions that kept such problems out of the courts or off the legal agenda: Susan Estrich's narrative[205] helped her to challenge the "neutrality" of requirements such as

203. I am grateful to Isabel Marcus for suggesting that I approach the question in this way. For a fuller discussion of the emergence of feminist narratives and its implications for their contribution to normative legal change, see Abrams, *The Narrative and the Normative in Legal Scholarship*, in S. HEINZELMAN & Z. WISEMAN, REPRESENTING WOMEN: FEMINISM, LITERATURE AND LAW (forthcoming Duke Univ. Press 1992).

204. A later collection of such narratives may be found in R. WARSHAW, I NEVER CALLED IT RAPE (1989).

205. *See supra* text accompanying notes 35-57.

"force" and "consent," which make rape cases trials of the victims and nearly impossible to prosecute. Contemporary feminist scholars still use narratives for this purpose—Martha Mahoney's use of narratives to highlight the distinct phenomenon of "separation assault" might be an example of such use.[206] But as the legal system slowly began to respond to these problems, for good or for ill, feminist scholars began to use narrative in new ways.[207]

Some feminist scholars have used narrative to encourage a midcourse correction in the application of a legal scheme that was basically helpful to women. Workers' narratives have been used, for example, to demonstrate that women's perspectives on the types of acts that constitute sexual harassment are different from men's, and to argue for a "reasonable woman" standard in evaluating sexual harassment claims.[208] Other feminist scholars have used narrative in an attempt to generate new kinds of answers when the legal system appears to have reached an impasse in addressing a particular injury. This last group of narratives attempts to effect a kind of paradigm shift—to advance new ways of discussing or conceptualizing a problem, so as to break the doctrinal or intellectual logjam that has prevented legal response.[209] Thus Marie Ashe attempts to confront a legal regime, whose regulation of reproduc-

206. *See supra* text accompanying notes 60-83. I should note, however, that I find Mahoney (and doubtless there are other examples) difficult to locate precisely within these categories. She offers "excluded voices" narratives in the sense that she offers the unpublished, nonlitigation-based stories of strong, competent women (lesbian and heterosexual) in battering relationships as a way of placing "separation assault," as a distinct form of abuse, on the social and legal agenda. But her narratives might also be described as effecting a "midcourse correction," in the sense that they propose discrete changes in the way that courts address spousal abuse cases, or a shift in paradigms inasmuch as they propose that courts (and the larger society) embrace a new way of conceiving battering—as part of a relationship struggle for power and control.

207. Another, gradual by-product of the offering of narratives for this purpose was the partial legitimization of the "excluded voices" narrative in both legal academia and mainstream culture. This partial legitimization, however, has had two ironic and unintended consequences. First, mainstream readers or listeners may think they already know the "women's perspective" or may assimilate new narratives to perspectives they have heard before. This has prompted feminists such as Catharine MacKinnon to remind her audiences that they have not heard the claims she is about to make. *See* C. MACKINNON, *supra* note 27, 127. Second, the increasing familiarity of this form of narrative has led some readers to believe that all feminist or opposition narratives simply offer an "excluded perspective," and to fail to look more closely at what other things narrative scholars might be attempting.

208. *See* Abrams, *Gender Discrimination and the Transformation of Workplace Norms*, 42 VAND. L. REV. 1183, 1197-1214 (1989) (using narratives drawn from cases and empirical sociological work to argue for adoption of modified "reasonable woman" standard). For a thought-provoking article that uses women's narratives to illuminate the distance between their perceptions of sexual harrassment and those embodied in many features of sexual harrassment law, see Pollack, *Sexual Harrassment: Women's Experience vs. Legal Definitions*, 13 HARV. WOMEN'S L.J. 35 (1990).

209. Martha Minow identifies this purpose in the work of some feminist scholars, including narrative scholars. *See* Minow, supra note 19, at 126-27 (describing work that "reformulates [a] problem . . . [by] chang[ing] the factors that would be relevant to both general and specific discussions of the issue").

tive experience coerces women and distances them from their bodies, by introducing a new legal discourse that begins from women's bodily experience.[210] And Patricia Williams responds to the flat, unidimensional world of formal equal opportunity with narratives that evoke a "multivalent way of seeing" discrimination.[211]

As one can see, the extent to which a narrative scholar will confront a "legal problem" or will advance proposals that mainstream scholars recognize as "normative" will depend on the phase in the social response for which she offers her stories. Those who attempt to place an unrecognized problem on the social map or on the legal agenda may or may not advance discrete legal proposals. Catharine MacKinnon described the coercion of Linda Marchiano[212] because she believed that this unheard perspective helped to publicize the ways in which pornography harmed women; yet she did so for several years before offering an ordinance that defined pornography as a violation of women's civil rights.[213] There were, moreover, sound reasons for this decision: a premature focus on remediation might have distracted her audiences, and prevented them from focusing on the nature of the harm; premature precision in specifying a remedy might have distorted the substantive message or foreclosed the inquiry that was necessary to build a plausible solution. On the other hand, Susan Estrich, who was dealing with an acknowledged, if ill-understood and ill-adjudicated legal problem, was able to move directly to legal prescriptions. Those who offer narratives to effect "midcourse corrections" can also be specific in their proposals because they respond to a largely functional legal framework that is already in place.[214] Those who use narratives to effect a paradigm shift in the face of a legal impasse are least likely to offer proposals that resemble a mainstream "legal solution." Prescribing the features of a new order may not be their sole or primary purpose. Some scholars—Patricia Williams is perhaps an example—may be more interested in exposing the current impasse and establishing the need for a new conceptualization than in elaborating that

210. *See supra* text accompanying notes 119-41.

211. *See supra* text accompanying notes 84-118.

212. For an account of one such description, published later, see C. MACKINNON, *supra* note 27, at 127-33.

213. This progression, from recognition of a problem to its legal remediation, may be seen in the chronological essays on pornography that form the last part of C. MACKINNON, *supra* note 27, at 127-213.

