

THE TOP TEN POLITICALLY CORRECT  
LAW REVIEW ARTICLES

ARTHUR AUSTIN \*

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I. INTRODUCTION AND CRITERIA

Five years ago I committed the academic sin of endorsing hierarchy by compiling *The Top Ten Politically Correct Law Reviews*.<sup>1</sup> I quickly learned that the ranking game is a lightning rod for controversy and criticism.<sup>2</sup> While some journals were irritated for being listed, others were chagrined at being excluded.<sup>3</sup> Professor Lawrence Cunningham of Cardozo Law School<sup>4</sup> said: “Categorizing law reviews in terms of political correctness obscures the broader range of scholarship they publish.”<sup>5</sup> Another critic wrote that while my article is “concise, entertaining, and frank,”<sup>6</sup> the effect was not benign: “[T]he discussion of new ideas should not be stifled just because they are new.”<sup>7</sup> The fact that my piece did incite criticism disproved my critics’ accusation that I wanted to stifle dis-

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1. See Arthur Austin, *The Top Ten Politically Correct Law Reviews*, 1994 UTAH L. REV. 1319 (1994). The top ten: *Cardozo Law Review*, *Yale Law Journal*, *Michigan Law Review*, *Southern California University Law Review*, *Stanford Law Review*, *Buffalo Law Review*, *Cornell Law Review*, *Wisconsin Law Review*, *Colorado Law Review*, *Harvard Law Review*. See *id.*

2. Deans are highly critical of law school rankings unless their school is in the top twenty. See Cynthia Cotts, *Deans and Watchdogs Flunk U.S. News Law School Rankings*, NAT’L L.J., Mar. 2, 1998, at A13; see also Jan Hoffman, *Judge Not Law, Schools Demand of a Magazine That Ranks Them*, N.Y. TIMES, Feb. 19, 1998, at A1.

3. See Ken Myers, *David Letterman, Watch Out: Professor Issues Top 10 of “PC”*, NAT’L L.J., Mar. 13, 1995, at A20; see also *Reviews Reviewed: Scholar Assigns “PC” Ranking*, A.B.A. J., June 1995, at 44.

4. *Cardozo Law Review* was ranked number one for publishing things like the deconstruction of a court summons. See Charles M. Yablon, *Forms*, 11 CARDOZO L. REV. 1349, 1352 (1990) (“[T]he language of the summons is indeterminate on a number of levels, but that does not mean that it lacks meaning.”).

5. Lawrence A. Cunningham, *Openness to Ideas Isn’t Political Correctness*, Letter, NAT’L L.J., Mar. 27, 1995, at A20.

6. Cheryl B. Preston, *It Moves, Even If We Don’t: A Reply to Arthur Austin, The Top Ten Politically Correct Law Reviews*, 63 TENN. L. REV. 735, 735 (1996).

7. *Id.* at 738.

cussion. The emergence of new styles and methods of scholarship is indeed a serious issue that I intend to continue exploring.

Reading hundreds of articles in researching a book on legal scholarship confirms that politically correct writing appears with increasing frequency, creating a split between the advocates of conventional doctrinal scholarship and nontraditional writing.<sup>8</sup> The American Association of Law Schools contributed to the split by encouraging faculty to avoid “prejudice against any particular methodology or perspective used in teaching or scholarship.”<sup>9</sup> This would presumably embrace photography, poetry, and paintings.<sup>10</sup> The conflict over the relevance of politically correct scholarship confirms its resonance<sup>11</sup> and to further the scope of the debate—and provoke the critics—it is time to rank the top ten politically correct law review articles.

A top-ten ranking is a convenient and entertaining way to draw attention to the hostilities generated by nontraditional scholarship. It provides the ideal vehicle to critically evaluate what I consider the best representatives of the new scholarship. Each article constitutes a different technique for rebellion against tradition.

Political correctness (PC) is a buzzword<sup>12</sup> of nebulous parameters. In the university community it is associated with language modification, oppression studies, race and gender victimization, rejection of the white male canon, plus a laundry list of etceteras. In the law academy PC is defined by specific goals, agendas, and vocabulary. It is oppositional to the Liberal white male culture of objectivity, rationality, and the Langdellian principle of law as a science.<sup>13</sup> Advocates come from three sources: Critical Race theorists composed of Blacks and females, feminists, plus the remnants of the Critical Legal Studies movement.<sup>14</sup> The unifying assumption is that minorities and females speak in a distinctive

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8. See ARTHUR AUSTIN, *THE EMPIRE STRIKES BACK: OUTSIDERS AND THE STRUGGLE OVER LEGAL EDUCATION* (1998).

9. *Report of the AALS Special Committee on Tenure and the Tenuring Process*, 42 J. LEGAL EDU. 477, 505 (1992).

10. For example, artwork, acrylic on canvas entitled, *The Painting: Naked Restraints of Trade*, originally submitted as an antitrust exam answer was published in a law journal as “original jurisprudence.” Christo Lassiter, *A Call to the Arts: Exploring New Means of Jurisprudential Expression*, 14 CARDOZO ARTS & ENT. L.J. 387, 388 (1996) (explaining how artwork is a valid and effective expression of legal concepts).

11. See DANIEL A. FARBER & SUZANNA SHERRY, *BEYOND ALL REASON: THE RADICAL ASSAULT ON TRUTH IN AMERICAN LAW* (1997); see also Arthur Austin, *Evaluating Storytelling as a Type of Nontraditional Scholarship*, 74 NEB. L. REV. 479 (1995).

12. See WEBSTER’S NEW WORLD DICTIONARY 192 (3d College ed. 1988) (“[A] word or phrase used by members of some in-group having little or imprecise meaning but sounding impressive to outsiders.”).

13. See Josef Redlich, *The Common Law and the Case Method in American University Law Schools*, 8 CARNEG. FOUND. BUL. 11 (1914) (“Law, considered as a science, consists of certain principles or doctrines. To have such a mastery of these as to be able to apply them with constant facility and certainty to the ever-tangled skein of human affairs, is what constitutes a true lawyer; and hence to acquire that mastery should be the business of every earnest student of law.”).

14. See AUSTIN, *supra* note 8, at ch. 1.

voice derived from privileged access to the perspective and experience of victimization,<sup>15</sup> and that their stories deserve recognition.<sup>16</sup>

I start my evaluation with a judgment of the extent to which the ranked article adds to *Law Political Correctness* (LPC) ideology. Authors do not get points for incrementalism, *i.e.* repackaging or reshuffling existing thoughts without adding new substance. I award points for the presentation of unique oppositional critique. Robin West, for example, seeks to demonstrate male and female differences and posits that women's suffering and pain are ignored or trivialized by the male-dominated legal culture. Her scholarship develops a critical legal method for describing women's subjective hedonic lives.<sup>17</sup> Oppositional ideology incorporates provocation or what the Crits<sup>18</sup> call "trashing."<sup>19</sup> LPC uses trashing to ridicule the Liberal white male establishment's dedication to rational and analytical scholarship. Crits call it demystification or unmasking the delusion of determinacy and certainty. "Take specific arguments very *seriously* in their own terms; discover they are actually *foolish* ([tragi]-*comic*); and then look for some (external observer's) *order* (*not* the germ of truth) in the internally contradictory, incoherent chaos we've exposed."<sup>20</sup>

Trashing is an art, easily abused by the overzealous writer. It can be *ad hominem*, like Mark Tushnet calling Lawrence Tribe's constitutional law treatise corrupt,<sup>21</sup> or Jerome Culp writing: "[The] 'real' Judge Posner, however, is no different than the white slaveowners in the antebellum South who were kind to their slaves . . ." <sup>22</sup> Trashing can also be silly, such as encouraging Crit colleagues "to engage in acts of 'macho self-immolation,' to become moral terrorists, to 'whack-off' in faculty

15. See Alex M. Johnson, Jr., *The New Voice of Color*, 100 YALE L.J. 2007, 2038 (1991) ("[T]he voice of color is identified and synonymous with marginalized groups in our society whose marginal outside status enables them to relate important stories—stories that cannot be sincerely told by their privileged majoritarian peers."); see also Martha Minow, *The Supreme Court, 1986 Term-Foreword: Justice Engendered*, 101 HARV. L. REV. 10, 61 (1987) ("Feminist work has thus named the power of naming and has challenged both the use of male measures and the assumption that women fail by them."). The boilerplate reference for female victimization is CAROL GILLIGAN, IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT (1982). See Joan M. Shaughnessy, *Gilligan's Travels*, 7 LAW & INEQ. J. 1, 3-5 (1988).

16. See Patricia Meisol, *A New Genre of Legal Scholarship*, L.A. TIMES, Oct. 7, 1988, at 8 ("We need to flood the market with our own stories until we get one simple point across" according to Robin West and that point "is that women's experiences, values and fears are different from men's experiences, values and fears.").

17. See Robin L. West, *The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory*, 3 WIS. WOMEN'S L.J. 81 (1987).

18. See Hope Yen, *As HLS Mulls Its Mission, CLS Scholars Remain Quiet*, HARV. L. RECORD, Dec. 1, 1995, at 2 (explaining that "Crit" is a term used to denote scholars of Critical Legal Studies).

19. See Mark G. Kelman, *Trashing*, 36 STAN. L. REV. 293 (1984).

20. *Id.* at 293. "[D]ebunking is one part of an explicit effort to level, to reintegrate the communities we live in along explicitly egalitarian lines rather than along the rationalized hierarchical lines that currently integrate them." *Id.* at 326.

21. See Mark V. Tushnet, *Dia-Tribe*, 78 MICH. L. REV. 694, 710 (1980) ("Under the circumstances, I take some pleasure, not however unmixed with regret, in noting that the Framers would have understood the phenomenon that Professor Tribe's work represents: [T]hey called it corruption." (reviewing LAURENCE H. TRIBE, *AMERICAN CONSTITUTIONAL LAW* (1978))).

22. Jerome McCristal Culp, Jr., *Posner on Duncan Kennedy and Racial Difference: White Authority in the Legal Academy*. 41 DUKE L.J. 1095, 1113 (1992).

meetings, to construct a praxis which is meaningful, public, and dangerous."<sup>23</sup> Successful trashing mixes contempt with nihilism.

One of the primary objectives of LPC is to control the methodology and substance of scholarship. The assumption is that the Liberal white male establishment uses the doctrinal method to sustain the illusion of objectivity, neutrality, and determinacy. The control of scholarship is a critical avenue to the ultimate subversion of the Liberal establishment. The strategy is to scorch the earth: attack the assumed certainty of linearity with deconstruction,<sup>24</sup> and replace the doctrinal model with the narrative genre—storytelling, allegory, and parable. It is a maneuver that makes genre a critically important indicia of LPC. For the LPC genre to be effective it must expose the various nuances of oppression, describe its psychologically debilitating effects, and transform, or at least educate, the dominant culture. One of the more esteemed techniques is the use of personal experiences to convey the emotion and agony of persevering in an alien environment of patriarchy, hierarchy, and objectification.

Narrative is a genre with an eclectic agenda. Drucilla Cornell wrote a play contrasting the distant autonomy and aloofness of the male character with the empathy and nurturing instincts of the female character, who relies on “emotional logic.”<sup>25</sup> Another LPC writer strings a series of “cynical,” “serious,” and “giddy” poems together as a preface to autobiographical vignettes of sexism in legal education.<sup>26</sup> Brenda Waugh exposes the tyranny of big law firm practice in eighteen pages of doggerel, striving to engage the reader “in a conversation between my words and your memories.”<sup>27</sup> Professor Jennifer M. Russell uses memoir to engage in a self-catharsis to examine her feelings and frustrations over a racial incident.<sup>28</sup> Paulette Caldwell teases and trivializes linearity by pleading “I want to know my hair again . . .”<sup>29</sup>

LPC exalts obfuscated terminology and syntax. It comes from the deconstruction influence and is reflected in an affectation of Michael Foucault’s description of Jacques Derrida’s prose style as “obscurantist terrorism.”<sup>30</sup> Deconstructionists feel an obligation—literally a duty—to avoid lucidity and transparent language. Critic Raymond Tallis says: “clarity is the enemy of writers whose stylistic mannerisms serve to cover over difficult theoretical problems by making it hard to pin down just

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23. David Fraser, *If I Had a Rocket Launcher: Critical Legal Studies as Moral Terrorism*, 41 HASTINGS L.J. 777, 804 (1990).

24. For a discussion of the mischief that efforts at applying deconstruction to law cause see AUSTIN, *supra* note 8, at 93-109.

25. Drucilla L. Cornell, *The Dream Cure*, 10 CARDOZO ARTS & ENTERTAINMENT L.J. 87, 90 (1991).

26. Heather R. Wishik, *Reverie*, 16 N. MEX. L. REV. 495, 495 (1986).

27. Brenda Waugh, *A Theory of Employment Discrimination*, 40 J. LEGAL EDUC. 113, 114 n.2 (1990).

28. See Jennifer M. Russell, *On Being a Gorilla in Your Midst, or, the Life of One Black Woman in the Legal Academy*, 28 HARV. C.R.-C.L.L. REV. 259 (1993).

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

30. DAVID LEHMAN, SIGNS OF THE TIMES 77 (1991).

what they are saying."<sup>31</sup> John Ellis identifies another consequence of obscurantist terrorism—that it deflects criticism “so that familiar positions may not seem so familiar and otherwise obviously relevant scholarship may not seem so obviously relevant.”<sup>32</sup> Likewise, vagueness reinforces the indeterminacy of language by decertaining the text. Stanley Fish, an English professor with a joint appointment at Duke Law School, argues: “The objectivity of the text is an illusion and, moreover, a dangerous illusion, because it is so physically convincing.”<sup>33</sup>

## II. THE TOP TEN

### A. Number One

*The following Commentary is an unfinished work. Professor Frug was working on this Commentary when she was murdered on April 4, 1991. The Editors of the Harvard Law Review agreed that, under the circumstances, the preservation of Mary Joe Frug's voice outweighed strict adherence to traditional editorial policy. For this reason, neither stylistic nor organizational changes have been made, and footnotes have been expanded but not added. [Editorial Board, Harvard Law Review]*<sup>34</sup>

Even in an uncompleted condition, *A Postmodern Feminist Legal Manifesto (An Unfinished Draft)*<sup>35</sup> is an obvious choice for Number One. In addition to receiving premium scores in every evaluation category, the Frug piece is the most controversial law review article ever published. Its publication history is a bizarre story of unconfirmed suspicions, rumors, and feminist implication.

Mary Joe Frug, a 49 year-old professor at New England School of Law, was the wife of a well-known Crit Harvard law professor and the co-founder, with Clare Dalton, of the Fem-Crit movement. She was stabbed to death near her home in an exclusive section of Cambridge, inflicted with five wounds in her chest and groin. The murderer has not been apprehended and rumors over motive continue to circulate, including the belief by some of her ardent supporters that she was targeted by a patriarchal conspiracy. “Mary Joe Frug may be a martyr to the random male violence toward females that she believed was rife in the world.”<sup>36</sup>

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31. Raymond Tallis, *A Cure for Theorrhea*, 3 CRITICAL REV. 7, 29 (1989) (reviewing J.G. MERQUIOR, *FROM PRAGUE TO PARIS: A CRITIQUE OF STRUCTURALIST AND POST-STRUCTURALIST THOUGHT* (1986)).

32. JOHN M. ELLIS, *AGAINST DECONSTRUCTION* 142 (1989).

33. STANLEY FISH, *IS THERE A TEXT IN THIS CLASS?* 43 (1980). It was Fish who said that deconstruction “relieves me of the obligation to be right . . . and demands only that I be interesting.” LEHMAN, *supra* note 30, at 75 (quoting Stanley Fish).

34. Mary Joe Frug, *A Postmodern Feminist Legal Manifesto (An Unfinished Draft)*, 105 HARV. L. REV. 1045, 1045 (1992).

35. *See id.*

36. David Warsh, *What the Stories About Harvard Leave Out*, BOSTON GLOBE, May 5, 1992, at 43. For discussion of the murder see Matthew Brelis, *Law Professor's Murder Still Unsolved*, BOSTON GLOBE, April 5, 1992, at 29; Peter Collier, *Blood on the Charles*, VANITY FAIR,

The decision to publish her manuscript was not unanimous, and after its publication, a group of dissenters expressed their dismay in a parody presented at the *Harvard Law Review*'s annual banquet. It was titled *He-Manifesto of Post-Mortem Legal Feminism* with Frug identified as the "Rigor-Mortis Professor of Law."<sup>37</sup> What ensued was an explosion of LPC rhetoric.<sup>38</sup> Faxes criss-crossed between feminists and Frug's supporters who demanded that the parodists be punished, and defenders of the parodists like Alan Dershowitz complained about "'a McCarthyite witch hunt.'"<sup>39</sup> Professor Elizabeth Bartholet's reply: "'this incident shows something very scary about male anger toward women in this institution. . . . These people don't get it.'"<sup>40</sup> A colleague of Frug said: "They engaged in a necrophiliac gang bang upon the living body of her work."<sup>41</sup>

Frug's discourse on the female body is a terrorist exercise in self-flagellation. She describes the female body as existing "'in terror', a body that has learned to scurry, to cringe, and to submit."<sup>42</sup> It cringes from the culture of oppression created by a system that uses linguistic ploys to render the female rapeable. The concussion level is off the LPC shock chart. Frug cites Madonna,<sup>43</sup> Camille Paglia's favorite sex icon, and then moves on to the "F" and "C" words with such insights as: "In pornography, women get fucked. Now, women get 'fucked' in the workplace, too, where we do 'women's work' for 'women's wages,' working for male bosses and working on male schedules . . . . We are raped at work or on route to work because of our sex, because we are cunts."<sup>44</sup> She condemns pornography for the valorization of the ejaculating penis.<sup>45</sup>

The use of the "F" and "C" words forced the dominant male system to confront the most graphic effects of its oppression on the female body. It's a verbal kick to the establishment's groin, a gesture which gained the approval of Martha Minow who, writing in response to Frug's article, said: "I get a charge thinking about . . . certain four-letter words appearing in a law review."<sup>46</sup>

An unfinished manuscript composed in a postmodern dialect constitutes a distinctive type of oppositional genre to counter and subvert the majoritarian doctrinal model. It was a scenario that enabled the Review's editors to convert the *Unfinished Draft* into a collective LPC effort by publishing the responses of three fellow feminists to "complete some of

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Oct. 1992, at 144; Alice McQuillan, *The Professor and the Murder*, BOSTON HERALD, Mar. 29, 1992 at 7, available in 1992 WL 4052275.

37. Collier, *supra* note 36, at 155.

38. For discussions of the parody see Fox Butterfield, *Parody Puts Harvard Law Faculty in Sexism Battle*, N.Y. TIMES, April 27, 1992, at A10; Collier, *supra* note 36; David Margolick, *At The Bar*, N.Y. TIMES, April 17, 1992, at B16; Stuart Taylor, Jr., *The Rule of Nonsense at Harvard Law*, LEGAL TIMES, June 1, 1992, at 25.

39. Butterfield, *supra* note 38.

40. *Id.*

41. Collier, *supra* note 36, at 159.

42. Frug, *supra* note 34, at 1049-50.

43. *See id.* at 1053.

44. *Id.* at 1072.

45. *See id.* at 1074.

46. Martha Minow, *Incomplete Correspondence: An Unsent Letter to Mary Joe Frug*, 105 HARV. L. REV. 1096, 1104 (1992).

the thoughts that Professor Frug left unfinished."<sup>47</sup> Barbara Johnson interprets Frug as relying on both linear arguments and postmodernism to advance feminism.<sup>48</sup> The linear style flushes out patriarchal legal constructs used to oppress while postmodern indeterminacy operates "as a kind of guerrilla warfare,"<sup>49</sup> leading the reader to a better understanding of the conflicts among women. In a sisterhood trashing of Frug, Ruth Colker produces a credible candidate for the LPC Top Ten list. Admitting she had "no idea what Mary Joe intended to say," she nevertheless entered into a lesbian critique.<sup>50</sup> Her complaint is that Frug's essentialist perspective failed to comprehend the impact of her ideas on the lesbian lifestyle.<sup>51</sup> Colker invokes LPC chic to give a brief autobiographical account of her bisexuality to dramatize lesbian terrorization under patriarchy. While her vocabulary is LPCized—"heterosexualize lesbians,"<sup>52</sup>—and her syntax baffling,<sup>53</sup> Colker needs more bite to break into the Top Ten.

By calling attention to Frug's success in invoking deconstruction and postmodernism, Martha Minow flushes out the obscurantist terrorism in *Unfinished Draft*. LPC relies on these two critical constructs to provide the intellectual rationale for subverting the certainty thesis of the Liberal system. Deconstruction rejects the author's authority over the text and assumes that meaning is *never* fixed. Under the guardianship of Jacques Derrida, the objective is to undress and demystify the duplicity of the text. Meaning is both "'differential' and 'deferred', the product of a restless play within language that cannot be fixed or pinned down for the purposes of conceptual definition."<sup>54</sup> The deconstructionist is someone who gazes into the abyss of meaning and comes away smiling.<sup>55</sup>

Postmodernism radicalizes deconstruction. If deconstruction destroys meaning and text, postmodernism spreads chaos. It disorients, attacks coherence and liberates the audience from the hierarchy of high and low forms of culture. Reality "is unordered and ultimately unknow-

47. Frug, *supra* note 34, at 1045.

48. See Barbara Johnson, *The Postmodern in Feminism*, 105 HARV. L. REV. 1076, 1077-78 (1992).

49. *Id.* at 1078.

50. Ruth Colker, *The Example of Lesbians: A Posthumous Reply to Professor Mary Joe Frug*, 105 HARV. L. REV. 1084, 1084 (1992).

51. *Id.* at 1085-86.

An anti-essentialist perspective reveals that many of the rules that Professor Frug describes as having a negative sexualizing, maternalizing, or terrorizing effect on some heterosexual women have an enhanced or different effect on lesbians. In some instances, these rules have a similar effect on lesbians and heterosexual women; in others, the effect may be detrimental to heterosexual women, yet it may improve the lives of some lesbians.

*Id.*

52. *Id.* at 1088 ("Although prostitution rules may not heterosexualize lesbians, other rules may.").

53. See *id.* at 1095 n.52 ("Professor Frug attempted to write a 'localized disruption' rather than a total theory. She seems to have been influenced by Catharine Mackinnon's work although MacKinnon attempts to formulate a 'total theory' rather than a localized disruption.") (citations omitted).

54. CHRISTOPHER NORRIS, DERRIDA 15 (1987).

55. This is a critic's description of Paul deMan who was admired as "the only man who ever looked into the abyss [of deconstruction] and came away smiling." LEHMAN, *supra* note 30, at 156.

able.”<sup>56</sup> Knowledge comes from the totality of cultural experience and includes multiplicity, plurality, fragmentation, and indeterminacy. Andy Warhol’s Campbell’s Soup can is art just as much as a Gauguin. “A postmodernist thus calls for new categories, modes of thought and writing, and values and politics to overcome the deficiencies of modern discourses and practices.”<sup>57</sup>

Engaging in word free-play that infuriates the Liberal wing is a self-appointed franchise. Committed to analysis and neutrality according to the linear methodology, Liberals are forced to endure the torture of LPC word terrorism. On the Liberal infuriation meter, with “10” being the highest score, *Unfinished Draft* gets a “10+.” Frug’s description of postmodernism is the “plus.” First we learn that postmodernism may be “passé” but used to be “genius”: “Once that initial moment has passed, there’s not much value in what’s left over.”<sup>58</sup> What is left over reminds her of “female troubles—of premenstrual and postmenopausal blues.”<sup>59</sup> For postmodernism, sometimes the medium is the message in a style of irony and “wordplay that is often dazzlingly funny, smart, and irreverent. Things aren’t just what they seem.”<sup>60</sup> Despite the possibility that postmodernism’s freelancing style speaks in a multiplicity of voices that could blur and fragment the message of feminist scholarship, Frug posits that postmodernism is not politically incorrect. It can open new visions, and at least, “the oppositional character of the style arguably coincides with the oppositional spirit of feminism.”<sup>61</sup> Her postmodernist conclusion: “only when the word ‘woman’ cannot be coherently understood, will oppression by sex be fatally undermined.”<sup>62</sup>

### B. Number Two

*I hope that the gaps in my own writing will be self-consciously filled by the reader, as an act of forced mirroring of meaning-invention. To this end, I exploit all sorts of literary devices, including parody, parable, and poetry.*<sup>63</sup>

But for *An Unfinished Draft*, Patricia Williams would secure first place. It is close—a snakeskin margin puts her behind Frug. Williams’s supporters may dispute my choice of article to serve as exemplar. They would expect the *Benetton* narrative which begins with the famous line: “Buzzers are big in New York City”<sup>64</sup> and is the story of the author’s seething anger at being denied entrance to a trendy clothing store by “[a] narrow-eyed, white teenager wearing running shoes and feasting on

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56. STEVEN BEST & DOUGLAS KELLNER, POSTMODERN THEORY: CRITICAL INTERROGATIONS 9 (1991).

57. *Id.* at 30.

58. Frug, *supra* note 34, at 1045.

59. *Id.* at 1046.

60. *Id.* at 1047.

61. *Id.*

62. *Id.* at 1075.

63. PATRICIA J. WILLIAMS, THE ALCHEMY OF RACE AND RIGHTS 8 (1991).

64. *Id.* at 44.

bubble gum”<sup>65</sup> to take first place. *Benetton* is the most esteemed Critical Race narrative. The problem in recognizing *Benetton* as the second choice is that there are a series of *Benetton* stories.<sup>66</sup> The first is a short two and one-half page version of the exclusion incident.<sup>67</sup> This was followed by frequent repetitions in speaking engagements that were ultimately published with embellishments in a chapter in *The Alchemy of Race and Rights*. Since the book chapter narrative is not eligible as a law review article and the law review story is too inchoate for consideration, I turn to another Williams narrative: *Commercial Rights and Constitutional Wrongs*.<sup>68</sup>

Williams specializes in emotionalized introspection, is dedicated to journal keeping, enjoys television’s dysfunctionality, loves to shop, is constantly annoyed with spoiled students, and broods over newspaper copy. She is fond of creating faceless and vacuous characters to expose the callous Liberal white hierarchy. The “self” dominates her plots. “I am sitting on a train writing a speech for a program sponsored by the University of Maryland School of Law.”<sup>69</sup> As she muses over the unspecified evasions of private contract law, she is joined by a stockbroker, and engages in a conversation about the homeless.<sup>70</sup> This is the Williams trademark—a series of encounters between the perceptive self of Williams and a misguided symbol of oppression or insensitivity. The stockbroker is an Ivan Boesky “greed is healthy”<sup>71</sup> capitalist; he talks to, but does not tip, the homeless in his neighborhood to remind himself that “they’re not just animals.”<sup>72</sup>

As the acknowledged genius of LPC postmodernism, Williams never allows the reader to gain control of the text. The scenes constantly shift, forcing the audience to constantly refocus, confront new instances of oppression, and reconsider the implications of previous parts of the story. The stockbroker scene is followed by accounts of Williams preparing for a conference while musing over homelessness as a legacy of slavery, teaching a two-session course on homelessness and law at another school during which she mentions Mayor Koch putting up subway signs discouraging riders from giving to panhandlers (“bad for tourism”),<sup>73</sup> remembers an article about a homeless pregnant woman giving birth on a New York subway,<sup>74</sup> recalls a series of bad encounters with her students who resent her constant references to the homeless and “growl

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65. *Id.* at 44-45.

66. I have discussed the Benetton story as aesthetic failure. See AUSTIN, *supra* note 8, at 142-46.

67. See Patricia Williams, *Spirit-Murdering the Messenger: The Discourse of Fingerprinting as the Law’s Response to Racism*, 42 U. MIAMI L. REV. 127 (1987).

68. See Patricia J. Williams, *Commercial Rights and Constitutional Wrongs*, 49 MD. L. REV. 293 (1990).

69. *Id.* at 293.

70. See *id.* at 294.

71. This is a quote attributed to Ivan Boesky, a Wall Street takeover expert caught and sentenced for using inside information. “His greedy deals hurt thousands of other investors and rocked the public’s confidence in the stock market.” *An Insider Goes Inside*, WASH. POST NAT’L WKLY., Dec. 21, 1987, at A22.

72. WILLIAMS, *supra* note 63, at 294.

73. *Id.* at 295.

74. See *id.* at 296.

with the restless urge to go shopping,”<sup>75</sup> and ponders on a meeting with the dean who has received complaints from the students about her subway stories.<sup>76</sup>

Her students’ reactions to stories from the bottom is the metaphor for the Liberal culture’s persistent denial of the truth of oppression. When they ignore her description of beggar women and assorted subway bums, and tell her that “this is the land of opportunity and that anyone who works hard can get anything they want,”<sup>77</sup> they, like their elitist professors, perpetuate the “fictional visions”<sup>78</sup> of a white supremacist democracy. It is the naive cream-puff questions by her students that enable Williams to unmask the cynical veneer of capitalism.

Conditioned to rational analysis, objectivity and the linear style, doctrinalists cannot cope with the Williams routine. To critics, her syntax is overly pretentious and opaque. In explaining her topic, Williams says: “At issue is a structure of relation in which a cultural code has been inscribed; if I am inside the bell jar of this common culture, my dilemma becomes how I can situate myself in order to evaluate it.”<sup>79</sup> This potpourri of self-indulgent babbling about babbling technique defies translation and exasperates critics. Her “idiosyncratic approach” has been compared to “new-age performance art,”<sup>80</sup> “obscured by pop jargon and personal irrelevancies.”<sup>81</sup> Her parables rebuff debate: “How can you respond critically? Tell a different story of your own?”<sup>82</sup> A law professor accuses her of relying on “overblown and overwrought prose, lurching between the perplexing and the obfuscatory, the melodramatic and the grandiose . . . .”<sup>83</sup> What bothers critics the most is Williams’s suffocating, autobiographical, emotional narratives. Wendy Kaminer’s reaction is typical: “The first person invites us in but the language shuts us out, and her diary finally seem less personal than private, self-enclosed.”<sup>84</sup> Other more succinct critics like Richard Posner accuse Williams of “blurring . . . the line between fiction and truth.”<sup>85</sup> Jonathan Rieder asks: “Is she discovering subtle aspects of racism, or is she imagining them?”<sup>86</sup>

Williams and her Critical Race colleagues welcome criticism from the dominant Liberal majority; it validates the authenticity of the voice thesis by acknowledging an inability to comprehend the agonies of oppression. This explains Williams’s frustration over Jonathan Rieder’s fault-finding review: “Mr. Rieder’s reading is a perfect example of why I am so

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75. *Id.* at 297.

76. *See id.* at 298-99.

77. *Id.* at 296.

78. *Id.* at 298.

79. *Id.* at 293.

80. David Streitfeld, *On Race, Rights and the Law*, WASH. POST, August 16, 1991, at D5.

81. Kenneth Jost, *Up Close and Personal: The Alchemy of Race and Rights*, A.B.A. J., July 1991, at 97.

82. David Sexton, *Radio Review: Should We Be Blind or Not, Prof?*, LONDON DAILY TELEGRAPH, Mar. 2, 1997, at 31.

83. Jean Bethke Elshtain, *Alchemy and the Law: Why this Marriage Can't be Saved*, 25 U.C. DAVIS L. REV. 1171, 1176 (1992).

84. Wendy Kaminer, *Citizens of the Supermarket State*, N.Y. TIMES BOOK REV., May 26, 1991, at 10.

85. RICHARD A. POSNER, *OVERCOMING LAW* 375 (1995).

86. Jonathan Rieder, *Tawana and the Professor*, THE NEW REPUBLIC, Oct. 21, 1991, at 39.

critical of those deadly conventions of scholarship that never look up to see that there might be worlds of meaning beyond the safe burrow of one's own genre—or of one's own neighborhood."<sup>87</sup>

The most threatening criticism of Williams's storytelling is that it defies verification. This is the type of barrier that drives verification and Bluebook addicted doctrinalists crazy. They see it as the subversion of the truth standard. How do you know that Williams had the various exchanges with the dean and the angry students, or the stockbroker encounter? Even Williams acknowledged rumors about the truthfulness of the *Benetton* story.<sup>88</sup> Posner criticizes her for a discussion of the Tawana Brawley incident without mentioning that it was a hoax with devastating consequences.<sup>89</sup> Farber and Sherry criticize Williams—and the storytelling movement—for a “casualness about truth”<sup>90</sup> and Coughlin has a “nagging ambivalence over the truth”<sup>91</sup> of the sausage story.<sup>92</sup>

Their concern is justified and mandatory for anyone who adheres to the doctrinal model of scholarship but is nevertheless irrelevant to voice narration. Williams's stories express the reality of the totality of the Black experience—from slavery through the tyranny of spirit-murder. To attack her truthfulness in telling the Black experience is another manifestation of the dominant culture's rejection of “Blackness.” Replying to the rumors about the *Benetton* story, Williams explains:

At this point I realized it almost didn't make any difference whether I was telling the truth or not—that the greater issue I had to face was the overwhelming weight of a disbelief that goes beyond mere disinclination to believe and becomes active suppression of anything I might have to say. The greater problem is a powerfully oppressive mechanism for denial of black self-knowledge and expression.<sup>93</sup>

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87. Patricia J. Williams, *Chicken-Centric*, Letter to Editor, THE NEW REPUBLIC, Dec. 9, 1991, at 45.

88. WILLIAMS, *supra* note 63, at 242.

89. See POSNER, *supra* note 85, at 375.

90. FARBER & SHERRY, *supra* note 11, at 97.

91. Anne M. Coughlin, *Regulating the Self: Autobiographical Performances in Outsider Scholarship*, 81 VA. L. REV. 1229, 1290 (1995).

92. Charged with selling contaminated products, a sausage manufacturer argued that sausage meant pig meat and lots of impurities. In her argument to the jury, Williams debunked the notion advanced by the defense that because it is a sausage machine, whatever comes out is by definition sausage. She urged them to revolt against the “tyranny of definition machines and insist on your right to name what your senses well know.” WILLIAMS, *supra* note 63, at 108. As with *Benetton*, Williams uses the sausage machine on the speaking circuit to attack the Reagan Court's “dominant social contract.” *Id.* at 109.

Coughlin is troubled because the sausage metaphor predates the Williams narrative, traceable at least back to Bismarck, and because a similar reference was included in Ambrose Bierce's *Devils Dictionary*: “Litigation, n[oun]. A machine which you go into as a pig and come out as a sausage.” Coughlin, *supra* note 91, at 1289 n.231 (quoting AMBROSE BIERCE, THE DEVIL'S DICTIONARY 108 (1957)). This revelation opens up a variety of interpretations; it may have been nothing more than a lapse; she simply assumed the reader would know she was not declaring originality. On the other hand, Williams is a law professor and knows the importance of citing sources. Ultimately, according to Coughlin, “if we conclude that this particular autobiographical representation was false and that the sausage story did not occur, we must decide whether that conclusion suggests that other personal experiences reported by Williams likewise did not occur.” *Id.* at 1290.