214. However, the use of narratives for this purpose is, so far as I can tell, fairly limited, in part because making small corrections in a statutory or doctrinal scheme does not often require the radical reinterpretation often provided by narrative. The sexual harassment example was, I think, unusual, in the sense that the doctrinal change proposed was, in formal terms, fairly circumscribed (replacing the "reasonable man" or "reasonable person" standard with a "reasonable woman" standard), yet it relied on a reinterpretation (demonstrating the gendered character of the "reasonable man" or "reasonable person" standard) that was fairly substantial and best conveyed through narratives.

conceptualization. Others may set themselves a prescriptive task but have only provisional ideas about how to impose a new conception on a systematically resistent legal system. These limitations may not always prove satisfying to mainstream readers. Some may respond to calls for radical change with a demand for more specificity than innovators still influenced by the existing system can accommodate. Yet it would seem unwise, at least at the outset, to penalize those who attempt to forge a new way for the provisional character of their response.[215]

A second reason for the divergence of feminist narrative prescription is that some feminist narrative scholars choose stylistic or methodological innovations in an effort to underscore the author's substantive message. For example, feminist legal scholars have increasingly called into question the methodological assumptions—such as preferences for abstraction, linearity, and scientific objectivity—that underlie mainstream legal argumentation.[216] These assumptions are faulty not only because they universalize a perspectival methodology, but because they prevent the contextualization that is essential to understanding women's condition, and neglect forms of knowing and arguing that have emerged in women's communities.[217] Where feminist scholars—including narrative scholars—employ alternative methodological assumptions in making their claims, they reinforce the substantive arguments they seek to advance. Marie Ashe, for example, seeks to replace the rigidifying, distancing qualities of traditional legal discourse with the physically concrete, experiential discourse she considers characteristic of women.[218] Her use of nonlinear argumentation demonstrates her commitment to the new and different discourse, attempting to show that it can be implemented without doing violence to the expectations of the legal community.[219]

215. One barrier to understanding this point may be that some mainstream readers may not conceive the legal predicaments feminist narrative scholars address as impasses. For example, some scholars view formal equal opportunity as a constitutionally sanctioned compromise between equality norms and the values of an individualistic meritocracy, not as an example of a systematic doctrinal breakdown. However, I propose that, in trying to understand and assess feminist narrative scholarship, readers should consider the goals that narrative scholars believe they are addressing.

216. For an excellent discussion of the range of methodological innovations associated with feminist scholarship, see Bartlett, *supra* note 58.

217. *See* C. MacKinnon, *supra* note 15, at 83-105 (contrasting methodology of scientific objectivity with feminist methodology arising from consciousness-raising).

218. *See supra* text accompanying notes 125-31.

219. The same might be said of Patricia Williams' choice to evoke the multivalence of the experience of discrimination almost exclusively through the presentation of interwoven narratives. Williams seeks to argue that formal equality fails—or makes no effort—to capture the attitudinal complexity of human beings, including those who have experienced discrimination; her immersion of her readers in narratives reflecting the complexity of human perception and experience both reinforces and illustrates the kind of seeing necessary for the alternative she hopes to develop. *See supra* text accompanying notes 117-18.

This point also extends to narratives that violate social taboos regarding the discussion of "intimate" experience. Self-revelation need not reflect a kind of unfocused self-indulgence; often, it reflects a focused attack on the boundaries of the private. A century ago, Elizabeth Cady Stanton often referred, in her speeches, to childbirth, child-rearing, wife-beating, and other women-centered events that were not generally thought to be the subjects of polite conversation.[220] She spoke about them, in unconventionally graphic terms, because she believed that social taboos were not mere arbitrary conventions. Taboos reflected and reinforced the boundaries of the private, which, in turn, protected and insulated the subordination of women.[221]

Attacking the boundaries of the private by attacking the sentries of social convention is an equally appealing strategy to many contemporary feminists. For some contemporary feminist scholars, as well, revelation goes hand in hand with a critique of those laws instrumental in shaping the boundary between the public and the private. Estrich's discussion of her rape, for example, assails the "shame" that removes this subject from the realm of polite conversation; her critique assails the shame that is perpetuated by the manner in which rape cases are adjudicated.[222] Ashe's pungent, visceral accounts of her births challenge a separation of women from their own reproductive experiences;[223] this separation is both reflected in conversational conventions and perpetuated by legal regulation of those experiences.

Understanding some of the reasons that narrative scholarship may establish unfamiliar relationships between stories and legal prescriptions is not tantamount to approving any relationship that might emerge. These reasons for these departures from convention may, however, help readers to assess prescriptive or methodological innovations in particular examples of narrative scholarship. Confronted with a legal prescription that seems cryptic, or a transition from narrative to normative proposal

220. *See, e.g.*, ELIZABETH CADY STANTON, SUSAN B. ANTHONY: CORRESPONDENCE, WRITINGS, SPEECHES 125-38 (E. DuBois ed. 1981); 1 E. STANTON, S. ANTHONY, & M. GAGE, HISTORY OF WOMAN 716-22, 738-40, 860-61 (1881). Elizabeth Clark notes that Stanton's public discussions of "private" subjects were not limited to formal speeches: Stanton often "roamed public conveyances giving young mothers unsolicited advice from the idiosyncratic and advanced maternal theories of which she was so proud." Clark, *Matrimonial Bonds: Slavery and Divorce in Nineteenth-Century America*, 8 LAW & HIST. REV. 25, 53 n.54 (1990).

221. Presentation by Elizabeth Clark to Boston University Legal History Workshop (Spring 1989). Many of the arguments contained in this talk are presented in Clark, *supra* note 220.

222. *See supra* text accompanying notes 47-52. Estrich and Mahoney seem to temper the provocation implicit in their revelations with a tonal subtlety. Estrich's combination of contemporaneous pain and retrospective irony, *see* Estrich, *supra* note 35, at 1087-88, and Mahoney's brief but candid discussion of her difficulty in identifying herself as a battered woman, *see* M. Mahoney, *supra* note 60, at 6, may reflect their own personal narrative style; they may also reflect a choice to avoid jarring their readers unnecessarily.

223. *See supra* text accompanying notes 119-31.

that seems difficult to follow, readers may want to consider whether the nature of the problem in question or the desire to underscore a substantive critique explains the author's choices.