93. WILLIAMS, *supra* note 63, at 242 n.5. Jerome McCristal Culp sees her narratives as uniquely subjective—a personal vision of truth. See Jerome McCristal Culp, Jr., *Autobiography*

Williams is esteemed by LPC for transformative and authentic voice narration. The voice thesis assumes that centuries of subordination imbues people of color with a distinctive vision of suffering and the capacity to describe the experiences of oppression.<sup>94</sup> Moreover, the dominant white culture does not have standing to question the authority of voice stories. Alex Johnson, Jr. summarizes: “[T]he voice of color is identified and synonymous with marginalized groups in our society whose marginal outsider status enables them to relate important stories—stories that cannot be sincerely told by their privileged majoritarian peers.”<sup>95</sup>

Williams’s autobiographical stories have played a major role in rendering the doctrinal model irrelevant to a new generation of students and academics. She, along with Derrick Bell and Richard Delgado, have created a public intellectual audience and in the process introduced storytelling as an acceptable academic exercise. Her position on the Columbia Law School faculty furnishes the imprimatur from an elite institution for the credibility of her work. Her achievement is the production of a Black-female perspective that merges victimization and advocacy to marginalize the Liberal white establishment. To admirers like Robin West, her work demonstrates that “reading can be transformative, and that writing sometimes can be and should always strive to be a moral act of the highest order.”<sup>96</sup> The highest LPC accolade comes from Henry Louis Gates, Jr.: “Williams manages to cause no end of trouble.”<sup>97</sup>

### C. Number Three

*This idea of female marines? It’s a bunch of bull, man. They cause trouble and they can’t do the work. It’s why we call recruits girls.*<sup>98</sup>

Feminists have traditionally viewed the military as the most incorrigible and ruthless citadel of patriarchy. Their antagonism is supported by the Radical Left who accuse the military of being willing lackeys for the capitalist-imperialist conspiracy. Electing a president with an admitted loathing for the armed services was the signal for the engendering of the citadel. Popular media accounts suggest that feminization of the military is in progress.<sup>99</sup> Madeline Morris’s *By Force of Arms: Rape,*

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*and Legal Scholarship and Teaching: Finding the Me in the Legal Academy*, 77 VA. L. REV. 539, 545 (1991). “Professor Williams requires us to see the world through her eyes; her words will not permit us the freedom to ignore her reality.” *Id.*

94. See Arthur Austin, *Race and Gender Exclusivity in Legal Scholarship*, 4 U. CHI. L. SCH. ROUNDTABLE 71 (1997).

95. Alex Johnson, Jr., *The New Voice of Color*, 100 YALE L.J. 2007, 2038 (1991).

96. Robin West, *Murdering the Spirit: Racism, Rights, and Commerce*, 90 MICH. L. REV. 1771 (1992).

97. Henry Louis Gates, Jr., *Contract Killer*, THE NATION, June 10, 1991, at 766.

98. Richard Rayner, *The Warrior Besieged*, N.Y. TIMES MAG., June 22, 1997, at 25 (quoting a young male marine).

99. See *id.*; see also Editorial, *Gender Mending*, THE NEW REPUBLIC, Jan. 19, 1998, at 7; John Hillen, *Hollow to the Corps*, NAT. REV., Feb. 9, 1998, at 36; John Leo, *A Kinder, Gentler Army*, U.S. NEWS & WORLD REP., Aug. 11, 1997, at 14; Richard J. Newman, *Can Peacekeepers Make War?*, U.S. NEWS & WORLD REP., Jan. 19, 1998, at 38; Hanna Rosin, *Sleeping With the Enemy*, THE NEW REPUBLIC, June 23, 1997, at 19; Jackie Spinner, *The New Drill Sergeant*, WASH. POST MAG., Aug. 24, 1997, at W10, available in 1997 WL 12882819; Andrea Stone, *Army*

*War, and Military Culture*<sup>100</sup> is a participant and an influence in the feminization movement.

Morris attacks the central nervous system of the military. She wants to take *kill and maim* out of combat, and goes on the offensive by invoking what feminists consider the most heinous crime—rape—as the justification for her pacification sociology. Her survey indicates that in peacetime, military rape rates are lower than civilian; in times of combat, however, the military rate doubles the civilian rate. “Thus, in both the wartime and the peacetime contexts studied, a rape differential exists: The ratio of military rape rates to civilian rape rates is substantially larger than the ratio of military rates to civilian rates of other violent crimes.”<sup>101</sup>

Effective LPC scholarship demonizes—it uncovers and profiles a Liberal demon and then rips it apart. The demon is military culture—a demon synonymous with other evils like fraternities, street gangs, and sports teams.<sup>102</sup> The military culture encourages male bonding, imposes discipline, develops the warrior spirit, focuses on toughness, self sufficiency, and dominancy, and preaches a “kill the enemy” message creating a masculine culture with norms celebrated in combat tradition but conducive to rape. Masculinity is the evil spirit of the military culture: “In essence, normative standards of masculinity that emphasize aggressiveness, dominance, and independence, and that minimize sensitivity, gentleness, and other stereotypically feminine characteristics have been found to be associated with heightened propensity to commit rape.”<sup>103</sup>

Morris’s solution to the rape problem is to castrate the military culture by removing the testosterone from the masculine demons. Feminize the ranks by permitting females into all work stations, including combat, recruit more women, and fully integrate basic training. An enhanced female presence “would be inconsistent with a military culture in which women are viewed as the ‘other,’ primarily as sexual targets, and in which aggression is viewed as a sign of masculinity.”<sup>104</sup>

The ultimate goal is the decimation of what Morris calls the “masculinist”<sup>105</sup> attitude. Give compassion and understanding status as military norms. Replace macho posturing with a vision of the just warrior, “protecting democracy and the decent lives of decent people.”<sup>106</sup> Change the ideology from aggression and dominance—the kill mentality—to “idealism and moral conviction.”<sup>107</sup> The military should emulate “religious or-

*Cracking Down by Pumping Up Unfit Recruits*, USA TODAY, Oct. 20, 1997, at 14A; Mark Thompson, *Boot Camp Goes Soft*, TIME, August. 4, 1997, at 20.

100. Madeline Morris, *By Force of Arms: Rape, War, and Military Culture*, 45 DUKE L.J. 651 (1996).

101. *Id.* at 653.

102. Feminist ideology condemns the use of sports metaphors as exclusionary and a rejection of women’s experience. See Ann C. Scales, *Surviving Legal De-Education: An Outsider’s Guide*, 15 VT. L. REV. 139, 150 (1990).

103. Morris, *supra* note 100, at 701-02.

104. *Id.* at 733.

105. *Id.* at 747.

106. *Id.* at 753 (“Such visions of just warriors on an honorable mission can be mightily motivating.”).

107. *Id.*

ders, Communist Party cells, the French resistance underground, and even Alcoholics Anonymous.”<sup>108</sup>

If timing counted, *By Force of Arms* would be ranked number one. Its appearance coincided with the allegation of sexual misconduct at the Army’s Aberdeen Proving Grounds and helped to qualify Morris as an expert on military sex crimes.<sup>109</sup> The article was an immediate quick read for feminists and the military. As a public intellectual, she carried her campaign against masculinity to the media. Speaking of Aberdeen, Morris posited: “This is not some aberrant individual doing an isolated act . . . it’s part and parcel of the way the military has structured its views on . . . what it means to be a man.”<sup>110</sup> Then, in what must have been an annoying twist to the Colonel Blimps, Morris was invited into the military’s fort to serve as a consultant on gender issues to Togo West, the Secretary of the Army.

From then on Morris was operating in the center of a national controversy. At every level, the military was in chaos, adrift in downsizing, budget cuts, and trying to adjust to a post-cold war period.<sup>111</sup> They have the responsibility to police the world with a depleted corps that is forty percent less than it was seven years ago. “The U.S. now offers the world a grand strategy that is, in essence, a gigantic bluff.”<sup>112</sup> Critics argue that feminization contributes to the bluff effect. The pressure to satisfy quotas for an all-volunteer corp forces an increase in the number of female recruits. To attract women and reduce attrition, the training process has been softened. Recruits now wear sneakers instead of combat boots, gym shorts instead of fatigues, and are allowed to run around, not over, the obstacle (now called confidence) course.<sup>113</sup> Drill sergeants, now kinder and gentler, do not cuss or otherwise humiliate recruits.<sup>114</sup> Basic training is “more like summer camp.”<sup>115</sup> Hence, not only are the armed forces undermanned, but they are wimps who, by their own assessment, “don’t know how to fight.”<sup>116</sup>

For her demonization of the military culture, Morris became an icon to LPC and a pariah to militarists. Comparing her to Clausewitz for the bold audacity of her attack, the *Washington Times* editorialized that

108. *Id.*

109. See Blake Dickinson, *Sexual Misconduct Allegations Indict Military Culture*, *Prof. Says*, HERALD-SUN (Durham, N.C.), Nov. 14, 1996, at A5 (noting Morris’ extensive research in military sex crimes).

110. *Id.* (quoting Madeline Morris).

111. See Newman, *supra* note 99, at 39-40.

Throughout America’s armed forces, there is mounting evidence that conventional combat skills—and the warrior ethic that goes with them—are being eroded by a combination of downsizing, budget cuts, and widespread commitments to non-combat operations in Bosnia, the Middle East, and elsewhere. A December report by a Senate Budget Committee analyst cited “extremely serious Army-wide personnel and training (i.e., readiness) problems,” such as units half staffed in key positions like infantry and mechanics.

*Id.*

112. Hillen, *supra* note 99, at 36; see also Newman, *supra* note 99, at 39-40.

113. See Thompson, *supra* note 99, at 22.

114. Spinner, *supra* note 99, at W10.

115. Thompson, *supra* note 99, at 20; see also Andrea Stone, *Battle of the Sexes Invades Boot Camp*, USA TODAY, Sept. 15, 1997, at 17A.

116. Newman, *supra* note 99, at 40.

"her theories as to the causes of the 'rape differential' are outdone in eccentricity only by her remedies, which are downright bizarre."<sup>117</sup> Hanna Rosin, in the liberal *New Republic*, observed that "the military is not a faculty lounge" while wondering how the "U.S. wound up in the bra-burning territory."<sup>118</sup> Morris was accused of being one of the anti-military feminists who was diverting the services from war capacity to "bizarre policies,"<sup>119</sup> and her article represented "the logical, if lunatic, extrapolation of personnel and training policies with which the U.S. military has been trying to appease feminist demands."<sup>120</sup> The toughest counter came from Elaine Donnelly who cites Morris's lack of empirical evidence and concluded: "The entire article might be dismissed as inconsequential as well as fatuous, except that her ideological theories might become official policy through Secretary West . . . ." <sup>121</sup>

LPC scholarship seeks notoriety and *By Force of Arms* delivered like a Patsy Cline song in a Texas honkytonk. Morris was on the opposite end of the Nancy Kassebaum Baker committee's recommendation to segregate the sexes in basic training but supported by a Pentagon conclusion that gender integration fostered a positive attitude.<sup>122</sup> Attention shifted to Sara Lister, Assistant Secretary of the Army, who was quoted:

[T]he Marines are extremists. Wherever you have extremists . . . you've got some risks of total disconnection with society, and that's a little dangerous. I think the Army is much more connected to society than the Marines are . . . . The Marine Corps is—you know, they have all those checkerboard fancy uniforms and stuff. But the Army is sort of muddy boots on the ground.<sup>123</sup>

She proffered an apology that echoes *By Force of Arms* by putting the blame on culture: "[M]y point—ineptly put—was that all the services had different relationships with civilian society, based in part on their culture, the size of their force and their mission . . . ." <sup>124</sup>

Morris has helped to convert the word masculinity into an Orwellian Newspeak term connoting sexual predation. Supported by sex escapades in the ranks, she composed what Hanna Rosin calls the storyline: "[T]he entire military is an alien, retrograde institution, conspiring against feminist concerns."<sup>125</sup> She ambitiously seeks to redefine the most masculine paradigm—the warrior—into an engendered person who is compassionate, nurturing, just, and programmed to kill only "bad" opponents.

117. Editorial, *Ungendered Army*, WASH. TIMES, April 8, 1997, at A20.

118. Rosin, *supra* note 99, at 20.

119. Ivo Dawney, *Sex War Defeats US Forces Military Attacked for Being Too Male and Too Aggressive*, THE LONDON DAILY TELEGRAPH, May 25, 1997, at 28, available in WL 2313027.

120. Frank Gaffney, *U.S. Military Must Find Courage to Defeat Gender Politics*, DEF. NEWS, May 26, 1997, at 19.

121. Elaine Donnelly, *Social Fiction in the Ungendered Military*, WASH. TIMES, April 7, 1997, at A16.

122. See *Gender Mending*, *supra* note 99, at 7; see also Philip Shenon, *New Pentagon Report Urges More Integration of Sexes in Military*, N.Y. TIMES, Jan. 21, 1998, at A13.

123. Philip Shenon, *Army Official Creates Furor Calling Marines 'Extremists'*, N.Y. TIMES, Nov. 14, 1997, at A30.

124. *Id.*

125. Rosin, *supra* note 99, at 19.

*By Force of Arms* is number three for another reason—it does not deal with law, instead it is a story about the sociology and ideology of radical feminism. Rape is not analyzed as a legal problem but is presented as the inevitable consequence of a masculinist culture. She relies on the accepted LPC Newspeak social construct thesis to define the just warrior as a combination of Communist cell and Alcoholics Anonymous.<sup>126</sup> It was, as they used to say on the rifle range, “lock and load.” Morris did just that and threw a grenade into the citadel, akin to a headline announcing *Andrea Dworkin and Catharine Mackinnon Join the Army*.

#### D. Number Four

*The critical legal studies movement has undermined the central ideas of modern legal thought . . .*<sup>127</sup>

*The movement completely collapsed several years ago . . . CLS is dead as a doornail.*<sup>128</sup>

There was a time when the Crits were the lead players in the LPC movement. As refugees from the counterculture rebellion of the 1960s they introduced radical politics into what had been an insulated law academy. It was an elitist group teaching revolution at prestigious schools, affecting the proletariat look in class before getting in BMWs to drive home to enjoy a glass of wine and toast the struggle against hierarchy and privilege. The Dean of Harvard accused the CLS movement of engaging in a “ritual slaying of the elders.”<sup>129</sup> The Crits viewed law as an exercise in class, gender, and race oppression that hid behind false objectivity to maintain the status quo of patriarchy. They saw decisions, laws, and regulations as a form of indeterminate literature. To a Crit, indeterminacy means that there “are as many plausible readings of the United States Constitution as there are versions of *Hamlet*” . . .<sup>130</sup>

Written by Duncan Kennedy and Peter Gabel, *Roll Over Beethoven*<sup>131</sup> is an open window to CLS mentality. The authors are original Crits, part of the group that met in the summer of 1977 in Madison, Wisconsin to jump-start the movement.<sup>132</sup> Kennedy, revered among Crits as a “cross between Rasputin and Billy Graham”<sup>133</sup> and a self-described “existential-

126. Prompting this response from the Washington Times: “Presumably Miss Morris would be willing to crawl out into the night to cut throats with a fellow member of Alcoholics Anonymous.” Richard Grenier, *You and Debbie Go Into Combat*, WASH. TIMES, April 4, 1997, at A19.

127. Roberto M. Unger, *The Critical Legal Studies Movement*, 96 HARV. L. REV. 561, 563 (1983).

128. Hope Yen, *As HLS Mulls Its Mission, CLS Scholars Remain Quiet*, HARV. L. RECORD, Dec. 1, 1995, at 2.

129. Robert Clark, *In Critical Legal Studies, the West is the Adversary*, WALL ST. J., Feb. 23, 1989, at A18.

130. Sanford Levinson, *Law as Literature*, 60 TEX. L. REV. 373, 391 (1982).

131. Peter Gabel & Duncan Kennedy, *Roll Over Beethoven*, 36 STAN. L. REV. 1 (1984).

132. For accounts of early CLS see John H. Schlegel, *Notes Toward an Intimate, Opinionated and Affectionate History of the Conference on Critical Legal Studies*, 36 STAN. L. REV. 391 (1984); Mark Tushnet, *Critical Legal Studies: A Political History*, 100 YALE L.J. 1515 (1991).

133. Schlegel, *supra* note 132, at 392.

Marxist anarcho-syndicalist modernist,"<sup>134</sup> infuriated the liberals at Harvard by recommending that everyone—including janitors—be paid the same salary.<sup>135</sup> His co-author, Peter Gabel, may be less flamboyant but was equally dedicated to the revolution. His holy grail was the duplication of *Consciousness III* from Reich's *The Greening of America*<sup>136</sup> he says "I was much more sex, drugs, rock and roll, revolution, break through the facade of the system to get to immediate connection . . . ."<sup>137</sup> Their opaque styles personified the tensions that ultimately led to the demise of the movement.<sup>138</sup>

Here is a synopsis of the rap session they titled *Roll Over Beethoven*. They agree on the need for structural reformulation. Kennedy accuses Gabel of betraying the cause by seeking unity. No, Gabel wants unalienated relatedness. Kennedy rejects that explanation as "abstract bullshit," comparing abstract formulation to speculation about reincarnation. Kennedy notes that intersubjective zap is possible and accuses Gabel of talking "rationalist, formulae, positivist yuk." Gabel brags about using intersubjective zap countless times. Kennedy says that Gabel is guilty of explicitness and that body-snatchers are lurking, ready to turn explicitness into a cluster of pods. Gabel connects Kennedy's proposal that janitors teach at law schools with intersubjective zap.<sup>139</sup> Kennedy delivers a short lecture praising the interspace of artifacts, gestures, histrionics, soap opera, pop culture, and "all that kind of stuff." Gabel complains that intersubjective zap is falsified when it falls into the hands of body-snatchers. Kennedy posits that jokes can be used to protect the reality of the community. Gabel disagrees. When Gabel criticizes him for evading explicitness, Kennedy wants to know how to reconcile that criticism with his proposal that janitors receive equal pay and his no-hassle pass proposal. At this point, Gabel unloads on the fundamental contradiction, arguing that it is being appropriated by the body-snatching rights theorists who use it as a pod for self-serving objectives. Kennedy goes ballistic, saying he renounces the fundamental contradiction. "I recant it, and I also recant the whole idea of individualism and altruism . . . . I mean these things are absolutely classic examples of 'philosophical' abstractions which you can manipulate into little structures."<sup>140</sup> Kennedy threatens to recant his critique of rights noting that rights analysis is a way of imagining the world and we don't know much about the world. Kennedy

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134. Marc Granetz, *Duncan the Doughnut*, THE NEW REPUBLIC, Mar. 17, 1986, at 22. Of Kennedy, Calvin Trillin said: "Kennedy—who can turn out slightly antic left-wing slogans practically as a parlor trick, the way some people can recite the verses to old songs—has said, 'Resist at the bourgeois dinner party as well as on the assembly line.'" Calvin Trillin, *A Reporter at Large: Harvard Law*, NEW YORKER, Mar. 26, 1984, at 53.

135. DUNCAN KENNEDY, LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY 79 (1983). Kennedy's proposal irritated the janitors: "The only thing worse than scrubbing a toilet would be to have to pretend to be some fancy-pants, egghead college professor, usually some dweeby guy who could never do anything well but read books." Brian Timmons, *That's No Okie, That's My Torts Professor*, WALL ST. J., Apr. 3, 1990, at A20.

136. In *Consciousness III* "People all belong to the same family, whether they have met each other or not." CHARLES A. REICH, THE GREENING OF AMERICA 244 (1971).

137. Peter Gabel, *Alan Freeman*, 44 BUFF. L. REV. 615, 617 (1996).

138. See AUSTIN, *supra* note 8, at 83-111.

139. See Gabel & Kennedy, *supra* note 131, at 15-16.

140. *Id.*

goes into rights and hallucinations, telling Gabel that “we’re all hallucinating, all the time.” And on it goes, with Gabel noting near the end: “That I think is indeterminate.”<sup>141</sup> Kennedy wistfully concludes that the CLS movement is in a tough political war and “it looks like it’s trench warfare for decades.”<sup>142</sup>

To the Crits trashing is a ritual. It enables them to ridicule the Liberal’s commitment to analysis and objectivity. While much of Crit trashing<sup>143</sup> is sordid or silly, *Roll Over* is Crit chic. At the entry level it mocks the Liberal mentality. According to Kennedy:

People are what they are in the mode of not being what they are, so that if you want to understand what it is to be a person, you have to be open to experience the negation that’s at the very core of your own being, and of the being of everyone else.<sup>144</sup>

Gabel trashes the gang of Liberals and feminists who seek rights, labeling them hallucinates who co-opt themselves into “adopting the very consciousness they want to transform.”<sup>145</sup> When Kennedy protests, Gabel reminds him of another Crit target—the Supreme Court—whose opinions “generates a fantasy-based ideological framework about the nature of social reality.”<sup>146</sup>

The principal trashee is the state—“the state as a collective hallucination.”<sup>147</sup> Gabel and Duncan the Doughnut revisit *The Greening of America* to complain about the absence of reciprocity among people, the state as an aspect of unconnectedness, as an imaginary political community, composed of a “sequence of images forming a kind of dream-like narrative that mystifies and idealizes the painful reality of immediate social experience—the real experience corroded by alienation and mutual distance.”<sup>148</sup>

As trashing, *Roll Over* is a form of postmodern performance art—a blend of indeterminacy and chaos. It is a version of Karen Finley ranting and raging “about the evils of the day,”<sup>149</sup> an “extended exhibitionistic frenzy of victimization and self-pity.”<sup>150</sup> Like Finley, their work “is punctuated throughout with acts of self-sabotage.”<sup>151</sup> Categorizing their performance art depends on the reader’s deconstruction—my first impression was that the two Crits were acting out an outlaw role by metaphorically rubbing feces on the faces of the readers. After reflection, I concluded that *Roll Over* anticipated Live Painting, in which artists covered themselves with car paint and hang for hours on hooks, talking or star-

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141. *Id.* at 53.

142. *Id.* at 54.

143. See Kelman, *supra* note 19.

144. Gabel & Kennedy, *supra* note 131, at 17.

145. *Id.* at 26.

146. *Id.* at 27.

147. *Id.* at 28.

148. *Id.* at 35.

149. Raymond Sokolov, *Karen Finley Takes on the System*, WALL ST. J., July 24, 1992, at A8.

150. John Taylor, *Mope Art*, NEW YORK, Mar. 22, 1993, at 16.

151. Ben Brantley, *There’s Still No Vanilla In a Finley Encounter*, N.Y. TIMES, June 24, 1998, at E1.

ing at onlookers. The idea is to challenge the traditional view of art, which assumes the viewer can read any type of criticism into the work. Live Painting permits the artist to look critically at the (reader) viewer, even to harass him. "Words drifted out unconnected" [from a Live Painting at a New York exhibit]. "If you hooked them all together, they made their kind of sense. "It's all part of the piece, it's funny, and it's threatening."<sup>152</sup>

Crits carefully nurtured scorn for Liberal scholarship and the doctrinal style. Mimicking the Derridian deconstructionalists they produced incoherent, dense, and impenetrable scholarship. This is not the result of a lack of composition skills but instead a function of CLS strategy. The objective is the calculated use of a private Critspeak jargon to intimidate the Liberal community. They compound the problem for Liberals by giving code words like praxis double meanings. Gabel and Kennedy rely on Consciousness III metaphors like intersubjective zap, a term with psychedelic connotations which means "a vitalizing moment of energy (hence "zap") when the barriers between the self and the other are in some sense suddenly dissolved."<sup>153</sup> Body snatchers is another favorite; taken from the film *Invasion of the Body Snatchers* it refers to Liberals who appropriate Crit ideas, distorting them for their own devious purposes. "Like one of the pod-bodies in *Invasion of the Body Snatchers*, an appropriated phrase loses some of its original meaning and sense of historical contingency."<sup>154</sup> It was fun mocking the establishment while playing the role of the political revolutionary, bragging at the yearly conferences that "when they find out what we're doing, they're going to come after us with guns."<sup>155</sup>

#### E. Number Five

*Derek Bok was not pleased. So we went to meet with him. And he said, "What were you trying to do?" And I said: "We were trying to help you get this affirmative action thing up on the agenda for discussion." And he said: "Well, you don't have to blow me up." Kind of missed the whole point.*<sup>156</sup>

In *Faces at the Bottom of the Well*<sup>157</sup> Derrick Bell quotes an older civil rights worker in Mississippi who was asked what kept her going in dangerous times. She replied: "I lives to harass white folks."<sup>158</sup> And this is what Bell did in the allegorical *Final Report*,<sup>159</sup> harassing President

152. Guy Trebay, *Not So Still Life*, VILLAGE VOICE, Feb. 16, 1989, at 16.

153. Gabel & Kennedy, *supra* note 131, at 54.

154. *Id.* at 54-55.

155. Schlegel, *supra* note 132, at 403 (quoting Mark Tushnet).

156. Arthur D. Austin, *Narrative Writing as Legal Scholarship: An Interview with Derrick Bell*, IN BRIEF, Sept. 1992, at 6 (Case Western Reserve University School of Law Alumni Bull.).

157. DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL* (1992).

158. *Id.* at xii.

159. See Derrick Bell, *The Final Report: Harvard's Affirmative Action Allegory*, 87 MICH. L. REV. 2382 (1989).

Derek Bok of Harvard and the white male academy with a tough message.

In a shock allegory Bell leads with an “earth-shaking explosion” that kills the President of Harvard and every one of the Black professors and administrators employed by the school. Bok had convened a meeting to discuss complaints about Harvard’s moribund affirmative action program. Documents and tapes discovered in the rubble recorded a profound concern by Blacks over what they viewed as hiring tokenism and the rejection of nontraditional scholarship for promotion and tenure. “As a result, the selection process favors blacks who reject or minimize their blackness, exhibit little empathy for or interest in black students, and express views on racial issues that are far removed from positions held by most blacks . . . .”<sup>160</sup>

If Patricia Williams is the poet laureate of voice narrative, Derrick Bell is the movement’s godfather. By publishing *The Civil Rights Chronicles*<sup>161</sup> in the *Harvard Law Review* in 1985, Bell gave storytelling instant respectability.<sup>162</sup> In a narrative between the fictional civil rights activist Geneva Crenshaw and a friend (Bell) he laid out his thesis that when given a choice between redemption and racism the white culture inevitably opts for the latter. Bell is revered by the Critical Race people: “I have noticed in myself, for example, an immediate reaction of rage when someone tells me they did not like the *Civil Rights Chronicles*.”<sup>163</sup>

Bell is one of God’s litigators—a preacher—and the *Final Report* is in classic sermon style.<sup>164</sup> He opens with the fire and brimstone of a nuclear-like explosion to rivet the audience’s attention. Then comes the familiar revelation of sin and oppression: the white male Liberal majoritarians maintaining the corrupt status quo by resorting to false and self-serving hiring and promotion standards. In addition to the hegemony of white male satans, Bell targets Black co-conspirators who think white. On a tape recovered after the explosion we get a Randall Kennedy message of meritocratic elitism: “there are very few blacks out there qualified for professional teaching . . . .”<sup>165</sup> The professor, caught in the clutches of the white male Tyranny of Objectivity, pompously says to a

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160. *Id.* at 2388.

161. Derrick Bell, *The Supreme Court, 1984 Term - Foreward: The Civil Rights Chronicle*, 99 HARV. L. REV. 4 (1985).

162. Bell explained the motivation for the use of the narrative technique: “I wanted to do something significant about race, and it just seemed to me that a traditional doctrinal discussion of cases was not going to do it. The subject required a broader perspective.” Austin, *supra* note 156, at 3.

163. Mari Matsuda, *Affirmative Action and Legal Knowledge: Planting Seeds in Plowed-Up Ground*, 11 HARV. WOMEN’S L.J. 1, 10 (1988).

164. In *GOSPEL CHOIRS: PSALMS OF SURVIVAL FOR AN ALIEN LAND CALLED HOME* (1996), Bell uses a soundtrack of gospel lines to preface each chapter and then weaves the lines into the text by having the characters sing the song.

165. Bell, *supra* note 159, at 2390. In *Racial Critiques of Legal Academia*, 102 HARV. L. REV. 1745 (1989), Kennedy challenged Bell’s assumption on minority hiring, concluding that Bell had not met the burden of demonstrating the irrelevancy of prevailing majoritarian standards and defining a persuasive justification for new criteria. “It is self-defeating, however, to leave unexplored why it is that criteria that seem innocuous and relevant on their face have such disastrous consequences for minority candidates.” *Id.* at 1765.

colleague: "Ramona, protests are not appropriate for persons in an academic setting."<sup>166</sup>

What gives *Final Report* an edge over other narratives is its distinctive technique: a blend of allegory and real events. While published as an allegory it was in fact the actual document presented to Bok as a report on minority policy—a commingling of fact and fiction.<sup>167</sup> He blurs the line between fact and fiction with a hate speech letter from a Harvard graduate—then mentions in a footnote that a search of alumni records failed to turn up the graduate.<sup>168</sup> There is an additional layer of the real world in footnote references to various documents describing what Bell offers as proof of Harvard's resistance to minority hiring. Bell supplies a final layer of perspective with various memoranda explaining the purpose of the report, along with support and criticism.

After blowing Derek Bok into smithereens, Bell concludes with a letter to Catharine MacKinnon who, with an author's discretion, he installs as the new dean at Michigan. In accepting her offer to join the Michigan faculty, Bell lays some heavy trashing on Harvard's "Caucasian elitism."<sup>169</sup> While Michigan "has become a very exciting institution"<sup>170</sup> with a faculty composed of more than fifty percent minorities, Harvard will have none after Bell's departure.<sup>171</sup> When Michigan was confronted with a crisis,<sup>172</sup> they adopted nontraditional hiring criteria; Harvard did not—a failure Bell blames on Bok's treating his fictional tragedy as heresy.<sup>173</sup>

Bell is one of the more pessimistic storytellers. The dominant message in his sermons is that Black people will never achieve full equality. The *Final Report* introduced the crisis theme—nothing will change without an explosion. "Our report was intended to find contemporary relevance in the historic fact that major racial progress has always come in periods of great crisis . . ."<sup>174</sup> Even with a crisis, any gain will be modest. While the white system may make a concession, it will invariably turn out to be a trick to camouflage some new form of oppression.

Storytellers favor the use of strawmen characters to manipulate the narrative. In *The Civil Rights Chronicles* it was Bell as the narrator who played the role of an earnest mentee seeking wisdom from Geneva Crenshaw. In *Final Report* it is the Randall Kennedy clone as a strawman for

166. Bell, *supra* note 159, at 2390.

167. For a discussion of the novelist use of facts see Don DeLillo, *The Power of History*, N.Y. TIMES MAG., Sept. 7, 1997, at 60.

168. See Bell, *supra* note 159, at 2405 n.25.

169. Bell, *supra* note 159, at 2408.

170. *Id.*

171. When Bell exceeded the two-year absence limitation by not returning in protest of what he called a poor minority record, Harvard terminated his contract. See Christopher B. Daily, *Black Law Professor Fights Harvard*, WASH. POST, July 2, 1999, at A14; see also Mary Jordan, *Black Harvard Law Professor Files Discrimination Complaint Against School*, WASH. POST, Mar. 3, 1999, at A15.

172. An undercover investigation of three law schools revealed no correlation between a professor's law school grades and the quality of scholarship ten years after gaining tenure and that after ten years of tenure the faculty averaged less than six pages per year. See Bell, *supra* note 159, at 2409.

173. See *id.* at 2410.

174. *Id.* at 2399.

Blacks who deny their black authenticity, thereby subsidizing racial marginalization. Likewise, Bell is a genius in twisting oppositional criticism into evidence of racism. In a letter to the deans Bell summarizes Bok's review of criticism of the Report:<sup>175</sup> most of the faculty were "turned off," the use of a fictional tragedy was proof that "we were not serious," and many faculty "were angered that the report questioned [their] commitment to affirmative action."<sup>176</sup> This provides an opportunity for vigorous rebuttal and to emphasize the contrast between the serious effort by the Bell group to resolve an untenable injustice with the arrogant disdain of the Liberal Caucasian elitists.

"I have," Bell said in 1996, "managed a metamorphosis into one of the 'new, black, public intellectuals.'"<sup>177</sup> *Final Report* was a critical energizer in the metamorphosis. In the national media attention that the fictional killing of Bok received, Bell got the opportunity to exalt the virtues of storytelling. "It's a well-known African tradition to make a point using stories, and we hope it will prevent our report from being forgotten."<sup>178</sup> Transferring the storytelling fashion from the parochial confines of the academy to the public intellectual circuit was a significant boost for movement. In the 1990s the Black public intellectual movement surfaced as the dominant voice on race. People like Henry Louis Gates, Jr., Cornell West, Stephen Carter, and Randall Kennedy, used op-ed pieces, popular magazines, and TV, to build a broad audience base.<sup>179</sup> It is a form of scholarship with a social purpose. "[T]he new black intellectuals have achieved a level of recognition usually reserved for near-emeritus figures with numerous books behind them and a few years ahead."<sup>180</sup> Derrick Bell's emergence as a Black public intellectual injected storytelling into the national debate, sparking controversy and recognition. He opened the door for other storytellers such as Richard Delgado.

#### F. Number Six

*The debate is about voice . . . about making everybody speak one language. . . . The whole idea of the dominant legal discourse is to limit the range of what you can express, the range of argument you can make.*<sup>181</sup>

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175. On his relationship with Bok, Bell is quoted as saying: "Derek Bok hired me . . . and we have disappointed each other ever since. I have not been grateful, which is about the most serious thing a black person can do to a white person." Ken Emerson, *When Legal Titans Clash*, N.Y. TIMES MAG., April 22, 1990, at 26.

176. Bell, *supra* note 159, at 2399.

177. BELL, *supra* note 157, at 55.

178. *Harvard Blacks Make Unusual Plea on Hiring*, N.Y. TIMES, Oct. 30, 1988, at 27.

179. See Robert S. Boynton, *The New Intellectuals*, ATLANTIC MONTHLY, Mar. 1995, at 53; Sam Fulwood, III, *An Identity of Their Own for the First Time, a Generation of Black Scholars is Defining What it Means to be an American, And They are Asking Provocative Questions About Class, Gender and Race in the Post-Civil Rights Era*, L.A. TIMES MAG., April 9, 1995, at 10; Byron P. White & Ron Grossman, *Black Intelligentsia Invisible No More African-American Scholars On the New Media Darlings*, CHL TRIB., Nov. 25, 1995, at 1.

180. Boynton, *supra* note 179 at 56.

181. Jon Wiener, *Law Profs Fight the Power: Minority Legal Scholars*, THE NATION, Sept. 4, 1998, at 246.

This is Richard Delgado's complaint about the Empire, the confederation of Liberal white males who govern legal education. Delgado complains that since the inception of the Socratic Method and the scientific model of legal analysis the Empire has used doctrinal scholarship to privilege pseudo objectivity and censor dissent from minorities and women. As a counter, Delgado seeks to subvert the doctrinal tyranny with parables about minority experiences.

If Bell got a foot in the mainstream law review door with *Chronicles*, Delgado broke the door down by persuading the Michigan Law Review to publish a symposium on *Legal Storytelling*.<sup>182</sup> The symposium certified the narrative genre as a legitimate threat to the doctrinal method.<sup>183</sup> Williams introduced her now famous sausage machine metaphor,<sup>184</sup> Bell's *Final Report* appeared,<sup>185</sup> while Delgado concluded the trilogy with a series of parables on race exclusion in faculty hiring.<sup>186</sup> It was the opening salvo in the storytellers attack on the Empire.

Delgado fires a barrage of rockets through Rodrigo Crenshaw, a graduate of a foreign law school whose mother is Italian and father Black. He is also the brother of Bell's Geneva Crenshaw. Rodrigo appears in a series of parables to confront the old Professor (a wise Bell-like character) with a problem dealing with race or gender.<sup>187</sup> Delgado understands—and exploits—the full range of advocacy resources that the parable technique provides. As a fictional tale to illustrate a lesson,<sup>188</sup> it is an invitation for generalization, counterstory, and assumptions not subject to verification or analytical support. As a strawman, the old Professor's sole role is to praise Rodrigo for his sagacity and caution him for impetuosity.

Because it introduced and verified the talent of the parable-chronicle methodology for LPC legerdemain, *Rodrigo's Chronicle*,<sup>189</sup> Delgado's first chronicle, is Number Six. Ostensibly a review of Dinesh D'Souza's controversial *Illiberal Education*,<sup>190</sup> it is instead a counterstory about the corruption and demise of that which D'Souza praises—Western culture. Rodrigo is after Northern Europeans who “have accomplished little—except causing a significant number of deaths and the disruption of a number of more peaceful cultures, which they conquered, enslaved,

182. Symposium, *Legal Storytelling*, 87 MICH. L. REV. 2073 (1989).

183. See AUSTIN, *supra* note 8, at 129.

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

185. See Derrick Bell, *supra* note 159.

186. See Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411 (1989).

187. Delgado calls Rodrigo his “interlocutor and alterego.” Richard Delgado, *Rodrigo's Book of Manners: How to Conduct a Conversation on Race-Standing, Imperial Scholarship, and Beyond*, 86 GEO. L.J. 1051, 1051 n.1 (1998). On the other hand, “the Professor is an imaginary character and should not be confused with any person, living or dead.” *Id.* at 1052 n.2.

188. “Parable, a brief tale intended to be understood as an allegory illustrating some lesson or moral.” CHRIS BALDICK, *THE CONCISE OXFORD DICTIONARY OF LITERARY TERMS* 159 (1991). “Allegory, a story or visual image with a second distinct meaning partially hidden behind its literal or visible meaning.” *Id.* at 9.

189. Richard Delgado, *Rodrigo's Chronicle*, 101 YALE L.J. 1357 (1992).

190. DINESH D'SOUZA, *ILLIBERAL EDUCATION: THE POLITICS OF RACE AND SEX ON CAMPUS* (1991).

exterminated, or relocated on their way to empire.”<sup>191</sup> The old Professor is intrigued by Rodrigo’s earnest and shrewd retelling of history.