Authors, however, will also want to consider the demand that innovative presentation makes upon its audience. Methodological innovation—inspired by the nature of the problem, the substance of the critique, or some other factor—is a sharp instrument, capable of cutting too deeply. A scholar may lose the trust of her audience by flouting too many of its conventions, or by offering an eloquent critique of a flawed discourse in a language too new to be understood. As well as asking about the reasons for innovation, readers and authors might well ask whether the author's choices serve the audience she seeks to reach, and the kind of relationship she seeks to establish with them. Two examples should clarify the process of questioning to which I refer.

In *The Obliging Shell,* Williams critiques the formal equal opportunity entrenched by *Croson,* as well as the attitude of "neutrality" that underlies it. In place of these crabbed ways of understanding discrimination and difference, she proposes a "multivalent" quality of seeing illuminated by her narratives.[224] This proposal presents a range of different puzzles to the reader. In understanding our relations with others, are we limited to the (admittedly multiple) ways we view ourselves? Or do we imagine the range of stories that another might tell about us? Does Williams' invocation of commonality suggest that many of these stories are ultimately the same? And even if we can imagine what multivalent seeing might mean for an individual, there are questions about its applicability to legal decisionmaking. Is the possibility of multivalent seeing presented as a general challenge to the smug narrowness of the *Croson* decision? Or does it express an aspiration—or a prescription—for future legal action? If so, what guidelines might counsel judges or legislators who are less imaginative than Williams herself?

These queries raise the more general question of whether it was incumbent on Williams, as a persuasive and communicative narrative scholar, to say more about her proposal. It is not difficult to identify factors that support Williams' more cryptic approach. While the practical problems created by *Croson* are not new, describing this case as arising from a monovalence or rigidity of vision, and suggesting a new kind of vision that might replace it, represents a highly novel legal approach. Simply outlining the contours of an alternative may be all that is possible at this time; it may require further experience with its possibilities to

224. *See supra* text accompanying notes 117-18. This is not Williams' only prescriptive proposal; she also commends affirmative action as a means of making visible the many blacks—and the qualities of blackness—that "neutrality" erases. *See supra* text accompanying notes 106-09 (discussion of substantive legal norms arising from Williams' narratives).

direct lawmakers in applying it. Williams' apparent reticence may also reflect a substantively driven methodological choice. Her message—that we should learn not from the imposition and enforcement of legal categories but from the fluidity and ambiguity suggested by our life experience—militates against the effort by a single scholar to impose specific instructions for multivalent seeing.

On the other hand, Williams' cryptic introduction of her alternative vision is likely to disturb some readers. Those unaccustomed to thinking about the quality of legal vision may wonder whether, in fact, she has proposed a legal solution at all. Even some of those who conclude that she has may wonder whether she has said enough to give her idea practical significance. They may find it problematic that she criticizes a judicial opinion without telling judges in concrete terms how to avoid repeating their errors.

Ultimately, I wish Williams had said more about her proposal. Her failure to explain further how multivalent seeing might be undertaken may fuel legitimate skepticism about whether it constitutes a plausible alternative to the monovalent vision of *Croson*. To my mind, the greatest challenge with multivalent seeing is not to illuminate the ways in which it reflects the complexity of our experience—though Williams' narratives accomplish this goal with acuity and power—but to demonstrate how this complex, fragmented vision can be integrated in the apparently unitary discourse of law. The aid that a scholar such as Williams, who is so minutely sensitive to complexities of this vision, might provide to this effort is substantial; and to have less of it than I might wish in this context creates a sense of missed opportunities. Yet this sense does not detract substantially from my positive assessment of the piece. Both her substantive commitments and her forum—a legal storytelling symposium where she might expect readers more willing to engage a suggestive proposal—lend credence to her choice. Moreover, it may be unfair to impose a reconstructive burden on a piece that appears to have been directed primarily toward other goals. The fact that I, as a reader, would like to see more concretely how the postmodern notion of "multivalent seeing" might be incorporated into law does not make this Williams' object in writing the article. As the title suggests, her article appears to have been intended to expose, in a new way, the defects of formal equal opportunity. The fact that the highly interesting lens through which she accomplished this exposure may also establish the foundations for a new approach should be treated as an asset in a piece of critical scholarship, not a liability.[225]

225. This should not suggest that I would remove in all contexts the burden of specificity in developing normative proposals. In areas where a problem has higher legal or social recognition, or preliminary work has been done, it is important for scholars to attempt greater specificity. Where

A similar set of questions can be applied to the work of Marie Ashe, whose methodological departures are even more comprehensive, and thus more challenging to readers accustomed to conventional scholarship. Grasping the relation between her narratives and her prescriptions is made truly strenuous by her new legal discourse. The legal implications of her stories emerge briefly and casually, in a torrent of physical detail. Her broadest proposal—the deregulation of reproduction—is suggested largely through a metaphor in the concluding paragraphs of her piece.[226] I read Ashe's article three times before I began to suspect that she had voiced a normative preference for deregulation. It took me almost that long to decide whether the effort required to derive prescriptive meaning from her metaphorical presentation was a problem.

There is no question that Ashe's presentation was a deliberate methodological choice, closely related to the substance of her critique. Abstract elaboration of her proposal might repeat the error she criticizes by distancing women from their experience. Yet the deregulation of reproductive experience is not a proposal so novel in form that it would be difficult to elaborate on what it might entail. It is, moreover, a proposal with discernible negative ramifications for several categories of women. Ashe's methodological innovations not only impose heavy demands on an ostensibly general audience of readers, but they make it difficult for readers to assess the magnitude of the costs that appear to be implicit in her proposal.

I admire—and I learn from—the uncompromising approach to critique that led Marie Ashe to frame her argument in such relentlessly concrete and nonlinear terms. Yet I find that I dissent from her methodological choice. I expect that, beyond the circle of critical narrative scholars, few readers would work as hard as is necessary to discern her normative preferences; and even some of those who did might be put off by her reluctance to seek methodological common ground with her readers.