Rodrigo has made a career of making unpredictable and culturally sensitive assumptions and deductions, a habit he initiated in the first Chronicle. He starts with the proposition that the Europeans are responsible for developing linear thought, enabling them to industrialize and produce weapons which they used to dominate other cultures.<sup>192</sup> It is a linear thought system out of control, causing economic chaos and producing “a ruthless, restless culture” that “enslaved others, and removed the Indians.”<sup>193</sup> Worst of all, “Saxons developed the hundred-page linear, densely footnoted, impeccably crafted article—saying, in most cases, very little.”<sup>194</sup> While Rodrigo admits he cannot prove that linear thought people are genetically inferior he nevertheless concludes “they act like lemmings.”<sup>195</sup>

The plot has Rodrigo challenging the majoritarian cultural bias when he seeks admission to an American LL.M. program as a preface to seeking a teaching job. He indignantly rejects the credibility of the LSAT, arguing that it rationalizes a grading system that unfairly awards the dominant hegemony with “pervasive forms of cultural power.”<sup>196</sup> Even if he gets an LL.M. Rodrigo despairs of getting a job—Geneva has briefed him on Bell’s views on the dominant culture’s use of merit to exclude minorities and the tipping point phenomenon that puts a cap on a minority hiring.<sup>197</sup>

The story concludes with Rodrigo turning D’Souza’s argument that education is being subverted by Political Correctness on its head. Through greed, economic exploitation, and oppression the dominant culture is in irreversible decline. In their state of denial, Liberals strike out at the very victims of their oppression—as exemplified by D’Souza’s book. Rodrigo’s solution and revenge: to survive, the majoritarians must embrace the teaching of LPC. If they don’t, Rodrigo would speed things up with a dose of sabotage or terrorism.<sup>198</sup>

LPC endorses the politicization of footnotes to marginalize the privileged and to embellish the message.<sup>199</sup> No one does it more effectively than Delgado who frequently creates sub-plots in the barking at the bottom of the page. His favorite tactic is the after-thought technique that

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191. Delgado, *supra*, note 189, at 1369.

192. *See id.*

193. *Id.* at 1370.

194. *Id.* at 1373.

195. *Id.* “Lemming, A small arctic rodent, resembling a field mouse, about 6 inches long, with a short tail, prolific, and remarkable for its annual migration to the sea.” THE OXFORD UNIVERSAL DICTIONARY 1127 (3d ed. 1955).

196. Delgado, *supra* note 189, at 1360.

197. In the second of Bell’s Chronicles, Geneva is a law professor when the school received a substantial gift to subsidize the addition of minority faculty. When the minority faculty approached twenty-five percent, the Dean told Geneva that the “tipping point” had been reached and that “we want to retain our image as a white school . . . [A] law school of our caliber and tradition simply cannot look like a professional basketball team.” Bell, *supra* note 161, at 42. *See also* Derrick Bell, *Application of the “Tipping Point” Principle to Law Faculty Hiring Policies*, 10 NOVA L.J. 319 (1986).

198. *See* Delgado, *supra* note 189, at 1376.

199. *See* Arthur Austin, *Political Correctness is a Footnote*, 71 OR. L. REV. 543 (1992).

has the old Professor making silent side remarks to himself: "I was reminded," "I thought of," "I was thinking," or "perhaps Rodrigo was thinking," followed by praise of Critical Race ideology, condemnation of the dominant culture or a new story.<sup>200</sup> On occasion, he will gently question Rodrigo's judgment: "Only two weeks ago I had my car rebuilt by a mechanic who (I hope) was well versed in linear thought."<sup>201</sup>

In 1984 Delgado wrote about the *Imperial Scholar* as part of a group of liberal white male scholars who controlled civil rights scholarship by not citing the work of minorities while cross-citing each other.<sup>202</sup> Eight years later he revisited the *Imperial Scholar* and concluded that while minorities were publishing in the top journals, a new generation of "neo-imperialist scholars" had moved in, employing "an almost baroque variety of ways to minimize, marginalize, co-op, soften, miss the point of selectively ignore, or generally devalue the new insurgent writers."<sup>203</sup>

The *Imperial Scholar* characterization nurtures the outsider pose by charging the majoritarians with exclusion and footnote victimization. It also deflects attention from Delgado's own footnote mischief. He is a genius at self-citation to increase his citation index.<sup>204</sup> It is estimated that eight to ten percent of all citations are self-cites.<sup>205</sup> In the first *Chronicle* the self-cite percentage was twenty-four percent, by number ten it was forty-one percent,<sup>206</sup> by *Rodrigo's Final Chronicle* it was forty-five percent.<sup>207</sup> (In fact it was not the final story as he continues to churn *Chronicles* out.)<sup>208</sup> His search for self-citation is irrepressible; the text has the old Professor "reaching for a much-thumbed reprint," which is a Delgado article.<sup>209</sup> The *Chronicles* became a primary source for citation; when Rodrigo engages in CRT advocacy, the footnote reference is to Delgado rather than original sources.<sup>210</sup> Self-citation aside, he, like other voice storytellers, prefers CRT sources,<sup>211</sup> with his mentor Bell a favorite. (Bell is cited thirteen times in the first *Chronicle*.)

200. See, e.g., Delgado, *supra* note 189, at 1359 n.5.

201. *Id.* at 1370 n.53.

202. See Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 U. PA. L. REV. 561 (1984).

203. Richard Delgado *The Imperial Scholar Revisited: How to Marginalize Outsider Writing, Ten Years Later*, 140 U. PA. L. REV. 1349, 1362 (1992).

204. A citation index counts the frequency that an article is cited.

205. See Norman Kaplan, *The Norms of Citation Behavior: Prolegomena to the Footnote*, 16 AM. DOCUMENTATION 179, 180 (1965).

206. See Richard Delgado, *Rodrigo's Tenth Chronicle: Merit and Affirmative Action*, 83 GEO. L.J. 1711 (1995).

207. See Richard Delgado, *Rodrigo's Final Chronicle: Cultural Power, The Law Reviews, And the Attack on Narrative Jurisprudence*, 68 S. CAL. L. REV. 545 (1995).

208. Delgado is a relentlessly prolific scholar; during the years 1988-92 he was the most productive author in the ten to twenty most cited law reviews. James Lingren & Daniel Seltzer, *The Most Prolific Law Professor and Faculties*, 71 CHI.-KENT L. REV. 781, 807 (1996).

209. Delgado, *supra* note 189, at 1361 n.12.

210. For footnote gamesmanship see Arthur Austin, *Footnotes As Product Differentiation*, 40 VAND. L. REV. 1131 (1987); Arthur Austin, *Footnote Skulduggery and Other Bad Habits*, 44 U. MIAMI L. REV. 1009 (1990).

211. Delgado disputes the conclusion that "outsider scholars cite each other more often than they cite Whites." Richard Delgado, *The Colonial Scholar: Do Outsider Authors Replicate the Citation Practices of the Insiders, But in Reverse?*, 71 CHI.-KENT L. REV. 969, 973 (1996). In a survey of Outsider scholarship he counted 767 citations to white authors and 741 for authors of color (Blacks, 576; Latinos, 95; Asian Americans, 47, and Native Americans with 23). His

## G. Number Seven

*Satire is a sort of glass wherein beholders do generally discover everybody's face but their own . . .*<sup>212</sup>

The justifications for the Law and Literature movement are that good literature serves as reference for teaching writing skills and that works such as Charles Dickens's *Bleakhouse* tell us how society views law and lawyers.<sup>213</sup> To undermine the stability of interpretation, LPC pushed the law and literature field to the outer limits by introducing deconstruction.<sup>214</sup> Then came Crit Lit Chic—the use of fiction as a vehicle for trash-ing.

Robin West has mastered this genre; for example, she uses a Kafka short story about a hunger artist who charges admission for the public display of his starvation to condemn Richard Posner's economics. By starving himself to death the Hunger Artist becomes the “ultimate Posnerian entrepreneur”<sup>215</sup> whose world is based on consent, individualism, and autonomy. The story “depicts a perfectly functioning Posnerian commercial market that leaves all preferences satiated at every moment of autonomous choice.”<sup>216</sup> The dead white male, Franz Kafka, proves that a community that endorses the Posnerian ideal of individualism and refuses to intervene in societal disruptions is morally repugnant.<sup>217</sup> Be-

own figures refute Delgado's conclusion that CRT scholars do not rely “unduly on scholars of like color.” The paucity of Black law faculty—something that Bell and Delgado often point out—results in a very small pool of sources yet cites to CRT people almost equal white cites.

212. JONATHAN SWIFT, *Preface* to *BATTLE OF THE BOOKS* in *GULLIVER'S TRAVELS AND OTHER WRITINGS* 358 (Louis A. Landa ed., 1960) (n.d.).

213. See CHARLES DICKENS, *BLEAKHOUSE* 215 (Oxford 1948) (1853) (characterizing the false moral consciousness of lawyers by reference to “the system”).

214. See Arthur Austin, *A ~~Primer on Deconstruction's~~ “Rhapsody of Word-Plays,”* 71 N.C. L. REV. 201 (1992) (striking through in original title).

215. Robin 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, 393 (1985).

216. *Id.* at 394.

217. Posner's response: “It [*The Hunger Artist*] may be about many things. But only superficially is it about hunger, poverty, the pitfalls of entrepreneurship, and the fickleness of consumers.” RICHARD POSNER, *LAW AND LITERATURE: A MISUNDERSTOOD RELATION* 180-81 (1988).

There are numerous interpretations and none supports West. Tauber says that the story is a self-portrait of Kafka as a type of hunger artist who exists as an outcast in a world of changing intellectual fashions. HERBERT TAUBER, *FRANZ KAFKA: AN INTERPRETATION OF HIS WORKS* 192 (1948). As an outsider, like the hunger artist, the writer must deal with the crisis of change and fashion. “Kafka wanted to caricature himself and his own long persistence in crisis.” *Id.* To Kafka and the hunger artist, death was the final and inevitable state of true art. Charles Neider sees *The Hunger Artist* as a story about the artist with self-destructive impulses who “exploits spirit until spirit injures body.” CHARLES NEIDER, *THE FROZEN SEA: A STUDY OF FRANZ KAFKA* 82 (1948). To Politzer, *The Hunger Artist* raises a paradox about art and fault: who is at fault for an art (fasting) that is produced by a deficiency—the hunger artist “for not finding the right food” or the world “for not providing him with it.” “The question aims ultimately at the meaning of the role that the artist performs in any kind of human context.” HEINZ POLITZER, *FRANZ KAFKA, PARABLE AND PARADOX* 306 (1962). Margot Norris writes that *The Hunger Artist* belongs with the “art and asceticism theme” of Kafka's later works. MARGOT NORRIS, *Sadism and Masochism in “In the Penal Colony” and “A Hunger Artist”* in *READ KAFKA* 170 (Mark Anderson ed. 1989). Ostensibly the hunger artist seeks the asceticism of spirit over flesh, of human spirit over animalism. A tale of asceticism versus masochism, where, by starving himself to death, the hunger artist succumbs, with pleasure, to masochism. Kafka had admitted: “Yes,

cause Kafka's work emanates from an impenetrable underground of complex tensions he is an LPC favorite; his fiction can be deconstructed to support any bias. Anthony D'Amato is ranked seventh for ingeniously converting Kafka's short story *The Metamorphosis* into a satirical demonization of Richard Posner's economics.<sup>218</sup>

To LPC, Judge Posner personifies the Tyranny of Objectivity. His assumption that every problem and act—including sex and sadism—is accountable to the rules of economics is considered totalitarianistic. LPC rejects his definition of morality according to efficiency and the free market system. Posner is seen as the lead instigator of the Law and Economics movement which attacks the left's assumption of indeterminacy and relativity.<sup>219</sup> As "one of the intellectual phenomena of our age"<sup>220</sup> his prolific scholarship touches every institution, forcing LPC people to play catch-up. D'Amato relies on satire to convert Posner's success into pernicious mischief.

In *The Metamorphosis* Gregor Samsa is transformed into a bug during a troubled night. The disciplined mind of a law professor helps him adapt to a split life style as a man existing in the body of a thousand legged cockroach. "[H]e is a divided creature, split, a halfway creature, something that oscillates between animal and man, that could become completely animal or return to being man and does not have the strength for a complete metamorphosis."<sup>221</sup> His sister, his contact with the human world, ultimately rejects Gregor and after an angry confrontation with his father he dies of starvation.

Being morphed into a cockroach was a minor problem—the real problem was that Gregor had to deal with the hideous burden of being transformed into "an enormous Economic Analyst of Law."<sup>222</sup> From then on it was the nagging frustration of calculating the opportunity costs associated with getting out of bed (each moment he stayed in bed represented the consumption of money), trying to explain his utility function to his mother by drawing a supply and demand curve (who unsympathetically says: "But that isn't a curve. It's two straight lines like an X")<sup>223</sup> and the awareness that he had abandoned feelings and emotions. Gregor now knew that judges decide most cases according to "the inexorable iron laws of economics"<sup>224</sup> and those that do not follow the iron laws are wrong.

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torture is extremely important to me, I'm preoccupied with nothing but being tortured and torturing." *Id.* at 171. Pietro Citati confirms Kafka's masochism, noting: "His heroes die unjustly: suffocated by Oedipal love, drowned in the river, dead of inanition or by a knife through the heart." PIETRO CITATI, *KAFKA* 28 (1989).

218. See Anthony D'Amato, *As Gregor Samsa Awoke One Morning From Uneasy Dreams He Found Himself Transformed into an Economic Analyst of Law*, 83 NW. U. L. REV. 1012 (1989).

219. The law and economics movement has been described as "the most important thing in legal education since the birth of Harvard Law School." Paul Barrett, *A Movement Called "Law and Economics" Sways Legal Circles*, WALL ST. J., Aug. 4, 1986, at 1.

220. Jeremy Rabkin, *The Promethean Richard Posner*, AM. SPECTATOR, May 1996, at 64.

221. CITATI, *supra* note 217, at 64.

222. D'Amato, *supra* note 218, at 1012.

223. *Id.* at 1013.

224. *Id.*

Confined to his room due to the inability to resolve the opportunity cost conundrum, he survives by resorting to a rational barter strategy to haggle for meals with his sister who proves to be a tougher social Darwinist than Milton Friedman. “I will not,” she says, “be victimized any longer by your self-serving appeals to altruism within the family.”<sup>225</sup> His unit of exchange was a long treatise on the economic approach to the law of “. . . ,” with Gregor producing a new treatise daily on a new topic, starting with the law of usufructs and continuing through rape, incest, etc. It was an effective assembly-line method; Gregor substituted a new topic into the text without changing a single word. When the inevitable flow of criticism came, it produced a new market—writing replies. Gregor’s stock rebuttal was that his critics had not read or did not understand his work. “His tactics threw his critics into disarray, and they began to accuse him of inconsistency, irrelevance, incoherence, incompetence, and inhumanity. These charges had the unexpected effect of raising the visibility of Gregor’s writings, which now found their way into the most remote journals of the profession.”<sup>226</sup>

Northrop Frye wrote that two things are essential to satire: “wit or humor founded on fantasy or a sense of the grotesque or absurd, [and] an object of attack,”<sup>227</sup> D’Amato satisfies Frye’s criteria with a focused LPC slant. The use of a well known Kafka story as a lead in establishes a context of the bizarre and grotesque. There is no question about the objective—Law and Economics and Richard Posner. There is scorn and ridicule; feeling and emotion, the “soft” values, are metamorphized out of Posner/Gregor’s system. Posner/Gregor gleefully accepts a Faustian barter—he becomes a prolific and famous writer, eventually able to produce two treatises per day but it was writing without content, economic equation writing that describes a nonexistent world. “He was writing straight from the mind; even if the world outside his room had ceased to exist—and for all he knew it had—he would not have been obliged to revise a single word.”<sup>228</sup> Like the drones from the diabolical Chicago School of Economics, he utilized the principle of repetition to market his scholarship.<sup>229</sup> Poor Posner/Gregor’s soul was in the possession of the devil of The Tyranny of Objectivity.

After a conclusion in which Posner/Gregor is hauled off to court where he is confronted by himself as Judge (Posner thus meets himself) who warns: “God save this Honorable Court,”<sup>230</sup> the reader is given an addendum of heavy LPC. Gregor is officially unmasked as Posner while D’Amato details the criticisms of Law and Economics and ends with a plea that imitates the ubiquitous *Consciousness III*:

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225. *Id.* at 1015.

226. *Id.* at 1018.

227. NORTHROP FRYE, ANATOMY OF CRITICISM 224 (1971).

228. D’Amato, *supra* note 218, at 1019.

229. When the opposition is forced into expending time and research in rebutting the idea, they have been co-opted into broadcasting its thesis. Stigler says: “The new ideas will normally require much repetition, elaboration, and, desirably, controversy, for controversy is an attention getter and sometimes a thought getter.” GEORGE STIGLER, MEMOIRS OF AN UNREGULATED ECONOMIST 67 (1988).

230. D’Amato, *supra* note 218, at 1021.

[I]f only we realized that the “rule of law,” and the market, and prisons and police, and convention, and differences among persons in aptitude and character, and the bourgeois values, and prudence, and asking students questions in class, and the monuments of Western civilization (including that reactionary sexist work, the *Nicomachean Ethics*), and maturity and professionalism and expertise and respect and tradition, and, in just two words, institutions and constraints, or, in a single word, “liberalism,” were all just so much authoritarian *bullshit*—then we could get on with the task (and it’s a lot easier than you think) of building a warm, loving, caring, open, hopeful, hugging, unmediated, hierarchy-free, prelinguistic, emphatic, affective (but not sentimental—liberals are sentimental), happy, herbivorous, weaponless, whole-grain, solar-powered, polymorphously perverse, classless, Utopian society for the Whole Human Family.<sup>231</sup>

#### H. Number Eight

*It is hard to know how to evaluate this foray into new legal discourse.*<sup>232</sup>

Judge Harry Edwards condemns law schools for subsidizing the presence of “impractical scholars” who engage in irrelevant chatter and ignore their obligation to the audience of lawyers, judges, and legislators.<sup>233</sup> LPC responds by charging that doctrinal scholarship is infected with a Liberal white male bias that marginalizes minorities and feminists. Delgado argues that the establishment abhors narratives because they “jar, mock, or displace a tenet of the majoritarian faith.”<sup>234</sup> The dilemma for storytellers is that in escaping the restraints of the doctrinal style they must face up to the responsibility of voicing evaluative criteria for their methodology. To achieve parity they are obligated to compose criteria that shows the community how to make judgments on quality.

Evaluation capability is tested by Marie Ashe’s *Zig-Zag Stitching and the Seamless Web: Thoughts on “Reproduction” and the Law*.<sup>235</sup> It is a story of her “anger,” “humiliation,” “indignation,” “desperation,” “horror,” and “rage” at law and the legal regulation of birthing. The discourse “originates in men; it defines women with certainty; it attempts to mask the operations of power; it silences other discourse.”<sup>236</sup> The pleasant experiences of home birthing are vividly contrasted with the agonies of the hospital treatment: “He slit my vagina. Then he backed off.”<sup>237</sup> “I feel

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231. Anthony D’Amato, *Gregor Samas Replies*, 83 NW. U. L. REV. 1022, 1025 (1989).