Implicit in my assessment of Williams and Ashe, are, of course, my own evaluative premises: a preference for greater clarity in communication,[227] and a tendency to cut persuasive slack for those capable of reconceptualizing long-standing legal problems. Readers who favor uncompromising protest or seek immediately workable legal solutions might reach different conclusions. Such disagreements are, I suspect, an

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Mahoney undertakes to show what a reconceptualization will mean for extant law—as where she argues that the concept of "separation assault" will help courts to reinterpret the "imminent danger" requirement in cases of battered women's self-defense—it is appropriate, in fact critical, that she provides a greater doctrinal precision and detail. *See, e.g., id.* at 97-108.

226. *See* Ashe, *supra* note 119, at 33.

227. I elaborate and argue for this preference of greater clarity in the following section of the paper. *See infra* text accompanying notes 235-44.

inevitable feature of efforts to assess narrative, and, increasingly, any other form of scholarship. The conventions I have proposed for evaluating the normative proposals of feminist narrative scholars do not guarantee agreement in all evaluations, a goal that becomes elusive with the fracturing of our evaluative frameworks. The considerations highlighted, however, assure that disagreements about the quality of scholarly works will focus on criteria responsive to the form of scholarship in question.

5. *Narratives and Scholarly Exchange*

It is not sufficient simply that feminist narratives be persuasive on their own terms, nor that they be capable of generating legal prescriptions. Because no single contribution is likely to resolve a social or legal controversy, it is important that narrative scholarship facilitate further discussion within the legal academic community. This is a final area in which feminist narratives have been subject to criticism. Some readers have argued that the narrative form restricts discussion by excluding from further discussion anyone who has not had the experience in question or is not, at the very least, willing to engage the issues raised in experiential terms. Yet other readers have claimed that narrative scholarship gives rise to conversational chaos by encouraging a range of experiential responses without providing generalizable criteria for selecting among them. If feminist narrative is to be embraced as a fruitful form of scholarly expression, its proponents must address these claims as well.

The claim of conversational chaos can be more readily dealt with, as much of the above discussion concerns the task of distinguishing among narrative accounts. The varying measures of credibility, the extent of responsiveness to diverse perspectives, the accessibility or instructiveness of the relationship between narrative and normative prescription—all of these are criteria that permit us to assess the contribution of narrative scholarship, or to prefer one narrative to another. Readers will quickly notice that these criteria do not permit the determinate, unitary kind of choice that some may expect. The criteria are multiple (both within and across different facets of evaluation), and are not likely to prompt the same assessments on the part of all readers. Readers may disagree, for example, about whether a narrative generates a moment of recognition, or incorporates too much methodological protest to be accessible; and there is no external or universal set of metacriteria to mediate among these differences in judgment. Yet to expect that unanimous agreement will be the outcome of evaluation according to appropriate criteria is to expect (or perhaps to wish for) the resurgence of an "objective" standard. These emerging criteria permit us to engage each other in a way consistent with the challenge to objectivity and the emergence of plural evaluative horizons. They permit us to focus on considerations appropriate to

the form of scholarship in question, articulate the elements of our judgment, and attempt to persuade each other concerning our differences.[228]

The claim that narrative scholarship disables further nonexperiential participation is trickier, and needs to be examined before it can be addressed. In some cases this criticism is offered as a form of protest, not against some exclusionary intent on the part of narrative scholars, but against the effort required to understand and engage a new form of discourse. There is no doubt that narrative scholarship imposes a set of distinctive demands, which may seem burdensome to uninitiated readers. Readers must learn to be sensitive to the distinctive voice of the author—as the above discussion indicates, no two narrative essays can be read with precisely the same questions—and flexible about approaching a variety of external forms.[229] They must teach themselves to discern the unifying threads of a nonlinear argument, or draw out the normative implications of a richly detailed story, or grasp the similarities in diverse accounts presented sequentially. Yet these demands are only *different*—neither more arduous nor less distinctively "legal"—than those imposed by conventional legal scholarship.

Because we are accustomed to traditional scholarship—as Annette Kolodny has put it, we "read well, and with pleasure what we already know how to read"[230]—we sometimes forget that mainstream legal analysis imposes its own burdens on uninitiated readers. Readers of mainstream scholarship must often deal with turgid abstraction, or reach to glimpse the unelaborated practical implications of a new conceptualization or rule. They must learn to be patient with simplifying assumptions that seem frustratingly counterfactual.[231] They must accept, for pur-

228. A number of scholars in law and related disciplines have argued for dialogue, conversation, or attempts at mutual persuasion as a method of developing shared understandings in the absence of a horizon of objectivity. *See, e.g.*, R. RORTY, *supra* note 145, at 333-37 (arguing that the use of the term "objective" is a self-deceptive effort to eternalize the normal discourse of the day); Singer, *supra* note 152, at 51-52, 62-66 (describing legal reasoning as conversational, interactive, and continuous with forms of decisionmaking we experience in our daily lives); *see also* Cornell, *Institutionalization of Meaning, Recollective Imagination and the Potential for Transformative Legal Interpretation*, 136 U. PA. L. REV. 1135, 1220-24 (1988) (establishing a source for legal reasoning in a properly constituted community's "dialogic reciprocity").

229. The nature of one's legal education would seem to be one important determinant of whether a legal reader develops the flexibility to attend and respond to a variety of different "voice" and stylistic forms. Legal academics trained on a steady diet of appellate cases are more likely to develop the "unity of discourse" of which Rubin complains, *see supra* note 149, than this sort of catholicity of taste and flexibility of judgment. For a promising proposal to expand the legal canon to include a greater range of styles and "voices," see Resnik, *Constructing the Canon*, 2 YALE J.L. & HUMANITIES 221 (1990) (proposing law students read, inter alia, those rare cases in which lower court judges disregard Supreme Court precedent, and the public commentary of judges on the role of judging).

230. Kolodny, *Dancing Through the Minefield*, in THE NEW FEMINIST CRITICISM: ESSAYS ON WOMEN, LITERATURE, AND THEORY 144, 154 (E. Showalter ed. 1985).