232. Kathryn Abrams, *Hearing the Call of Stories*, 79 CAL. L. REV. 971, 1009 (1991).

233. Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 35-36 (1992); see also Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession: A Postscript*, 91 MICH. L. REV. 2191 (1993).

234. Richard Delgado, *On Telling Stories in School: A Reply to Farber and Sherry*, 46 VAND. L. REV. 665, 670 (1993).

235. Marie Ashe, *Zig-Zag Stitching and the Seamless Web: Thoughts on “Reproduction” and the Law*, 13 NOVAL. REV. 355 (1989).

236. *Id.* at 358.

237. *Id.* at 360.

they are trying to kill me . . . . This pain destroys me.”<sup>238</sup> “He raped me.”<sup>239</sup> Ashe describes other agonies: the death of her friend at age 34 from cancer, the death of her father, a prosecutor insults her by addressing her as Mrs. rather than Ms. as requested, and the remorse from purposely drowning five pups: “I have not forgotten the weight of those small, wet, stiffened forms in my hands.”<sup>240</sup>

The story seems to be an effort to dramatize the ambiguity and pervasiveness of the regulation of abortion and birthing. The harmful consequences come from male abstractionism that fails to account for the female experience. Ashe proposes a feminist critique: “It seems to me that the departure point for such exploration must be women’s own accounts of our experiences, uttered with a commitment of faithfulness to the truths of female bodies suppressed in the dominant discourse.”<sup>241</sup> But beyond these observations and a call for a discourse, *Zig-Zag* is not an easy read.

To the doctrinalist, *Zig-Zag* reads like the machine gun babble out of *Bridget Jones’s Diary*<sup>242</sup> or like Molly Bloom’s unpunctuated stream of consciousness monologue in *Ulysses*.<sup>243</sup> Ashe rejects structure, plot, and closure as she throws out her innermost musings, relying on emotional outbursts to carry her story. The problem for the doctrinalist is that except for opaque impressionistic generalizations on the trauma of birthing we aren’t sure of what the story is—or if there is a story. With these barriers, an observer cannot make a judgment on the primary doctrinal evaluative criterion of: “Does this scholarship increase human knowledge, and if so, by how much?”<sup>244</sup>

This is the reaction that LPC storytellers expect—and seek. It enables them to carry out a strategy of challenging doctrinal criteria as exclusionary to minority work in order to protect the *status quo* of a biased system. “Majoritarian tools of analysis, themselves only stories, inevitably will pronounce outsider versions lacking in typicality, rigor, generalizability, and truth.”<sup>245</sup> Being excluded justifies a declaration of independence; LPC storywriters have created a new paradigm of legal scholarship and as creators have exclusive authority over evaluative criteria.<sup>246</sup>

LPC evaluation of narrative is guided by the subjectivism of the self. The story must incorporate LPC perspectives, advance the interests of the oppressed community, and validate the aspirations of the marginal-

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238. *Id.* at 368.

239. *Id.* at 370.

240. *Id.* at 373.

241. *Id.* at 375.

242. See Sarah Van Boven, *The Bridget Invasion: A London Diary Hits Home*, NEWSWEEK, May 4, 1998, at 82 (reviewing HELEN FIELDING, *BRIDGET JONES’S DIARY* (1997)) available in 1998 WL 9578553.

243. JAMES JOYCE, *ULYSSES* (1914).

244. Stephen L. Carter, *Academic Tenure and “White Male” Standards: Some Lessons from the Patent Law*, 100 YALE L.J. 2065, 2080 (1991).

245. Richard Delgado, *supra* note 234, at 675.

246. Speaking of the need for storytelling criteria, Coombs says: “They are also politically valuable to outsider scholars to insulate our work from the imposition of inappropriate criteria developed by and for other scholarly communities, such as traditional legal scholarship.” Mary I. Coombs, *Outsider Scholarship: The Law Review Stories*, 63 U. COLO. L. REV. 683, 703 (1992).

ized. Standards are derived from the discourse of members of the relevant community—icon storytellers like Bell, Williams, and Delgado. Truth, the ultimate goal of scholarship, has been redefined to respond to the essentialism of the marginalized. The new definition does not refer to universal truth—objective truth—but refers to a relative truth that is “true to the vision of those for whom the work purports to speak,” and “presented in good faith and . . . as honest as the author can make [it].”<sup>247</sup> Evaluation is an effort in deconstruction that enables the reader to assume authority over the destiny of the text. Moreover, LPC’s assumption of speaking in a unique voice that restricts comprehension and peer review to the jurisdiction of the storytelling community assures a favorable review,<sup>248</sup> enabling *Zig-Zag* to achieve equal status with articles by Lawrence Tribe or Richard Posner.

While *Zig-Zag* is a challenge to the doctrinalist,<sup>249</sup> Kathryn Abrams, as a member of the relevant community, is able to parse its meaning. She begins by praising Ashe’s narratives for their “pungency, intimacy, and dominance over the landscape of her article.”<sup>250</sup> While conceding that reading it “can be a jarring experience,”<sup>251</sup> Abrams detects an effort by Ashe to use the painful experiences to introduce a feminist discourse on birthing in response to the male mainstream’s failure to tune into female narratives. Yet Abrams acknowledges the difficulty of understanding Ashe’s cryptic style and doubts whether she speaks for all women. Nevertheless, Abrams recognizes several possible interpretations: first, “a kind of radical subjectivity that maps one set of individual experiences directly into a legal rule”<sup>252</sup> that rejects any medical—legal regulation of childbirth. Or, alternatively, Ashe may be leaving open the possibility of diversity that “permits her to choose some voices over others.”<sup>253</sup>

Abrams allows that Ashe’s vague and opaque narrative builds resonance for an LPC audience. Although she had to read the story three times to make a tentative interpretation, Abrams nevertheless admired and learned from “the uncompromising approach to critique that led Marie Ashe to frame her argument in such relentlessly concrete and nonlinear terms.”<sup>254</sup> While dissenting from Ashe’s methodological choice, Abrams does not dispute the academic credibility and legitimacy

247. *Id.* at 714.

248. See AUSTIN, *supra* note 8, at 170-73. Storytellers vigorously defend their turf. Responding to criticism of his narratives, Richard Delgado accused the writer of “coming close to replicating the sin of the slave master.” Richard Delgado, *Coughlin’s Complaint: How to Disparage Outsider Writing, One Year Later*, 82 VA. L. REV. 95, 107 (1996). In reacting to Richard Posner, Jerome Culp wrote:

To me, this ‘real’ Judge Posner, however, is no different than the white slave-owners in the antebellum South who were kind to their slaves (some of the males genuinely loved and indirectly married black female slaves) or the white southerner who is particularly kind to “Uncle Joe” or “Aunt Susie” or the white northerner who patronizes her black friends.

Jerome McCristal Culp, Jr., *supra* note 22, at 1113.

249. See FARBER & SHERRY, *supra* note 11, at 84-85.

250. Abrams, *supra* note 232, at 1006.

251. *Id.* at 1007.

252. *Id.* at 1011.

253. *Id.* at 1012.

254. *Id.* at 1040.

of a narrative that forces the reader to respond to a story in its “unmediated form.”<sup>255</sup> If nothing else, it is an opportunity for each reader to deconstruct *Zig-Zag* to uncover a personal meaning.

### I. Number Nine

*Does adolescent and post-adolescent promiscuity make me exceptional, and therefore—again—marginal (You’ve got to be kidding.) A better question: Is it worth it? I wonder if it is possible to explain—at all—to men who remember their own sexual adolescence and initiation as one of continual rejections from women, that other men—the ones who scored—got it more often than not by overt intimidation. That they accomplished this great triumph by refusing to even see the girl’s subjectivity, much less give a damn for her welfare, by making their profound lack of concern manifest, and then by exploiting her resulting (fully justified) perception of his dangerousness.*<sup>256</sup>

Robin West is the most fearless member of the LPC collective, taking on Richard Posner and the Chicago Law and Economics people,<sup>257</sup> dueling other feminists,<sup>258</sup> extolling the virtues of the literary woman,<sup>259</sup> and, as the above quote acknowledges, she even memorializes her own sexual promiscuity. Although several of her articles are serious prospects for the Top Ten, (most notably the piece attacking Posner’s economics)<sup>260</sup> her most irrepressible and eccentric piece is a seven page deconstruction of Duncan Kennedy’s views on Crit sexuality published in the Wisconsin Women’s Law Journal when she was an assistant professor.<sup>261</sup> West cites Kennedy’s state of the movement comments as evidence that white male Crits systematically oppress and disempower Fem-Crits.<sup>262</sup>

To West, the problem starts with the institutionalization of words which enables CLS to compose verbal constructs to mask hierarchy. On the assumption that deconstruction is a tactic that favors the marginalized disempowered as a counter to the dominant verbal constructs of the empowered, she turns it on CLS and Kennedy. “We must understand what men with power within CLS are doing with words and to women—and how they use words to mask what it is they do.”<sup>263</sup> The Crit word façade begins to crack like Dorian Gray’s portrait when Kennedy makes the mistake of admitting that Fem-Crits “face a very difficult problem” dealing with Crits: the “internal challenge” of dealing with op-

255. “By demonstrating, rather than explaining, the new legal discourse she proposes, Ashe demands that readers confront it in unmediated form.” *Id.* at 1045 n.236.

256. West, *supra* note 17, at 101.

257. See Robin 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).

258. See Robin West, *Jurisprudence and Gender*, 55 U. CHI. L. REV. 1 (1988).

259. See Robin West, *Economic Man and Literary Woman: One Contrast*, 39 MERCER L. REV. 867 (1988).

260. See *supra* notes 257-59 and accompanying text.

261. See Robin West, *Deconstructing the CLS—Fem Split*, 2 WIS. WOMEN’S L.J. 85 (1986).

262. See Duncan Kennedy, *Psycho-Social CLS: A Comment on the Cardozo Symposium*, 6 CARDOZO L. REV. 1013 (1985).

263. West, *supra* note 261, at 85.

pression and the temptation of sexual desire.<sup>264</sup> The result is “a feminist taboo on seductive self-presentation and on competition with other women.” West’s deconstruction starts with Kennedy’s explicit vision of heterosexual desire. Kennedy states:

First, there is desire—*between* men and women and also between men and between women . . . .

Second, there is the historical fact of the oppression of women by men . . . . Oppression on the basis of gender is the actual context within which cls came into being—“its no accident that the mentors are men”—and cls has never been a counter-sphere within which it was absent . . . .

. . . .

[T]he internal structure of the conference is unmistakably reflective of the larger patriarchy. Men have much more power than women . . . .

..<sup>265</sup>

Taking the perspective of a disempowered marginalized feminist deconstructionist, West joins the first two claims to unmask Kennedy’s vision of sexual desire: powerful and privileged white male Crits desire disempowered Fem-Crits while oppressed Fem-Crits sexually desire powerful Crits.<sup>266</sup> The key word is “between” (emphasized above) which indicates sexual desire is “reciprocal and symmetrical” even though the hierarchical relationship between Crit and Fem-Crit is asymmetrical. From the sequence of the first claim that desire is natural and the second claim of the existence of gender oppression in CLS, West offers a deconstructive summary of Kennedy’s argument:

[Desire] is as *good* as it is natural and can lead to good things. It can, for example, free what the mentors have to give, and at least on occasion it might lead to equality and love. [Nevertheless,] like all taboos, the feminist political taboo against expressing natural sexual desire, while understandable, is unfortunate—it leads to ‘rough sledding.’ Kennedy complains it inhibits the mentor; and it prevents the mentee from entering the mentor’s universe and from getting all the mentor has to give.<sup>267</sup>

West used a deconstruction performance to show that a CLS legend who professes to champion community over individualism, altruism over capitalism, and who recants the Liberal white male hegemony, harbors anti-feminist views. It gets worse; Kennedy preaches a sermon that celebrates empowered institutions—marriage, family, law, and the

264. Kennedy, *supra* note 262, at 1021.

It may be tempting to give up, and settle for seducing the men, by treating them as “honorary women” and appealing to the competitive desire they feel for women, into alliance against the outside world. This impulse is likely born *both* of intelligent instrumental politics, and of politically threatening impulses: desire for men, the urge to submit and recreate patriarchy, with all its comforts for the oppressed, within an organization supposedly devoted to overcoming it.

*Id.*

265. *Id.* at 1020 (emphasis added).

266. See West, *supra* note 261, at 87.

267. *Id.* at 88.

popular media—who collectively are responsible for a laundry list of anti-feminist evils, *e.g.* the refusal to acknowledge marital rape as rape, to recognize workplace sexual harassment, that teenage pregnancy is the result of teenage male coercion, that pornography causes no harm, etc.<sup>268</sup>

Context renders West's fearlessness even more impressive. In 1986 CLS was the leading left radical movement in legal education and its leader,<sup>269</sup> Duncan Kennedy, was making headlines terrorizing Harvard Law School.<sup>270</sup> Along comes a lowly assistant professor from a second tier law school excoriating him for a "dangerously anti-feminist interpretation of women's behavior,"<sup>271</sup> telling him that "he doesn't get it,"<sup>272</sup> while accusing him of indulging in "self-pity."<sup>273</sup> Even more remarkable is the clairvoyance of West's warning that if CLS did not change its attitude, feminists should leave the movement.<sup>274</sup> CLS ignored her and the split widened with the feminists expanding their influence to become the dominant anti-Liberal movement in legal education, ultimately relegating CLS to the scrapeheap, and, as Kennedy admitted, "dead as a door-nail."<sup>275</sup>

West adheres to the LPC contradiction that deconstruction, which repudiates *any* fixed meaning, can nevertheless be warped to immutably define the meaning of the political opposition's language.<sup>276</sup> She summarizes:

The commitment to deconstruction, if its dictates are consistently followed, should make CLS members willing, even if unhappy, listeners of feminist claims. Deconstruction commits the theorist to at least the coherency of the claim that what a culture or institution has defined as natural is in fact a social, cultural or institutional imperative. The core radical-feminist claim that "heterosexuality is compulsory"—a socially rather than naturally imposed imperative—badly needs the deconstructionist's commitment for its minimal coherency.<sup>277</sup>

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268. *See id.* at 89. "Eroticization of hierarchical, dominating relationships is not the route to 'equality' and 'love,' it is the route to unequal marriages, low female self-esteem, boredom, inactivity, unemployment and a devastating waste of female talent." *Id.*

269. *See* Schlegal, *supra* note 132.

270. *See* Granetz, *supra* note 134.

271. West, *supra* note 261, at 86.

272. *Id.* at 90.

273. *Id.* at 91.

274. "Second, unless they do so [change], CLS is not a congenial atmosphere for feminist work, nor is it a healthy environment for women, and women should therefore get out." *Id.*

275. Yen, *supra* note 128. The Crits also rejected the efforts of the Critical Race movement's campaign for rights and practical remedies. AUSTIN, *supra* note 8, at 92-93.

276. AUSTIN, *supra* note 8, at 101.

Very little, if any, scholarship incorporates the Derridaian deconstruction performance method. CLS people restrict their efforts to a two-step process: First, identify the dominant privileged interpretation and flush out the marginalized counter meaning, then rationalize the social and political benefits and superiority of the marginal position while trashing the oppressive effects of the privileged meaning. This is an abridged application of deconstruction that adds nothing other than a rationalization for advocacy scholarship.

*Id.*

277. West, *supra* note 261, at 91.

Since deconstruction assumes, "an element of temporality in language" and that "a word means something different each time it is used,"<sup>278</sup> there can never be, by definition, coherency nor is there ever a commitment to coherency. It is, however, the custom of LPC to selectively ignore the indeterminacy of deconstruction when it suits the argument.

### J. Number Ten

*Scholars generally have a stake in their own norms or methods; they will tend to conclude that a work with different ones should not be persuasive to a rational decisionmaker, or would not be applicable by other scholars.*<sup>279</sup>

On occasion LPC scholars prefer to unleash new normative judgments within the doctrinal style; the goal is to make sure the message is comprehensible and bursts on the reader like a slap on the face. Speaking from the mainstream perspective, Professor Rubin notes that LPC work can become an issue in deviant scholarship, posing the questions: how should the community deal with method or substance that is deviant from the mores of traditional scholarship, "[w]ould a rational decisionmaker be persuaded," and "Does the work contain an insight that scholars could apply?"<sup>280</sup> Anything that receives a negative response to these questions is too extreme or dissonant to constitute scholarship.<sup>281</sup>

Kennedy and Gabel playing intersubjective zap in *Roll Over Beethoven* while mocking the establishment is good LPC work but probably too deviant and extreme under Rubin's analysis. Other than mocking doctrinal methodology it has no message and addresses a small insular Crit in-group.<sup>282</sup> Likewise Mark Tushnet, a prolific writer and co-founder of CLS,<sup>283</sup> produced LPC shock with an audacious review of *Strange Justice: The Selling of Clarence Thomas*.<sup>284</sup> In Tushnet's view the book establishes "beyond a reasonable doubt—that Clarence Thomas lied during his confirmation hearings."<sup>285</sup> Although he concedes that impeachment after confirmation is highly unlikely, Tushnet wants to make Thomas pay for his perjury. How will Thomas pay? When the Court hands down a 5-4 decision with Justice Thomas part of the majority, citizens should simply ignore the decision as "law at all." "Although the prospect of

278. LEHMAN, *supra* note 30, at 95.

279. Edward L. Rubin, *On Beyond Truth: A Theory for Evaluating Legal Scholarship*, 80 CALIF. L. REV. 889, 958 (1992).

280. *Id.* at 951.

281. Rubin describes Catharine Mackinnon's views on the sexual relationship between men and women as so deviant "that no decision-maker would be persuaded by her and that no scholar who did not already agree with her substantive positions would find her insights useful." *Id.* at 959. He contrasts this with her work on sexual harassment, which "seem more persuasive." *Id.*

282. "It is true," admits Kelman, "that our Utopian 'work' has been strictly anti or nonintellectual." Kelman, *supra* note 19, at 336.

283. See Tushnet, *supra* note 132.

284. JANE MAYER & JILL ABRAMSON, *STRANGE JUSTICE: THE SELLING OF CLARENCE THOMAS* (1994).

285. Mark V. Tushnet, *Clarence Thomas: The Constitutional Problems*, 63 GEO. WASH. L. REV. 466, 466 (1995).

widespread disregard of such decisions is slight, at least it is a remedy in the hands of citizens themselves, rather than their representatives.”<sup>286</sup>

It was the type of LPC message that attracts media attention, providing Tushnet an opportunity to proudly announce that he is “among the more radical constitutional law professors’ in the country.”<sup>287</sup> When questioned about the article, one of the book’s co-authors replied that its conclusions were “poppycock” and “silly.”<sup>288</sup> Tushnet’s attention getting flippancy is a manifestation of the pull of the public intellectual circuit. In today’s pop media culture controversy is the vehicle to recognition; Tushnet got his fifteen minutes, then faded back to the politics of academe. On the other hand, the Number Ten selection—Paul Butler’s *Racially Based Jury Nullification: Black Power in the Criminal Justice System*<sup>289</sup>—is a blue-print for the aspiring LPC public intellectual.