231. Law and economics scholarship is one example of mainstream legal scholarship employing

poses of discussion, a general formulation of a principle, whose exceptions and exclusions seem far more salient than the thesis being defended. That many legal scholars are willing to labor mightily at these tasks, scarcely noticing the burdens they impose,[232] reflects in part the familiarity of these burdens. But it also reflects a privileging of abstraction that has been improperly assumed to be appropriate to the legal role.

There are undoubtedly some legal roles in which linear argumentation and conceptualization are the order of the day: the articulation of holdings in appellate judicial opinions provide one example.[233] But to accept this model as an index of all that is "legal" ignores the variety inherent in the legal role.[234] In other corners of the legal world, we find tasks that immerse lawyers in the concrete, require us to be sensitive to the particularities of voice, demand that we find meaning in the nonlinear or ambiguous—require that we exercise, in short, many of the same skills necessary to comprehend legal narratives. For the trial attorney, "law" is inevitably about presenting concrete and nonlinear stories, about sensing the features of a narrative that will engage a judge's or juror's attention or expose the tension in a legal rule. Using and telling clients' stories requires trial lawyers to make constant assessments of what they mean, of what elements unite them, of which features are most important. Similarly, for the classroom law teacher, "law" is about glimpsing, appreciating, and utilizing the ambiguity inherent in legal texts. Few of us urge our students toward some interpretive bottom line; we encourage our

simplifying assumptions that may be viewed as counterfactual by some readers. *See* West, *supra* note 7, at 391 (a comparison with "Kafka's fiction suggests that Posner's argument rests on a severely inadequate picture of human nature and human motivation"). Though law and economics scholars may be chided for their simplifying assumptions, their work is not often challenged as "not legal," or lacking in "rigor," partly because their reliance on and controlled modification of simplifying assumptions permit those scholars to make highly specific normative choices and proposals.

232. It is comparatively rare in the legal academy, beyond the occasional inconsequential joke, to find fault with scholarship for employing too much abstraction. In contrast, it is common to assert that scholarship does not present its conclusions at a high enough level of generality. Virtually impenetrable abstraction and accessible, if conceptual, exposition tend to be treated as two acceptable alternatives, casting an equally positive light on the quality of the scholarship in question, whereas a persistent concreteness is often viewed as signaling a lack of intellectual "rigor."

233. Edward Rubin has argued convincingly that use of judicial discourse is a powerful determinant of the practice of "standard legal scholarship." *See* Rubin, *supra* note 11, at 1859-65, 1881-86. This may explain why this limited vision of the "legal" is held so tenaciously by many mainstream legal scholars.

234. That our "legal" system operates on multiple levels in the real world—including a concrete level—is made wonderfully clear in the work of Lucie White, who details the lawyer's (often unavailing) efforts to shape, and gauge the impact of, her clients' narratives. *See* White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFFALO L. REV. 1, 24-51 (1990). It is also implicit in the work of Patricia Williams, whose sausage narrative is taken directly from a speech to a jury. *See* Williams, *supra* note 84, at 2130-31; *see also* Cohen, *Posnerism, Pluralism, Pessimism*, 67 B.U.L. REV. 105 (1987) (responding to economic model of baby-selling through examination of real-world effects of the proposal).

often-reluctant classes to see the multivalent possibilities implicit in case law and statutes.

Neither the litigator nor the teacher may immerse herself unreservedly in ambiguity and detail. The practitioner must draw connecting themes from nonlinear stories; the teacher must illuminate the strategies or interpretive approaches suggested by the divergent possibilities of a case. Yet this responsibility justifies no categorical privileging of the abstract; it only suggests we must be alert to the connecting as well as the particularizing elements of legal narratives, a point to which I will return presently. It should not be inconsistent with our vision of ourselves as legal actors to search out the themes that unite, or appreciate the ambiguity that resides in, a sea of rich detail.

But even if we assume that this objection is not a protest against the demands of the form but a sincere concern about exclusion, it—like the challenges to "truth" and "typicality"—might benefit from being reframed. To say that "narrative excludes from the conversation anyone who has not had the experience in question or is unwilling to respond in experiential terms" is in fact a perspectival way of stating a more general problem: any methodological system that attempts to apply its own premises as universal requirements of participation risks excluding from what might be a broad scholarly conversation those who do not share these premises. I have no doubt that some forms of experiential narrative scholarship tend to discourage those unwilling to respond in experiential terms; but it could also be said that forms of scholarship based on assumptions of scientific rationality discourage those discussants unwilling to strive for objectivity in their perspective or universality in their claims.[235] A more useful way to frame the question is: Does feminist narrative scholarship lend itself to forms that reflect its epistemological or methodological precepts without discouraging the participation of those who do not share these assumptions, and, if so, what are they?

It is fair, at the outset, to say that not all forms of feminist narrative scholarship manifest this inclusive character. There are forms of narrative scholarship that are intended to affirm the experiences of, and create solidarity among, those who have had them; the authors of such work may see no need to encourage, through methodological presentation, the participation of those beyond the experiential group. There are also forms of narrative scholarship that assert their claim to equal scholarly standing by imposing the same requirements on discussants that have been imposed by traditional legal scholarship: engage us according to

235. Indeed, some critical narrative scholars might claim that challenges to their work on the basis of objectivist notions of "truth" or "typicality" discourage them from participating in scholarly conversation.

our own methodological premises or not at all.[236]

But there are also forms of narrative scholarship that encourage the participation of those with diverse methodological assumptions. These are forms that stress the elaboration of the normative content of narratives. Elaboration begins from the premise that telling our stories is less an act of direct translation of some definitive "experience" than an act of interpretation, of choice among alternative characterizations.[237] There are many different ways we can represent a particular experience through narrative, each of which has its distinctive advantages. We can render an experience in its most concrete, particularized form, a choice that permits access to all of its subtleties and ambiguities. But we can also render it in a way that emphasizes its relatedness—to other narratives, to substantive precepts we hold, to strategies for legal reform.[238]

236. Marie Ashe's work may, for example, reflect this position. By demonstrating, rather than explaining, the new legal discourse she proposes, Ashe demands that readers confront it in unmediated form. *See supra* notes 119-38 and accompanying text; *cf.* C. MACKINNON, *supra* note 27, at 127-33, 215-28 (discouraging forms of engagement that are inconsistent with author's methodological premises and reframing questions to show her interlocutors the distance between their assumptions and her own). For a discussion of the advantages and disadvantages of MacKinnon's insistence on engagement on her own terms, see Abrams, *supra* note 58, at 30-34. Although the methodological presentation of narrative scholarship is one index of a scholar's willingness to engage with methodologically diverse participants, it may not be conclusive. There may be scholars who feel they can best present their arguments (and advance the legitimacy of their scholarly method) by employing methodologically uncompromising forms of presentation, yet are willing, in subsequent exchanges, to engage with scholars who employ different premises. There is some risk to this strategy, however, in that some methodologically diverse participants may be deterred from engaging with narrative scholars by the uncompromising form of the scholarship.

237. My position in this respect has some parallels with that of Stanley Fish and other proponents of the "reader response" school of literary interpretation. Fish argues that "[i]nterpretation is not the art of construing but the art of constructing. Interpreters do not decode poems; they make them." S. FISH, IS THERE A TEXT IN THIS CLASS? 327 (1980). While I do not embrace all aspects of Fish's position, particularly the conventionalist implications of his arguments regarding "interpretive communities," *id.* at 303-04, I agree with his position inasmuch as I do not regard an "experience" as an objective event, as to which there is one accurate narrative account. An experience is constructed through the creation of a narrative account, much as a poem is constructed through the act of interpretation. I also find applicable in this context Fish's observation that "[t]he objectivity of the text is an illusion and, moreover, a dangerous illusion, because it is so physically convincing. . . . A line of print or a page is so obviously *there* . . . that it seems to be the sole repository of whatever value and meaning we associate with it." *Id.* at 43 (emphasis in original). Similarly, an experience that involves a particular person in a particular place at a particular time generates the illusion of objectivity, which seems to militate against the possibility of plural constructions.

238. An imprecise analogy, yet one that might offer a useful way to begin thinking about elaboration, is provided by Clifford Geertz's notions of "experience-near" and "experience-distant." *See* C. GEERTZ, *supra* note 148, at 57 (adopting for his own purposes the distinction first made by psychoanalyst Heinz Kohut). A concept that is "experience-near" is one that "someone . . . might himself naturally and effortlessly use to define what he or his fellows see, feel, think, imagine, and so on," while an "experience-distant" concept is "one that specialists of one sort or another . . . employ to forward their scientific, philosophical, or practical aims." *Id.* An experience-near concept, Geertz explains, might be "fear," while an experience-distant concept would be "phobia." When we talk about narratives and legal scholarship, we are not referring to concepts, but to forms of

Elaborating the normative content of a narrative both vindicates its potential for connectedness and emphasizes its particularity. When Patricia Williams describes the phantom room, she not only distills its meaning in her own particularized experience ("[o]ne day [it was] filled with profusion and overwhelming complexity, the next day filled with persistently recurring memories"[239]), she also describes it in relation to the broader question of equal opportunity that she has attempted to explore with her readers ("[t]he phantom room is to me symbolic of the emptiness of what formal equal opportunity as promised has actually turned out to be"[240]).[241] Such elaboration also acknowledges that full understanding emerges from a dialogue or oscillation among the more general and the more particularized features of a story. Perception, Martha Nussbaum has argued, "is a process of loving conversation between rules and concrete responses, general conceptions and unique cases, in which the general articulates the particular and is further articulated by it."[242] Drawing out of a story elements that are shared, general, or capable of repetition is a crucial part of relating, or understanding that story: it sketches the network of connections, obligations, and relation-

discourse. Yet we might say that a narrative provides an "experience-near" account of a particular story, occurrence, or sensation, whereas the elaboration provides a comparatively "experience-distant" account. The narrator is asked to step back from her experience about how it might appear to someone who had not, in fact, experienced it—what connections it might have to other ideas or problems or categories in the world that might be more accessible to other "specialists" than the narrator's direct experience. Geertz, of course, does not ask that the "native" population being observed—the presumed source of the "experience-near" concepts—provide an "experience-distant" account. And there are great challenges implicit in asking people to offer their experiences simultaneously at two levels. However, legal academics have long been socialized to abstract from our experience; to ask legal academics who have "taught themselves" to offer and use their narratives to attempt a more "experience-distant" construction might be less difficult than to ask most legal academics to move to a more "experience-near" form of discourse. For a thoughtful discussion of the uses and limits of Geertz's metaphor in thinking about difference and community, see Alexander, *Talking About Difference: Meanings and Metaphors of Individuality*, 11 CARDOZO L. REV. 1355 (1990).

239. Williams, *supra* note 84, at 2141-42.

240. *Id.* at 2142.

241. Although elaboration is principally concerned with the way feminist scholars tell our stories, it may also be employed in the presentations of those prescriptions that follow from narrative: we can be as clear as possible about what changes in legal rules or interpretation are responsive to the messages of our narratives; and where we are not able to arrive at full prescriptions, we can indicate the tasks that remain and the directions for future inquiry. Martha Mahoney provides an excellent example of this strategy in her discussion of the ways in which feminist scholars might (1) inquire into diversity of response among different categories of battered women, and (2) pursue the legal consequences of understanding separation assault as a distinctive kind of violence. *See* M. Mahoney, *supra* note 60, at 47-68.

242. M. NUSSBAUM, *supra* note 7, at 95. I should note that while this portion of Nussbaum's discussion calls attention to the role of general conceptions and abstract reasoning in moral perception and decisionmaking, her larger point is to underscore the importance of perceiving and reflecting on particulars and to elaborate the "excursions of imagination and yearnings of sympathy," *id.* at 88, that this second part of moral reasoning requires.

ships from which the particular features of the story take their meaning. Attention to such elements also permits readers or listeners to see the connections among stories—to think about how a particular experience or choice could guide an individual in a subsequent situation, or to see relationships among stories that link members of a particular group.