Jury nullification, in which a juror believes the accused is guilty but nevertheless votes to acquit, was a hot issue when Butler’s article came out. A string of controversial verdicts—Bernhard Goetz, William Kennedy Smith, Lorena Bobbitt, Rodney King, the Menendez brothers, and O.J. Simpson—produced a new group of talking heads who now form a permanent media circus and who, according to the president of the American Bar Association, “pimp their dubious talents and hustle the public . . . .”<sup>290</sup> One of the hot topics for the pimps was jury nullification by juries who seemingly acquitted on the basis of one of the abuse defenses—a result generally condemned by the commentators as a threat to the criminal justice system.<sup>291</sup>

Butler carried the debate to a new level by arguing that not only should nullification be tolerated but it is the “moral responsibility of black jurors to emancipate some guilty black outlaws.”<sup>292</sup> It was a reprise of Black Panther Don Cox who announced at a Lenny Bernstein party in the 1970s: “We want all black men who are in jail to be set free.”<sup>293</sup> Butler trumps Cox; his “goal is the subversion of American criminal justice . . . . Through jury nullification, I want to dismantle the master’s house with the master’s tools.”<sup>294</sup>

All race based LPC scholarship assumes the presence of white supremacy. Butler agrees, tying capitalism into a system that excludes Blacks from educational and employment opportunities, and forces young Blacks into crime—including Black on Black crime.<sup>295</sup> The result is

286. *Id.* at 477-78.

287. Tony Mauro, *Should We Just Ignore Thomas?*, LEGAL TIMES, Dec. 4, 1995, at 11.

288. *Id.*

289. Paul Butler, *Racially Based Jury Nullification: Black Power in the Criminal Justice System*, 105 YALE L.J. 677 (1995).

290. Gail D. Cox, *Bushnell: O.J. Commentators Are ‘2 \$ Hookers’* NAT’L L.J., June 12, 1995, at A4.

291. See generally ALAN M. DERSHOWITZ, *THE ABUSE EXCUSE* (1994); SUSAN ESTRICH, *GETTING AWAY WITH MURDER* (1998).

292. Butler, *supra* note 289, at 679.

293. “We want them to be set free because they have not had fair trials. We’ve been tried by predominantly middle-class, all-white juries . . . .” TOM WOLFE, *RADICAL CHIC AND MAU-MAUING THE FLAK CATCHES* 20 (1970).

294. Butler, *supra* note 289, at 680.

295. *Id.* at 693-94. Butlet comments:

the incarceration of an inordinate number of Black youths evoking a comparison to a police state.<sup>296</sup> The other prong of the white supremacy assumption is that in a race warped democracy which subordinates Blacks the majority rule "is, morally speaking, illegitimate."<sup>297</sup> Under these conditions nullification is a form of self-help that gives Blacks power to mete out justice in a way the system does not.

Under Butler's nullification program, jurors were left to intuition: when a poor woman steals from Tiffany's, a juror "might" nullify, but not when she robs a next door neighbor.<sup>298</sup> While ghetto drug dealers should normally be convicted, jurors should retain discretion to nullify if they believe the dealer would go straight upon release.<sup>299</sup> Jurors who nullify "might be morally obligated to participate in black self-help programs, such as those proposed by Louis Farrakhan."<sup>300</sup> Given gross economic inequalities, Butler "encourages" nullification of theft from "the very wealthy".<sup>301</sup>

Unlike Tushnet who was playing a Crit roll-over Beethoven game, Butler responded to a festering problem with an incendiary solution. His proposal got legs from the concern that race nullification was already prevalent and posed a serious threat to the criminal justice system. What he did was to codify and sanction what had been recognized as a power, but not a right.<sup>302</sup> Moreover, it didn't hurt his cause that he was speaking in the wake of the most racially divisive trial in our history. Within a year of publication, Butler was both famous and notorious. The article was abridged in *Harper's*<sup>303</sup> while he appeared on *60 Minutes*, Jesse Jackson's *Equal Time*, *Geraldo*, and duked it out with two legacies from the O.J. trial, Roger Cossack and Greta Van Susteren on *Burden of Proof*.

Along with recognition came a loud chorus of criticism. There was the general concern that nullification would lead to "anarchy,"<sup>304</sup> while the *New York Times* called his article "troubling." "The criminal justice system is certainly imperfect, but this sort of wrecking is not the way to fix it."<sup>305</sup> Randall Kennedy wrote that the Article "gives voice to erroneous claims, dubious calculations, and destructive sentiments."<sup>306</sup>

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Some property crimes committed by blacks may be understood as an inevitable result of the tension between the dominant societal message equating possession of material resources with success and happiness and the power of white supremacy to prevent most African-Americans from acquiring "enough" of those resources in a legal manner.

*Id.*

296. *See id.* at 691.

297. *Id.* at 710.

298. *See id.* at 715.

299. *See id.* at 719.

300. *Id.* at 717, n.214.

301. *Id.* at 722.

302. *See* U.S. v. Karley, 838 F.2d 932, 938 (7th Cir. 1988).

303. Paul Butler, *Black Jurors: Right to Acquit? Jury Nullification*, HARPER'S MAG., Dec., 1995, at 11.

304. Greta Van Susteren, *Burden of Proof*, (CNN television broadcast, Jan. 15, 1996) (Transcript No. 76 on file with author).

305. Editorial, *When the Jurors Ignore the Law*, N.Y. TIMES, May 27, 1997, at A14.

306. RANDALL KENNEDY, RACE, CRIME, AND THE LAW 299 (1997).

The doctrinalist who adheres to the Rubin model would accuse Butler of being irrational, impractical, relying on false assumptions and hence too dissonant from acceptable scholarship.<sup>307</sup> Drug crimes are not victimless and putting dealers back on the streets exacerbates the hard life for people in the inner city.<sup>308</sup> He ignores the negative effects on enforcement and prosecution while failing to consider the likely legislative response: eliminating unanimous verdicts.<sup>309</sup> The plan of implementation is fuzzy aspiration; jurors would have to separate rehabilitatable pushers from the incorrigible, identify those defendants who stole to support a habit, and determine whether the victim of the thief was poor, middle-class or wealthy. The final criticism is fatal: the relevant factual information necessary for jurors to make a relatively accurate decision on these fine points is inadmissible.<sup>310</sup> Subsequent to the publication of his article, the Second Circuit summarized the mainstream view: “We categorically reject the idea that, in a society committed to the rule of law, jury nullification is desirable or that courts may permit it to occur when it is within their authority to prevent.”<sup>311</sup>

From the majoritarian perspective these are valid and fatal criticisms, but are irrelevant to race LPC. Butler, like Derrick Bell in *The Slave Traders*,<sup>312</sup> is preaching a parable: If Black people fail to take drastic self-help measures to protect their life blood of young men, the capitalist regime will continue to exploit their labor and devalue their lives. “When white folks say ‘justice,’ they mean ‘just us.’”<sup>313</sup> Like Bell, Butler is saying

307. Andrew D. Leipold, *The Dangers of Race-Based Jury Nullification: A Response to Professor Butler*, 44 UCLA L. REV. 109 (1996).

308. “In a moral sense, drug dealing in black communities is the ultimate black-on-black crime. It is the descendant of the slave trade that once put our ancestors in bondage. Just as the slave trade could not have succeeded without the help of Africans, the drug trade of today could not flourish without black help.” Joseph H. Brown, *Who’s Really Selling Out Fellow Blacks?*, TAMPA TRIB., Mar. 24, 1996, at Commentary 6.

309. One commentator notes:

The people who believe that jury nullification poses a serious problem also often propose a solution: States should switch to allowing non-unanimous verdicts in criminal cases. The idea is to allow a supermajority of jurors—who, it is assumed, can usually be depended upon to follow the law—simply to outvote radical, outlying, nullifying jurors, reducing the number of hung juries, saving court time, and achieving swifter, sterner justice.

Roger Parloff, *Race and Juries: If It Ain’t Broke . . .*, AM. LAW. JUNE, 1997, at 5.

310. Conceding the validity of this criticism, Butler says: “So, in either the current regime or with the implementation of jury nullification, the juror’s difficult job of assessing blameworthiness might be, in part, a shot in the dark. Given that, I think it is better to err on the side of emancipation of African-American people.” Paul Butler, *The Evil of American Criminal Justice: A Reply*, 44 UCLA L. REV. 143, 155 (1996).

311. *U.S. v. Grady Thomas*, 116 F.3d 606, 614 (2d Cir. 1997).

312. In the year 2000, a fleet of space ships appears to trade with what has become an economically besieged U.S. The traders offer gold, critical chemicals and safe nuclear power in exchange for all African Americans. There is loud indignation at this offer of slave trading. After reflection, an enabling constitutional amendment is approved by a seventy percent vote and the trade is made. “And just as the forced importation of those African ancestors had made the nation’s wealth and productivity possible, so their forced exodus saved the country from the need to pay the price of its greed-based excess.” Derrick Bell, *After We’re Gone: Prudent Speculations On America In a Post-Racial Epoch*, 34 ST. LOUIS U. L.J. 393, 400 (1990).

313. Butler, *supra* note 289, at 690, n.72 (quoting Henry L. Gates, Jr., *Thirteen Ways of Looking at a Black Man*, NEW YORKER, Oct. 23, 1995 at 56, 58).

that since white supremacy will never freely share equality with Blacks, nullification is morally justified.

There is more to Butler's agenda—he uses the doctrinal style to subvert the doctrinal style. He ostensibly adheres to the linear methodology, uses Blue Book footnote etiquette, and writes in legalese. Nevertheless, he is speaking race LPC, targeting the public intellectual audience—which accounts for the easy conversion into an essay for *Harper's*. In a rebuttal to criticism, he explains his methodology:

In the Christian faith tradition of many African Americans, preachers sometimes describe an epistemology of "knowing what you know." Knowing what you know refers to those beliefs, often emotional, that are at the core of one's being and that precede or subvert education and other formal ways of knowing . . . . Knowing what you know gives law review editors headaches because it does not lend itself to formal citation.<sup>314</sup>

### III. THE IMPLICATIONS

*Now some people say there will be no law in the law schools.*<sup>315</sup>

Sex and self dominate the LPC Top Ten. Frug monologues on the torture of male sex exploitation, Williams draws attention to the ordeals of "I am,"<sup>316</sup> Morris excoriates military masculinity, West deconstructs Crit sexual despotism, while Ashe suffers from birthing trauma. Williams, Bell, Delgado, and Ashe are storytellers. Gabel and Kennedy do postmodern hallucinogenic performance art. All of the articles scorn the doctrinal style—including Butler who used the linear method to mock doctrinalism with the irrefutable "I know what I know" routine. With the possible exception of D'Amato's satire, the authors are angry and bitter which Williams, Frug, and Ashe, carry into paranoia.<sup>317</sup>

I have excluded consideration of articles that critique and analyze the storytelling genre. They tend to be linear advocacy work rationalizing the nontraditional methodology of narratives: Lawrence says that narratives possess the power "to build bridges of validation, understanding, and

314. Butler, *supra* note 310, at 143-44.

315. Charles Rothfeld, *What Do Law Schools Teach? Almost Anything*, N.Y. TIMES, Dec. 23, 1988, at B8.

316. Reputably "the shortest complete sentence in the English Language." AKRON BEACON J., July 19, 1998, at F1.

317. According to Farber and Sherry, this can create static between LPCs and traditionalists:

Although this paranoid mode of thought does not necessarily signify either falsity or abnormality, it does isolate radical multiculturalists from the kind of dialogue that might lead them to modify their views. For paranoids can be difficult patients to treat—any overtures are interpreted as hostile, and their ideas are impossible to refute. Radical multiculturalists tend to take a similar posture with respect to outsiders. Either the criticism is another effort by members of the dominant group to maintain their status and power, or it is pandering by members of the oppressed group to the power structure. Even outsiders who purport to be sympathetic to the radical multiculturalist position may be viewed with suspicion—they may be co-opting the radical potential of the movement.

FARBER & SHERRY, *supra* note 11, at 136.

empathy.”<sup>318</sup> Baron connects the movement to those “who lack power or who represent those who do.”<sup>319</sup> Halewood recommends that “white male legal academics must recognize the legitimacy—even the superiority—of certain ‘outsider’ perspectives on these issues, and assume the role of secondary contributors to the development of scholarship in these areas.”<sup>320</sup> Van Praagh concludes that storytelling “gives significance to emotion and provides a space for multiple experiences and perspectives.”<sup>321</sup> Milner Ball suggests that the function of storytelling is to “nudge the language of law toward art.”<sup>322</sup> While these articles validate the relevance of LPC storytelling they do not add to the corpus of the genre.

Uninhibited by formalism, the LPC methodology is in a constant state of evolution. As the LPC crowd is fond of gloating—everyone is writing stories and everything is a story.<sup>323</sup> Even practical clinicians have been seduced by the narrative genre, producing stories of attorney-client relationships, with the client a metaphor for subordinated esteem, intimidation, and objectification.<sup>324</sup> One of the more innovative conversions is to announce that “Judges, as storytellers, tell their audiences that something happened.”<sup>325</sup> When an opinion becomes a story, the reader as author-interpreter has the self-commissioned discretion to deconstruct what the court says with empathy, agony drama, and subjective imagination: “[R]eadings of judicial narratives always diverge as readers’ individual imaginations push them to their own meanings.”<sup>326</sup>

Innovative techniques and new disciples to narrative create a good and bad news dilemma for LPC people. The good news is the enhanced visibility and an increase in the flow of LPC writing that can be translated into more political influence in the academy. But there is a downside: success is sparking vigorous criticism from the doctrinalist, who, despite some erosion of authority, still dominate legal education.

As a legacy of Langdell’s notion of law as a science,<sup>327</sup> the doctrinal methodology relies on analysis and neutrality to solve problems and

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318. Charles R. Lawrence, III, *The Word and the River: Pedagogy As Scholarship As Struggle*, 65 S. CAL. L. REV. 2231, 2281 (1992).

319. Jane B. Baron, *Resistance to Stories*, 67 S. CAL. L. REV. 255, 266 (1994).

320. Peter Halewood, *White Men Can’t Jump: Critical Epistemologies, Embodiment, and the Praxis of Legal Scholarship*, 7 YALE J.L. & FEMINISM 1, 7 (1995).

321. Shauna Van Praagh, *Stories in Law School: An Essay on Language, Participation, and the Power of Legal Education*, 2 COLUM. J. GENDER & L. 111, 114 (1992).

322. Milner S. Ball, *The Legal Academy and Minority Scholars*, 103 HARV. L. REV. 1855, 1862 (1990).

323. To prove this point Professor Lopez has written a story about the problem of getting his mom a cab in Manhattan. “Thus, if Son wants to persuade Man to give Mom the cab despite Man’s acknowledged first-in-time claim to it, Son’s best shot will be to tell Man a story that both explains Mom’s situation and presents a compelling reason why Man should grant the desired remedy.” Gerald P. Lopez, *Lay Lawyering*, 32 UCLA L. REV. 1, 10 (1984).

324. See Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1 (1990); see also William L.F. Felstiner & Austin Sarat, *Enactments of Power: Negotiating Reality and Responsibility in Lawyer-Client Interactions*, 77 CORNELL L. REV. 1447 (1992).

325. Thomas Ross, *The Richmond Narratives*, 68 TEXAS L. REV. 381, 386 (1989).

326. *Id.* at 400.

327. See *supra* note 13.

counsel decisionmakers, attorneys, and the academy.<sup>328</sup> The ultimate objective is to add to our knowledge of law, either through explication or prescription of normative standards.<sup>329</sup> For political reasons LPC rejects linear analysis and objectivity and, to the chagrin of the doctrinalist, does not address law *qua* law. The proof is in the pudding; nine of the top ten articles do not seek to resolve legal problems or endeavor to add to the knowledge of law. Frug writes about the meaning, culture, and subordination of the female body and only in an ambiguous way does she generalize on the criminalization of sex.<sup>330</sup> To Williams, shopping, the homeless, and beggars trump law as she briefly ponders that a TV ad “—an orgasmic peep show—”<sup>331</sup> might suggest false advertising issues but then quickly moves on to lament the behavior of selfish students. Morris combines politics, psychology, sociology, and statistical analysis, to convict the military of masculinity. Her concluding section on breaking down military aggressiveness is vibrant LPC, but makes no normative judgments on law.<sup>332</sup>

Gabel and Kennedy disdain legal rights discussion, instead preferring a dialogue on themselves as they contemplate zapping the pods of the Liberal empire. Bell uses allegory to preach about race oppression, Delgado’s narrative explores the malignancy of Western culture, while West deconstructs Kennedy’s Critspeak into sexism. Even Abrams, an LPC supporter, could discern only “possibilities”<sup>333</sup> of a legal vision in *Zig-Zag*, perhaps a plea for nonregulation. Number Ten is the only article that deals with law as the central topic and seeks to solve a problem

328. “It involves the careful reading and comparison of appellate opinions with a view to identifying ambiguities, exposing inconsistencies among cases and lines of cases, developing distinctions, reconciling holdings, and otherwise exercising the characteristic skills of legal analysis.” Richard A. Posner, *The Present Situation in Legal Scholarship*, 90 YALE L.J. 1113, 1113 (1981).

329. See Stephen L. Carter, *Academic Tenure and “White Male” Standards: Some Lessons from the Patent Law*, 100 YALE L.J. 2065, 2068-69 (1991); see also Edward L. Rubin, *On Beyond Truth: A Theory for Evaluating Legal Scholarship*, 80 CAL. L. REV. 889, 903-04 (1992).

330. Her concluding lesson: “Only when sex means more than male or female, only when the word ‘woman’ cannot be coherently understood, will oppression by sex be fatally undermined.” Frug, *supra* note 34, at 1075.

331. WILLIAMS, *supra* note 63, at 308. “On a more complicated level, I worry that in acustoming ourselves to the overwhelming emptiness of media fictions, we will have reconstructed our very notion of property.” *Id.* at 309.

332. In defining the factors that link masculinity to military culture Morris borrows from the intuition of Butler’s “I know what I know.” She assumes away the need for physical strength with the “modern firepower” argument, a refrain that dates back to the cross-bow. Her response to the male’s need to establish a separate identity from the mother influence as a cause of masculinity is shared parenting. See Morris, *supra* note 87, at 750. Then comes the just warrior as a counter to macho posturing. For support Morris refers to William Manchester’s description of John Wayne visiting he and his wounded buddies who booed him as a “symbol of fake machismo we had come to hate.” *Id.* at 755 (quoting William Manchester, *The Bloodiest Battle of All*, N.Y. TIMES MAG., June 14, 1987, at 84). While the doctrinalist would scoff at a Manchester cite as anecdotal I would criticize Morris’s failure to appreciate the message. Morris ignores the effects of the two culture syndrome in warfare—the combat culture vs. the rear echelon culture. There is an impenetrable wall between the cultures—one bonded by death and survival, the other living with the guilt of not being part of “it.” The reaction to Wayne was a result of the two culture syndrome and has no bearing on the just warrior. Anyone who has been in combat knows that a distinction between a just and unjust warrior is ludicrous. The only distinction I encountered was between those that survived and those that did not.

333. Abrams, *supra* note 232, at 1011.

through race jury nullification. But Butler departs from the doctrinal paradigm by endorsing an off-the-wall solution, ignores serious impediments, and replaces the logic of analysis with LPC intuition.

As that old curmudgeon Kingsfield might growl: "Law and logic chopping—that's what scholarship is all about." To many, Kingsfield exposes a spreading malaise: we are witnessing the demise of law in legal education. Too many faculty members are ivory tower dilettantes,<sup>334</sup> writing for each other in a private elitist code.<sup>335</sup> Richard Epstein summarizes:

The modern academic discourses of critical theory and new voices have thus far contributed nothing to the debate on substantive legal issues beyond the constant, repetitive assertion of their own relevance. Even on the issues most relevant to their own concerns, they lack the basic conceptual apparatus necessary for understanding. What we have are merely assertions that theirs is a large turf that outsiders may not share.<sup>336</sup>

The Kingsfields and Epsteins of the academy can take a small slice of solace from the Crit experience. The CLS movement started with a flourish—numerous articles ferreting out indeterminacy in contracts, torts, labor, and other basic categories. After the initial power high from fame and notoriety the Crits crashed. Without the guidance of the analytical process, the messages became platitudinous<sup>337</sup> or incomprehensible overdoses of rhetoric.<sup>338</sup> The Crit version of pseudo deconstruction replaced analysis with simplistic trashing, which inevitably led to the all encompassing conclusion that the system is evil and should be replaced with a new vision such as Kennedy's notion of altruism.<sup>339</sup> The most serious dead end came when the Crits could not come up with solutions after concluding that everything is indeterminate.<sup>340</sup>

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334. See Edwards, *supra* note 233, at 36.

335. The phenomenon prompted a federal judge to complain that "many of our law reviews are dominated by rather exotic offerings of increasingly out-of-touch faculty members." *United States v. \$639,558 in Currency*, 955 F.2d 712, 722 (D.C. Cir. 1992). Law professors "are writing for each other." Judith S. Kaye *One Judge's View of Academic Law Review Writing*, 39 J. LEGAL EDUC. 313, 320 (1989).

336. Richard A. Epstein, *Legal Education and the Politics of Exclusion*, 45 STAN. L. REV. 1607, 1626 (1993).

337. "The goal of politics and law should be to organize social life in a way that will maximize the number and variety of social situations in which contact among people is experienced as mutually self-validating and loving rather than mutually isolating and threatening." Joseph W. Singer, *The Player and the Cards: Nihilism and Legal Theory*, 94 YALE L.J. 1, 70 (1989).

338. Reviewing Roberto Unger, a leading Crit theorist, *The New Republic* notes his "obscurities, contradictions and unanswered questions," calling his book a "riot of inconsistency" and "overdose of rhetoric." Stephen Holmes, *Plasticity Into Power: Comparative-Historical Studies of the Institutional Conditions of Economic and Military Success*, THE NEW REPUBLIC, Oct. 19, 1987, at 30.

339. "Altruism enjoins us to make sacrifices, to share, and to be merciful. It has roots in culture, in religion, ethics and art, that are as deep as those of individualism. (Love thy neighbor as thyself.)" Duncan Kennedy, *Form and Substance in Private Law Adjudication*, 89 HARV. L. REV. 1685, 1717 (1976).

340. "Positive proposals from the CLS movement never go far beyond a general endorsement of equality, participatory democracy, and (sometimes) socialism." Phillip E. Johnson, *Do You Sincerely Want to Be a Radical?* 36 STAN. L. REV. 247, 282 (1984).

The doctrinal establishment cannot read too much into the dissolution of CLS. While the Crits were a noisy bunch, they were a modest influence in LPC. They authored their own demise by stubbornly refusing to recognize the goals of the LPC majority who demand specific changes in rights instead of chatter about utopias. The LPC majority writes about hate speech, pornography, and race and gender harassment rather than the mush of Consciousness III and intersubjective zap. As Patricia Williams warned the Crits: "In discarding rights altogether, one discards a symbol too deeply enmeshed in the psyche of the oppressed to lose without trauma and much resistance."<sup>341</sup> As a result, there is a law orientation in mainstream LPC. Hence, writing that imitates the top ten's failure to connect with normative judgments on law could be susceptible to the same fate as CLS (what is left after the agony drama is tapped out) but less so as long as LPC continues to simultaneously produce rights scholarship.

I have been uncomfortable with the publication of law review articles in the form of short stories, or short stories in the form of law review articles, because they strike me as yet another manifestation of the "lawyer as astrophysicist" mentality that I have criticized.<sup>342</sup>

Four of the Top Ten belong to the storytelling genre: Williams offers a postmodern mesh of agony and anger,<sup>343</sup> Ashe affects the crisis memoir style,<sup>344</sup> Bell proselytizes with a parable,<sup>345</sup> Delgado relies on dialogue to castigate western culture.<sup>346</sup> The goal of storytelling is to erode and subvert doctrinal objectivity and analysis. Success depends on a strategy that can evade the obligations of the Culture of Critical Discourse that governs doctrinalism and imposes a duty to criticize and be open to criticism.<sup>347</sup> Where the genre is storytelling, critical inquiry and objectivity are not, as Posner observes, "rules of the literature game."<sup>348</sup>

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341. Patricia J. Williams, *Alchemical Notes: Reconstructing Ideals From Deconstructed Rights*, 22 HARV. C.R.-C.L. L. REV. 401, 433 (1987).

342. Mark Tushnet, *Truth, Justice, and the American Way: An Interpretation of Public Law Scholarship in the Seventies*, 57 TEX. L. REV. 1307, 1338 n.140 (1979).

This was brought home to me in a conversation with a former roommate, now a professor of literature, in which my wife and I were trying to identify the author of a line of poetry quoted in a newspaper puzzle. My friend immediately began by saying something like, 'Well, it couldn't be by X because the line is too long for him.' I realized then that there is a world of understanding about literature to which I essentially have no access, and I now wonder about the degree to which other law professors do.

Tushnet, *supra* note 132, at 1515 n.1; *see also* Lloyd Cohen, *A Different Black Voice in Legal Scholarship*, 37 N.Y.L. SCH. L. REV. 301 (1992).

343. *See supra* Part II.B.

344. *See supra* Part II.H.

345. *See supra* Part II.E.

346. *See supra* Part II.F.

347. One commentator observes:

The essence of critical discourse is in its insistence on reflexivity. There is the obligation to examine what had hitherto been taken for granted, to transform givens into problems, resources into topics: to examine the life we lead, rather than just enjoy or suffer it. It is therefore not only the present but also the anti-present, the *critique* of the present and the assumptions it uses, that the culture of critical discourse must also challenge. In other words: the culture of critical discourse must put its hands around its own throat, and see how long it can squeeze.

Doctrinalist stipulate that scholarship must be supported by verification roadmaps. With storytelling there is no way to provide verification for a response to the question: "Is the author's account what it purports to be."<sup>349</sup> For parables or narrative-dialogues this question is irrelevant; these genres are, by definition, fictional, composed as vehicles to teach a lesson or moral.<sup>350</sup> The verification question is, however, very relevant to the autobiographical narrative used by Williams, Culp, and Ashe. The coming together of the author and reader forms the autobiographical contract, which assumes truth. "Not only does the reader expect truth from autobiography, but autobiographers themselves all made more or less successful efforts to get at the truth."<sup>351</sup> Yet verification of the Williams, Culp, and Ashe stories is an insurmountable challenge, made virtually impossible by the use of highly personal musings and by the lack of objective references such as the identification of characters, dates, etc., which are subject to verification.<sup>352</sup>

To the doctrinalist, it is a breach of academic culture to recognize a methodology that so willingly lends itself to disguising fictive professions of truth.<sup>353</sup> The most generous reaction is doubt and suspicion. After praising Williams's *Benetton*<sup>354</sup> story for its rhetorical punch, Posner pauses with a reservation: "Yet here at the very pinnacle of Williams's art, the careful reader will begin to feel a sense of disquiet."<sup>355</sup> There are too many unexplained gaps in her description of encounters for Judge Posner.<sup>356</sup> Coughlin expresses "nagging ambivalence over the truth"<sup>357</sup> of Williams's sausage machine story.<sup>358</sup> Even Williams acknowledged rumors over the veracity of *Benetton*.<sup>359</sup> Without the structural constraints of analysis and objectivity the role of the motives of the self intrudes into the discourse between author and audience. "Are there," asks William

ALVIN W. GOULDNER, *THE FUTURE OF THE INTELLECTUAL AND THE RISE OF THE NEW CLASS*, 59-60 (1979).

348. POSNER, *supra* note 85, at 381. In critiquing Williams's work, Posner says:

We accept one-sidedness in literature, moreover, because we make allowance for *autres temps, autres moeurs* and because factual accuracy and scholarly detachment are not rules of the literature game. But they are rules of the scholarly game, and Williams is writing as a scholar. If my criticisms of her in this chapter should turn out to be one-sided, misleading, and tendentious, she would not be impressed by my rejoicing that mine is only one voice in an ongoing conversation and I can leave it to others to rectify any omissions or imbalance in my contribution.

*Id.*

349. Daniel A. Farber & Suzanna Sherry, *Telling Stories Out of School: An Essay on Legal Narratives*, 45 STAN. L. REV. 807, 833 (1993).

350. See BALDICK, *supra* note 188.

351. ROY PASCAL, *DESIGN AND TRUTH IN AUTOBIOGRAPHY* 83 (1960).

352. It was the existence of numerous factual references that led to the unmasking of Lillian Hellman's autobiography, *PENITENTIA*, as a misrepresentation. See AUSTIN, *supra* note 8, at 138-40.

353. "[A]utobiography may be a means of revealing the truth, it may be a means of hiding it." PASCAL, *supra* note 351, at 63.

354. See *supra* notes 63-93 and accompanying text.

355. POSNER, *supra* note 85 at 372.

356. "Williams has promised to get the particulars of an event or situation right, rather than submerging them in a generality, such as that whites hate blacks." *Id.* at 373.

357. Coughlin, *supra* note 91, at 1290.

358. See *id.* at 1290-91.

359. See WILLIAMS, *supra* note 63, at 242 n.5.

Gass about autobiography, "any motives for the enterprise that aren't tainted with conceit or a desire for revenge or a wish for justification?"<sup>360</sup>

Ironically, storytellers look to motive to finesse the truth issue. Instead of rational analysis, autobiographical narratives rely on emotion and catharsis to ridicule, distract, and dissipate the tenants of the majoritarian faith.<sup>361</sup> It is a subjective and passionate engagement, not objective truth, that defines autobiographical narratives and insulates them from critical discourse.<sup>362</sup> More decisively, the storyteller's grand motive is bonding and transformation;<sup>363</sup> circulating oppression stories provides a forum for discussion among the marginalized while simultaneously informing the dominant culture of the demeaning effects of privilege.<sup>364</sup> At this more elevated—and to storytellers, more principled—level of motivation the author seeks a deeper truth. Hence the *Benetton* story is not about the factual events of Williams's encounters but about the spirit murder of all Black females by an insensitive dominant culture. To the storyteller, focusing on objective truth, reason, and neutral analysis "might easily lead the reader to miss the deeper truth at the heart of Professor Williams' story."<sup>365</sup> The deeper truth is thus a communal truth, incorporating a history of oppression.<sup>366</sup> "Patricia J. Williams is a columnist ('Diary of a Mad Lawyer,' *The Nation*), and a professor of law at Columbia University. Her previous books are *The Rooster's Egg* and *The Alchemy of Race and Rights*. She also contributes regularly to *Ms.* and *The Village Voice*."<sup>367</sup>

This is the way Williams' career is described by the publisher of her recent book.<sup>368</sup> Its message is that the paradigmatic image of the public intellectual transcends the status of law professor. It is no accident that Morris, Bell, Delgado, and Butler have opted to participate in the public intellectual circuit—it is the new paradigm that reaches a larger and more diverse group of observers. The doctrinalist would read this strat-

360. William Gass, *The Art of Self*, *HARPERS MAG.*, May 1, 1994, at 43.

361. See Delgado, *supra* note 234, at 670.

362. Coombs notes that in addition to the insulating effect, "An explicit encouragement of passionate engagement with one's subject, I suspect, helps us produce better scholarship." Coombs, *supra* note 246, at 713 n.120.

363. See West, *supra* note 96.

364. Insider perspective "persuades by offering a complex, highly particularized account of an experience unfamiliar to many readers....[I]t 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." Abrams, *supra* note 232, at 1022.

365. See Delgado, *supra* note 234, at 675.

366. AUSTIN, *supra* note 8, at 141.

367. PATRICIA J. WILLIAMS, *SEEING A COLOR-BLIND FUTURE: THE PARADOX OF RACE* (1997).

368. The book is composed of five lectures Williams gave under the Reith Lecture for the BBC. It generated harsh criticism: "Have you ever had that dream when you are running in treacle? If not, try reading her lecture on racism called the Emperor's New Clothes. It's two-aspirin stuff." Boris Johnson, *People in the News: The Tedium is the Message*, *THE LONDON DAILY TELEGRAPH*, Jan. 27, 1997, at 32. "Too many of her sentences are either impenetrably dense or ungraspably vague." Robert Hanks, *The (English) Language Barrier*, *THE INDEPENDENT*, London, Mar. 15, 1997, at 20. "How can you respond critically? Tell a different story of your own?" David Sexton, *Should We be Blind or Not, Prof?* *SUNDAY TELEGRAPH*, London, Sun. Mar. 2, 1997, at 31. "The words she utters in a gentle, melodious voice of great beauty are clearly enunciated and unmistakably English. But they are strung together in such a way as to make them barely intelligible to British minds." Tom Utley, *Professor Who Cannot Find an Understanding Audience in Britain*, *THE LONDON DAILY TELEGRAPH*, Jan. 25, 1997, at 4.

egy as confirming the dumbing down of scholarship by work that repudiates the Culture of Critical Discourse.<sup>369</sup> The stakes of the conflict between doctrinalism and storytelling are high—without the *imprimatur* of objectivity and analysis, legal scholars are vulnerable to the risk of relegation to the scrape heap of the humanities who stand at the end of the line in getting grant and research support.<sup>370</sup>

The fact that seven of the top ten appeared in top-tier law reviews validates the emerging influence and presence of LPC. Yale, number one in the *U.S. News and World Report* ranking,<sup>371</sup> and which specializes in pop legal culture,<sup>372</sup> published Delgado and Butler. This also confirms that LPC writing has moved from its original outlet in the alternative journals like the *Wisconsin Women's Law Journal* to the exclusive pages of the most prestigious journals. The more serious implication is that the top tier law reviews are now engaging in the public intellectual dialogue.<sup>373</sup>

In the final analysis the conflict between the doctrinalists and the LPC movement will fade into the memory of history. Both sides will fall to the onslaught of cyberspace scholarship. Self-publication on the web will by-pass the Bluebook law review monopoly and enable authors unlimited artistic discretion. As cyberspace author Bernard Hibbitts predicts: "The next decade could witness the end of the law review as we know it."<sup>374</sup> In the new millennium, authors can illustrate text with self-videos of encounters with sexist, liberal, white males, while I could publish the antics of my LPC colleagues oppressing me at faculty meetings.<sup>375</sup>

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369. The dumbing down concept comes from Patrick Moynihan who described how deviant behavior is now deemed normal. "The amount of deviant behavior in American society has increased beyond the levels the community can 'afford to recognize' and that, accordingly, we have been re-defining deviancy so as to exempt much conduct previously stigmatized, and also quietly raising the 'normal' level in categories where behavior is now abnormal by any earlier standard." Daniel P. Moynihan, *Defining Deviancy Down*, 62 AM. SCHOLAR 17, 29 (1993).

370. See AUSTIN, *supra* note 8, at 160-64.

371. *Best Graduate Schools*, U.S. NEWS & WORLD REP., Mar. 2, 1998, at 78. Yale is number two on my ranking of top ten LPC reviews. See *supra* note 1 at 1327.

372. See, e.g., Symposium, *Popular Legal Culture*, 98 YALE L.J. 1545 (1989). "The editors at *Yale Law Journal* wanted to do a symposium in their June issue. But they wanted something a little lighter, a little zippy. The result was a bodacious departure from stodgy law journal convention—an issue devoted almost entirely to the law as reflected in television, books, and other forums of popular culture." Edward W. Lempinen, *Revved-Up Review*, STUDENT LAW., Dec. 1989, at 3.

373. The best example is the *Southern California Law Review's* symposium on the Anita Hill hearings. An editor acknowledged that the objective was "to capture the intensity and immediacy of the feelings that seized us last October." Symposium, *Gender, Race, and the Politics of Supreme Court Appointments: The Import of the Anita Hill/Clarence Thomas Hearings*, 65 S. CAL. L. REV. 1279, 1281 (1992).

374. Bernard J. Hibbitts, *Last Writes? Reassessing the Law Review in the Age of Cyberspace*, 71 N.Y.U. L. REV. 615, 616 (1996).

375. *The Talk of the Town*, NEW YORKER, July 20, 1998, at 27.

Spy 7, which broadcasts NiteLifeCam for at least three hours each evening beginning at eleven, funds itself by offering the humdrum vulgarities that have become the bread and butter of the Internet. One service shows girly photographs. Another gives a peek at some female N.Y.U. students who have wired up their dorm room. A third had been set up to peddle an explicit sex tape of a rock star and was halted by a restraining order before it could do so. Spy 7 currently has forty-five hundred subscribers, who pay \$19.95 for a month of access.

*Id.*