Normative elaboration not only facilitates connection of a narrative with an author's substantive legal arguments (a move that may make the narrative accessible to a wider variety of readers), it facilitates conversation with scholars from diverse methodological backgrounds. Elaboration encourages these scholars to participate because it permits them to engage the narrative at more than one level of abstraction, in more than one form of discourse. The author's effort to highlight elements of her narrative that connect it to more abstract or general formnlations of the substantive issues raised, to extant legal problems, or to strategies for legal reform also signals her willingness to engage on a basis that is not exclusively experiential.[243]

As should be clear from the above discussion, normative elaboration is a choice in narrative scholarship that I favor. Particularly at a time when the erosion of common evaluative and methodological premises threatens to fracture the scholarly community—and to render communication between subgroups difficult—it seems to me important that all of us strive to make our work intelligible to one another.[244] However, this

243. Elaboration may also play a partial role in mediating among different experiential accounts. When an author elaborates the relationship between her story and her broader conceptual perspective, she may highlight qualities that she will use to evaluate subsequent narratives concerning the same issue. Martha Mahoney, for example, argues that her narratives of battered women contrast with the image of learned helplessness by virtue of their psychological complexity, and the fact that they are "not defensive" (that is, they were not generated in the limiting, and atypical, context of criminal defense). M. Mahoney, *supra* note 60, at 47-57. Although she does not propose a single vision of battered women that should be used to replace or supplement learned helplessness, she has propounded certain qualitative criteria by which future narrative images can be judged. Though others will not inevitably agree with her, the articulation of these criteria will doubtless be helpful in evaluating images of battered women that emerge in future discussion.

244. This issue might, of course, be addressed another way. Some might argue that it is too optimistic to claim that we live in a period of increasingly diverse methodological and evaluative assumptions. In fact, the argument might go, critical scholars are only beginning the assault on the unitary evaluative horizon of scientific rationality. If we compromise our methodological distinctiveness in order to make our scholarship accessible to those who favor the dominant paradigm, we will never be able to offer a clear methodological alternative or attain the equal standing we seek.

Although each scholar must assess this question for herself, it is my experience that the confusion and division born of increasingly plural evaluative premises are already upon us. In the area of critical race narrative, this division has already reached the pages of leading law reviews; in the area of feminist narrative, it is increasingly evident in the scholarly discussions that take place in faculty lounges and on appointments committees. Although I agree that, in temporal terms, the challenge to scientific rationality is of relatively recent vintage, its effects are already far-reaching enough, in many corners of the legal academic world, to have created a new dialogic environment that we must consider in our scholarship. In places in which this does not yet appear to be true,

preference is not shared by all proponents of feminist narrative. In particular, the injunction to elaborate our narratives has been met with two kinds of objections.

The first objection is aesthetic: explicitly expounding a normative message is inconsistent with the suggestion and ambiguity of narrative, and may ruin a brilliantly subtle story. This objection has a certain merit. When we choose narrative, we choose a form of discourse that is capable of being judged by aesthetic standards that are not coterminous with, and that may be disserved by, the demands of traditional modes of legal communication and political persuasion.[245]

I am initially inclined to say that feminist legal scholars using narrative in service of social change may not always resolve the tension between these two sets of demands in the same way as would short-story writers. Yet, extant feminist narratives demonstrate more range in the practice of normative elaboration than this rough dichotomy would seem to suggest. In many cases, we can elaborate the normative content of stories in ways that do not noticeably detract from the subtlety of the narrative. Listen to Patricia Williams, for example, explaining the meaning of the phantom room:

> The phantom room is to me symbolic of the emptiness of what formal equal opportunity as promised has actually turned out to be. It is the creation of a space that is filled in by a meandering stream of unguided hopes, dreams, fantasies, fears, recollections. It is the presence of the past in imaginary, imagistic form. What is required in the law of opportunity is some acknowledgement of the room as an empty room before we can stop filling the void with the perpetuated racism of the past.[246]

This brief explanation connects the details of the story with the larger meanings she assigus to them; it connects the world of lives and objects to her visions of the law; it is executed with a lyricism that weaves it seamlessly into the stories that succeed and follow it. It is an accomplishment that may not be within the power of every legal storyteller; yet it is wholly consistent with the demands of feminist narrative as a form of legal discourse.

The second, and more substantial, objection is political. Insistent, unelaborated concreteness permits us to be true to women's experiences while highlighting the prejudicial abstraction of legal rules. Relinquish-

critical scholars might find facilitating mutually intelligible conversation less important than mounting this methodological challenge.

245. Whether and how feminist narrative scholarship, and narrative scholarship more generally, might be evaluated as literature is an interesting question whose examination would, I think, be edifying to a range of scholars. It is not, however, a question I feel qualified or prepared to take up at this point.

246. Williams, *supra* note 84, at 2142.

ing this methodological tool, some narrative scholars would argue, represents an unnecessary compromise with a legal regime that has already wrested too many concessions from women. This objection may be even more widespread than the first among proponents of the feminist narrative form. It was brought home to me in a particularly succinct way when I presented some of the ideas that make up this Article at the 21st National Conference on Women and the Law.

Soon after I had finished arguing for the elaboration of narratives, a woman in the front row stood up to make a statement. As she was hearing-impaired, and a native speaker of American Sign Language (ASL), she both spoke and signed her response. She observed that because it was necessary for her to take classes and converse with classmates in spoken English, she was constantly engaged in a process of translation not dissimilar to the translation of experience through narrative. Through this effort she had become increasingly convinced that translation was an inherently flawed—or limited—activity. There were frequently concepts in English that could not fully be translated into ASL, and many ideas originally expressed in ASL that could not be made fully comprehensible in English. Not only the experience of translation, but the experience of exclusion that followed from her difference, had caused her to doubt the goal of elaboration that I had proposed. Our narratives—our accounts of our lives as we see them being lived—are our own, she said. When we explain them, we make them someone else's. When we acknowledge the need to explain them, we accept, acquiesce in, the power of the audience to whom we explain ourselves. At some point, she declared, we have to stop explaining our stories—and ourselves—to our audiences and simply TELL THEM.

As the audience roared its approval, I thought about the substantive point,[247] and, particularly, about the way it had been made. The woman who had challenged the goal of elaboration had communicated both through spoken English and through ASL. She had engaged in what she

247. I have difficulties with the substantive message offered by the speaker in two respects. First, in analogizing between telling stories about our experiences and translating languages, she neglects the sense, discussed earlier, in which narration reflects interpretation rather than direct translation of some determinate, externally verifiable event. *See supra* text accompanying notes 237-41. Second, her suggestion that if an experience is not mine (unelaborated narrative) it is someone else's (elaborated narrative) seems to me to reflect a view that human nature, and therefore human subjectivity, are radically discontinuous. This view, which posits little basis for creating connection among human beings on the basis of experience (subjectivity), is frequently associated with the position that the only way we can achieve agreement or connection is through the operation of (objective) rationality. A view that regards subjectivity as slightly less radically discontinuous is sometimes associated with different forms of separatism. It seems to me unlikely that the speaker intended to affiliate herself with the former position; it is possible that she intended to affiliate herself with the latter, although as I note below, the dual form of communication she chose did not reflect an entirely separatist premise.

acknowledged to be an imperfect act of translation—and to what end? With the reflexive perspectivity of the hearing world, I asked myself first why she had signed. Perhaps there were other hearing-impaired persons in the room, although a sign-language interpreter, translating my talk had identified the speaker as the person for whom her services were to be provided.[248] More likely, this woman signed and spoke to communicate a political message. Signing was her way of communicating her story in her native langnage—a langnage insufficiently recognized, but possessing a structure and complexity that make it the peer of spoken languages.[249] Her signing reminded us of the marginalization of this language and its speakers; her signing alongside speech, of the equal acceptance this community sought.

As I reflected on this, I began to see that the more appropriate question was why she had spoken. A native speaker of ASL, protesting the compromising task of translation, might have delivered her remarks solely in her own language. The audience might have been struck, full in the face, with the completeness of this form of expression, and with the isolation in which the hearing world places those who do not hear. Yet she did not take this path, and we may learn by imagining her reasons. She may have feared that without communicating in spoken English, much of her message would be lost. The audience might have followed the expressions on her face, or glimpsed one of the few phrases of sign that have penetrated popular English-speaking culture; but it would have been unable to comprehend the greater part of the experience she described. Speaking assured her that her experience and her message would be understood by those who did not sign. It is also possible that she lacked the sense of complete alienation from the group that might have fueled an effort at untranslated expression. The audience represented the hearing world, which was responsible for her isolation; yet it also represented the heterogeneous community of women of which she felt a part. So she engaged in an act of imperfect translation, before a group of which she was and was not a member, to resist her marginalization and expand the range of expression accepted by that group.

I do not wish to overstate the analogy between a distinct language and a new methodology, nor to suggest that feminist narrative scholars are isolated in the same ways as those who do not hear. Yet it struck me

248. Although it did not appear that there were any other native speakers of sign in the room, it is possible that there were others who understood ASL. Obviously, the two sign-language interpreters standing behind the panelists did, and Patricia Williams, one of the panelists, had stated earlier that she was in the process of learning ASL. Keynote Address by Patricia Williams, 21st National Conference on Women and the Law (Mar. 23, 1990).

249. *See generally* N. GROCE, EVERYONE HERE SPOKE SIGN LANGUAGE: HEREDITARY DEAFNESS ON MARTHA'S VINEYARD (1985); H. LANE, WHEN THE MIND HEARS: A HISTORY OF THE DEAF (1984); O. SACKS, SEEING VOICES (1989).

that the position, and the choices, of this speaker were in some ways similar to my own. Many of us want our message to be heard, even if it is a message that surprises or discomfits our audience. And many of us live our lives in the ambivalent condition of having one foot in and one foot out of the dominant group, however it is defined.[250] In that complicated posture, it seems not just politically futile but humanly difficult to avoid the attempt to communicate with others. We do it in ways we contemplate and ways we scarcely perceive; it is important that we do it well.

* * *

My colleague Adeno Addis has written that the narratives of subordinated groups represent the struggle "of [their] memory against [the] forced forgetting"[251] imposed by official abstraction. In elaborating this notion, Addis describes the dissent of Justice Marshall in *Croson,* which he views as a salient example of an opposition narrative. The dissent is rich with the details of Richmond's history; and they are, importantly, details that decisively distinguish blacks' experience in Richmond from that of whites. For Addis, these two features of Marshall's dissent reflect two precepts—"thinking concretely" and "remembering socially"—that aid Marshall in assailing the abstract, symmetrical argument of the majority.[252]

This example may hold a lesson for feminists seeking to oppose the abstraction that has erased our experience from law. "Thinking concretely" is embodied in the stories we tell, the wealth of particularized detail that will not permit our experience to be ignored. "Remembering socially," however, requires something else. It requires us to take up the connecting threads: to see the skeins that give the stories, whatever their particularity, meaning to those beyond the teller, and to glimpse those features that make them also the stories of a group, a group that is situated socially, in a way that is distinct from other (dominant) groups. This effort is, as Martha Nussbaum has observed, essential to rendering or understanding a particular story: the oscillation between the shared or repeatable elements of the story and its unique particularities gives both their meaning. But it is also essential to establishing common ground with others. Pulling through these scattered or sometimes submerged threads reveals to women, or other opposition storytellers, the

250. The extent of this divided membership will obviously vary from person to person, and may in fact condition one's willingness to attempt the act of elaboration or translation. Yet Patricia Williams' Au Coton narrative, *see supra* text accompanying notes 102-05, offers a poignant illustration of the way in which even those who have suffered systematic discrimination may occasionally end up on both the "inside" and "outside" of a discriminatory circle.

251. A. ADDIS, THE COMMUNICATIONS PROCESS AND MINORITIES 43 (manuscript on file with author) (citing P. CONNERTON, HOW SOCIETIES REMEMBER 15 (1989)).

252. *Id.* at 44.

connections that persist among us, despite our diversity. Normative elaboration is central to both of these functions: By "remembering socially" as well as "thinking concretely," we can help our stories to be heard.